

FINAL

SAFETY AND HEALTH CODES BOARD MEETING MINUTES THURSDAY, DECEMBER 6, 2006

A regular meeting of the Safety and Health Codes Board was held in Courtroom A, State Corporation Commission, 1300 East Main Street, Richmond, Virginia. Board Chairman Louis Cernak called the meeting to order at 10:08 a.m.

BOARD MEMBERS PRESENT: Mr. Louis Cernak, Outgoing Chairman
Mr. M. Frank Hartsoe
Mr. Daryl Hines
Ms. Anna Jolly
Mr. Satish Korpe
Dr. James H. Mundy
Mr. Rick Linker
Mr. Linwood Saunders
Mr. Chuck Stiff
Mr. Daniel A. Sutton
Dr. Khizar Wasti

BOARD MEMBERS ABSENT: Mr. Roger Burkhart, Outgoing Vice Chairman/Newly Elected Chairman
Ms. Juanita Garcia
Ms. Milagro Rodriguez, Outgoing Secretary/Newly Elected Vice Chair

STAFF PRESENT: Mr. Ray Davenport, Labor and Industry, Commissioner
Mr. Glenn Cox, Director of VOSH Programs
Mr. Ronald Graham, Health Compliance Director
Mr. Jay Withrow, Office of Legal Support Director
Mr. John Crisanti, Office of Planning and Evaluation Manager
Ms. Jennifer Wester, Director, Cooperative Programs
Mr. Frank Dellinger, Confidential Policy Analyst
Ms. Regina Cobb, Agency Management Analyst SR

OTHERS PRESENT: Ms. Beverly Crandell, Federal OSHA
Ms. Donna Chandler, Court Reporter, Chandler & Halasz

ORDERING OF AGENDA

Chairman Lou Cernak called the meeting to order at 10:05 a.m. Mr. Cernak asked for a motion from the Board to approve the proposed Agenda. Mr. Chuck Stiff made the motion to approve the Agenda, as submitted, and Mr. Linwood Saunders seconded the motion. The motion was carried by voice vote.

APPROVAL OF MINUTES

Mr. Cernak asked for a motion from the Board to approve the Minutes of the June 19, 2006 meeting and the October 26, 2006 Public Hearing. Mr. Linwood Saunders made the motion and Mr. Stiff seconded it. The motion was carried unanimously by voice vote.

ELECTION

Chairman Cernak began by recalling the more than 20 year tradition in which the vice chair is typically nominated to be the Chair and the secretary is typically nominated to be Vice Chair and the alternation of the Chairman and Vice Chairman positions between labor and management representatives. Chairman Cernak asked for nominations for the position of Chairman of the Board. Mr. Saunders nominated Mr. Roger Burkhart, who was unable to attend the meeting, but who had expressed interest in being nominated as Chairman. Mr. Burkhart represents management. There being no other nominations, Dr. James Mundy moved that the nominations be closed and Mr. Frank Hartsoe seconded the motion. Mr. Burkhart was elected unanimously by voice vote.

Next, Chairman Cernak asked for nominations for Vice Chairman. Mr. Satish Korpe nominated himself and briefly provided the Board with his qualifications. There was a lengthy discussion by members of the Board about the bylaws and the tradition of alternating the Chairman and Vice Chairman positions each year between a labor representative and management representative. Mr. Korpe, who represents management, withdrew his name from nomination and Ms. Anna Jolly then nominated Ms. Milagro Rodriguez, who was also absent. Ms. Rodriguez represents labor. She was elected by voice vote. Chairman Cernak noted that according to the Bylaws, the Chairman selects the secretary. In the absence of newly elected Chairman Burkhart, no secretary was appointed, and Board members suggested that outgoing Chairman Cernak continue to preside over the meeting.

PUBLIC COMMENT

Chairman Cernak opened the floor to comments from the public, however, no one had any comments.

OLD BUSINESS

Amendment to 16 VAC 25-75, Amendment to General Industry Standard for Telecommunications, General, Approach Distances, §1910.268(b)(7)(i); Final Adoption

On behalf of the VOSH Program, Mr. Jay Withrow, Director of the Office of Legal Support for the Department of Labor and Industry, requested that the Board consider for adoption as a final regulation of the Board VOSH's proposed amendments to the General Industry Standard for Telecommunications, General, Approach Distances, §1910.268(b)(7)(i), pursuant to §40.1-22(5). He summarized the regulation as an attempt to incorporate identical protections for telecommunications workers who work around power lines that are currently in place for general industry power line workers and construction industry power line workers. He briefly reviewed the regulatory process of this regulation. Next, he explained that the amendment is needed

because of a loophole in the regulation which involves employees using gloves and/or gloves and sleeves when they are working around power lines. He further explained that there have been fatalities in both construction and telecommunications where an employee inadvertently contacted a nearby uninsulated line with their shoulder while working and that it is this type of situation that the Department is trying to address with this amendment.

With respect to impact, Mr. Withrow indicated that no significant additional cost or implementation should be placed on employers and employees would benefit from identical protections that other employees in other industries have. He added that they may require additional training on the change in the regulatory language. In referencing the meeting that the Department staff had with members of the power utility and telecommunications community, Mr. Withrow stated that all agreed in that meeting that the changes in the regulation would not impact their business practices; and there didn't seem to be any significant cost associated for the employer. He mentioned the four issues discussed at that meeting and noted that there was a fifth issue about municipally-owned power poles and municipally-owned or operated telecommunication systems. It was recommended that the Department solicit comments from the Virginia Municipal League and Virginia Association of Counties. Mr. Withrow stated that he has not received any comments from these two groups.

Mr. Withrow added that the Department clarified for interested persons that the proposed regulation allows just the use of glove or gloves and sleeves; it is either/ or. He stated that Dominion Power's main issue involved language in the regulation that could be read to allow a telecommunication worker to actually handle live electrical parts. Dominion Power wanted to make it clear that they do not allow external telecom employees to handle live electrical parts. The Department agreed to make that change in the regulation. In response to other comments, Mr. Withrow stated that there were concerns about the distinction between minimum approach distances and "reaching distances".

He stated that the Department struck out the term, "reaching distances". Mr. Withrow stated that the Department, by adopting this proposed regulation, does not intend to change any current interpretations federal OSHA or the Department of Labor and Industry, whether they concern application of the telecommunication standard or the construction standard. He added that, where a telecommunication employee might go inside the approach distances, there is a procedure for contacting the power line company which involves discussions, plans of action and costs. Another comment involved the regulatory language that would allow the use of an insulating handle. In response to that comment, Mr. Withrow informed the Board that the Department deleted that reference to the insulating handle from the proposed regulation.

In conclusion, Mr. Withrow recommended, on behalf of the Department of Labor and Industry, that the Safety and Health Codes Board consider for adoption the final regulation to amend §1910.268(b)(7)(i), General Industry Standard for Telecommunications, General, Approach Distances, as authorized by Virginia Code §40.1-22(5).

Mr. Stiff made a motion to accept Mr. Withrow's recommendation, and Mr. Saunders seconded. The motion was approved by voice vote.

16 VAC 25-95, Proposed Regulation to Amend the Medical Services and First Aid Standards for General Industry, §1910.151