

FINAL

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, MARCH 14, 2013**

BOARD MEMBERS PRESENT: Mr. Tommy Thurston, Chair
Mr. Charles Bird
Mr. Jerome Brooks
Mr. Gregory Hart
Ms. Anna Jolly
Mr. Satish Korpe, Vice Chair
Ms. Rebecca LePrell
Mr. Marc Olmsted, Secretary
Ms. Milly Rodriguez
Mr. Danny Sutton
Mr. Chuck Stiff

BOARD MEMBERS ABSENT: Dr. James Mundy

STAFF PRESENT: Mr. Bill Burge, Assistant Commissioner
Mr. Ron Graham, Director, Health Compliance
Mr. Ed Hilton, Director, Boiler Safety Compliance
Mr. John Crisanti, Manager, Policy and Procedure
Ms. Reba O'Connor, Regulatory Coordinator
Ms. Regina Cobb, Senior Management Analyst
Ms. Sharon Sykes, Policy and Planning Specialist
Ms. Cathy Brown
Ms. Ashlee Babb

OTHERS PRESENT: Ms. Sandy J. Loonam, Court Reporter, Halasz Reporting & Videoconference
Elizabeth Meyers, Esq., Assistant Attorney General
Mr. Michael Iacobellis, Tidewater Electrical Industry JATC
Mr. J. McRoy, MER General Contractors

ORDERING OF AGENDA

Chairman Tommy Thurston called the meeting to order at 10:00 a.m., and noted that there was a quorum. Chairman Thurston then called the Board's attention to that fact that Mr. Korpe was video recording the meeting and that there were questions concerning the purpose of the video recording, and who should be the custodian of the video recording. Mr. Korpe responded that he was video recording for informational purposes only so the public would know how the Board functions. Mr. Korpe added that the court reporter is recording everything anyway; therefore, the meeting is a matter of public record. A lengthy discussion continued on this issue by Messrs. Korpe, Crisanti, Thurston, Bird, Ms. Jolly and Ms. Myers.

Mr. Stiff motioned that the Board accept the recommendation of the Attorney General's Office to research the issue to make sure that we know all of the implications before we permit the meeting to be recorded by video, and that there be some advanced notice that the session would be video recorded. It was established that neither the Board nor the Department had advanced notice of the taping prior to the meeting. Mr. Sutton seconded the motion. The motion was approved with eleven yeas and one nay. More discussion on this topic followed. Mr. Bird suggested that matters like this be presented under Section 9 – Items of Interest for Members of the Board – during a meeting prior to the action, to give the Board a chance to consider the proposal and have some advanced information on it.

Next, Chairman Thurston requested a motion to approve the Agenda. Ms. Rodriguez moved to accept the Agenda, and Mr. Bird properly seconded the motion. The Agenda was approved, as submitted, and the motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Thurston asked the Board for a motion to approve the Minutes from the September 12, 2012, Board meeting. Ms. Jolly noted that there was an error in the Minutes in which Mr. Sutton's name appeared on the list as both present and absent. Mr. Sutton stated that he was, indeed, absent. On proper motion by Mr. Stiff and seconded by Ms. Jolly, the Minutes were approved, as corrected, by unanimous voice vote.

APPOINTMENT OF SECRETARY

Mr. Thurston appointed Mr. Marc Olmsted, who agreed to serve as Secretary.

PUBLIC COMMENTS

Mr. Thurston opened the floor to comments from the public, however, there were no comments.

OLD BUSINESS

Proposed Regulation: Amendments to Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

Mr. Ron Graham, Director of Occupational Health Compliance for the Department of Labor and Industry, summarized the proposed regulation by stating that the Department seeks to remove the \$2,000 minimum contract price provision required for lead contractors to file a lead project notification with the Department, as provided in Paragraph A. of 16VAC25-35-30 of the regulation. He explained that this change would require that licensed lead contractors submit written notification for all lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project.

He explained that since there will no longer be a contractor price threshold of \$2,000, lead abatement contractors will be required to submit more notification permit applications, but otherwise, the permit fee under Subsection C.1. will not change. He added that notification permit applications will increase the overall costs of lead permit fees that contractors would need to pay to get their lead abatement permit. He stated that there would be no impact on Virginia employees and that the Department would incur no added costs nor would staffing levels need to be increased as a result of the change.

In closing, Mr. Graham recommended that the Board consider for adoption as a proposed regulation of the Board an amendment to the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, pursuant to the Virginia Administrative Process Act, §2.2-4007.01.

On proper motion by Mr. Korpe and seconded by Ms. Jolly, the Minutes were approved, as corrected, by unanimous voice vote.

NEW BUSINESS

Corrections and Technical Amendment to the Hazard Communication Standard, §1910.1200 and Related Standards

Mr. Graham summarized this federal-identical regulation by stating that federal OSHA had made corrections and technical amendments to its regulations that were amended by the Hazard communication Standard which was published in the Federal Register on March 28, 2012 (77 FR 17574). He explained that most of the corrections involve changing references in federal OSHA standards from “material safety data sheet” (MSDS) to “safety data sheet” (SDS). These changes were inadvertently missed by federal OSHA in its 2012 revisions to the Hazard Communication standard. Other corrections include correcting values or notations in tables and updating references to terms defined in the Final Rule to Hazard Communication Standard.

Mr. Graham added that no impact on Virginia employers, employees or the Department is anticipated from the adoption of these corrections and technical amendments.

In conclusion, Mr. Graham recommended that the Board adopt the Corrections and Technical Amendment to the Hazard Communication Standard, § 1910.1200, and related standards, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 15, 2013.

A motion was properly made by Mr. Stiff and seconded by Ms. Rodriguez. The Department’s recommendation was approved unanimously by voice vote.

Occupational Exposure to Hazardous Chemicals in Laboratories, §1910.1450; (Non-Mandatory) Appendix A—National Research Council Recommendations Concerning Chemical Hygiene in Laboratories; Technical Amendment

Mr. Graham explained that federal OSHA updated a non-mandatory appendix in its Occupational Exposure to Hazardous Chemicals in Laboratories Standard to include the contents of the latest National Academy of Sciences publication entitled, “Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards,” 2011 edition. This new revision addresses current laboratory practices, security, and emergency response, as well as promoting safe handling of highly toxic and explosive chemicals and their waste products. The 2011 edition is also widely distributed and accepted by recognized authorities in the laboratory community. All revisions made were minor and non-substantive.

He added that the adoption of this technical amendment to the non-mandatory appendix is not expected to have any impact on Virginia employers, employees or the Department.

In conclusion, Mr. Graham recommended, on behalf of the Department of Labor and Industry, that the Board adopt the Technical Amendment to the National Research Council Recommendations Concerning Chemical Hygiene in Laboratories, (Non-Mandatory) Appendix A, of the Occupational Exposure to Hazardous Chemicals in Laboratories Standard, §1910.1450, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 15, 2013.

A motion was properly made by Ms. Jolly and seconded by Mr. Stiff. The Department's recommendation was approved unanimously by voice vote.

Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20

Mr. Graham explained that pursuant to the Executive Regulatory Initiative, this regulation was identified for amendment after an in-depth review by the Department. He stated that, as currently enacted, this regulation provides the procedure for notifying the Department of asbestos projects to be undertaken and sets permit fees for those projects. He informed the Board that licensed asbestos contractors who undertake affected projects must notify the Department of Labor and Industry, obtain a permit and pay a fee as required by Va. Code §40.1-51.20.A. and B.

Mr. Graham continued by stating that the VOSH Program of the Department seeks to discontinue the requirement for notification of residential asbestos projects and delete the regulatory language of 16VAC25-20-40, Exemption, because eliminating the notification requirements for residential buildings will minimize the paperwork burden for asbestos contractors and also for homeowners. In addition, he informed the Board that the Code of Virginia does not require a permit fee for asbestos projects in residential buildings. (See Va. Code §40.1-51.20.B)

He explained that eliminating the notification requirements for residential buildings will reduce the paperwork burden for asbestos contractors and homeowners, but it would have no impact on Virginia employees. With respect to impact on the Department, Mr. Graham stated that eliminating the notification requirements for residential buildings will reduce the number of applications the Department will have to process. In response to Ms. LePrell's question concerning the number of notifications currently received for residential buildings, Mr. Graham replied that the Department receives approximately 250 to 300 a year. He informed the Board that the Department would not have to record asbestos-related contractor work in residential buildings or private homes.

Mr. Crisanti made the Board aware that the Department would be utilizing the Fast-Track procedure in adopting this regulation because the regulation is non-controversial, and no individual or entity will be adversely affected by this regulatory change.

In conclusion, Mr. Graham recommended, on behalf of the Department of Labor and Industry, that the Board amend the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, pursuant to Va. Code §2.2-4012.1.

A motion was properly made by Ms. Rodriguez and seconded by Mr. Korpe, and the Department's recommendation was approved unanimously by voice vote.

Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, et seq.; Amendments

Mr. Ed Hilton, Chief Boiler Inspector, explained that, pursuant to the Executive Regulatory Reform Initiative, the Department identified for amendment the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40. As currently enacted, this regulation requires the chief boiler inspector of the Commonwealth, or his designee, to provide and evaluate the written examination for boiler operator certification.

He stated that the Boiler Safety Compliance Program of the Department seeks the repeal of the requirement that it provide and evaluate written examinations of Subsection C. of 16VAC25-40-30 because it has never been requested to do so, nor has the section ever been implemented by any locality. The Department has never been asked to provide and evaluate the written examination for boiler operator certification for a boiler operator who operates/maintains boilers in any county, city or town in the Commonwealth. Therefore, it has been determined by the Department to be of no value in protecting the public health, safety or welfare.

Mr. Hilton also discussed the amendments to the following sections: 16VAC25-40-30.I.; 16VAC25-40-30.L.; 16VAC25-40-30.N.; 16VAC25-40-30.O.; 16VAC25-40-10; and 16VAC25-40-20.D.

Mr. Hilton informed the Board that the Department does not anticipate any impact on Virginia employers, employees or the Department as a result of these changes to the regulation. Also, he informed the Board that the Department would be utilizing the Fast-Track procedure in adopting this regulation because the regulation is non-controversial, and no individual or entity will be adversely affected by this regulatory change. In conclusion, Mr. Hilton recommended that the Board amend the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, *et seq.*, pursuant to Va. Code §2-2.4012.1.

A motion was properly made by Mr. Sutton and seconded by Ms. Rodriguez and Mr. Korpe. The Department's recommendation was approved unanimously by voice vote.

Regulations for Periodic Review

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, explained that in accordance with the Administrative Process Act §2.2-4017 of the Code of Virginia, Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review of existing regulations. She continued by stating that the Executive Order requires that state agencies conduct a periodic review of regulations every four years. She listed the six regulations of the Board that have been identified for review in 2013 as follows:

- 1) 16VAC25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of asbestos-Containing Construction wastes— Incorporation By reference, 40 CFR 61.140 through 61.156;
- 2) 16VAC25-70, Virginia Confined Space standard for the telecommunications Industry;
- 3) 16VAC25-97, Reverse Signal Procedures – General Industry-Vehicles/Equipment Not Covered by Existing Standards;

- 4) 16VAC25-140, Virginia Confined Space Standard for the Construction Industry;
- 5) 16VAC25-150, Underground Construction, Construction Industry; and
- 6) 16 VAC25-270, Virginia Excavation Standard, Construction Industry

After explaining the current status and process of the regulatory review, Ms. O'Connor concluded by requesting that the Board vote to give the Department permission to proceed with the periodic review process for the six regulations mentioned.

Mr. Korpe moved to extend the 21-day public comment period for the periodic review process to 45 days to give the general public more time to respond. Ms. Jolly seconded the motion, which was approved unanimously by voice vote.

A motion to accept the Department's recommendation concerning going forward with the periodic review process was properly made by Ms. Rodriguez and seconded by Mr. Korpe. The Department's recommendation was approved unanimously by voice vote.

Items of Interest from the Department of Labor and Industry

Mr. Bill Burge, Assistant Commissioner of the Department of Labor and Industry, began by stating that he was here today on behalf of Commissioner Malveaux, who sends his regrets that he could attend the meeting. Commissioner Malveaux was called away because of a family illness. Mr. Burge announced that the Department had received permission to recruit and hire four additional Voluntary Protection Program (VPP) coordinators. Previously, that division had one full-time employee and one part-time employee. He expressed the Department's excitement for this opportunity to partner with outstanding employers who have outstanding employees and outstanding safety records. He informed the Board that this will help companies achieve the full star status with the VPP Program and it will also help the Department develop projects that have been put on hold. He added that it will allow the Department to form alliances with other programs in addition to VPP in the state and it will advance or expand the VPP effort into construction.

Mr. Burge stated that the new hires will more than likely telecommute from home so they can travel statewide. In response to Mr. Korpe's inquiry about the Department's jurisdiction in construction, Mr. Burge stated that the Department has enforcement jurisdiction in construction and it does voluntary compliance work in construction. He stated that the Department has not ventured into the VPP arena in construction because two of the requirements of the VPP Program are that the program must be site-specific and that safety data must be run from three years from that same location. He explained that today it's a rarity to have projects lasting several years in construction. Mr. Burge informed the Board of a program similar to VPP, which is in the draft phase, called the Virginia Best Program. This program, which is being developed as a result of meetings with the Association of General Contractor, would be very VPP-like without the VPP qualifying restrictions.

Items of Interest from Members from the Board

Mr. Stiff then requested an overview or an orientation of boiler and pressure vessel safety primarily to determine the reasons for rules and regulations that no one uses or that haven't been enforced in years. Discussion continued on this issue by Messrs. Olmsted, Korpe, Bird, Stiff, Crisanti and Ms. Jolly.

Mr. Crisanti agreed to strive to have an overview of the boiler and pressure vessel safety program at the next meeting.

Mr. Bird stated that he would like to see the Board take up the issue of roof perimeter fall protection for commercial-type buildings during construction and even after the building is completed. He continued by stating that for maintenance workers, there is nothing there for protection but a “gravel stop” which is to prevent the ballast from moving where stone has been placed to hold down the roofing material from migrating off the edge of the building. He complained that there is nothing, however, to protect either the construction worker or the maintenance worker from falling off the roof. Additional discussion continued on this issue by Messrs. Bird, Korpe, Stiff, Hart and Ms. LePrell and Ms. Jolly.

Mr. Thurston asked Mr. Crisanti to have the Department look into this issue of fall protection for people working on roofs and any helpful fall-related statistics associated with the construction and general industry.

Since some of the meeting had been taped and the Board agreed that the Department would be the custodian of the video recording, Chairman Thurston then asked that Mr. Korpe give the video recording to the Department until the Board receives a determination as to how to proceed.

Mr. Korpe then asked about provisions for pins issued for Board members. Ms. Cobb responded that the Secretary of the Commonwealth’s office issues pins for Board members. She agreed to check into that. Ms. Jolly stated that she received a Commonwealth of Virginia pin when she was appointed to the Board.

Adjournment

There being no further business, Mr. Stiff made the motion to adjourn the meeting. Mr. Korpe properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:40 a.m.

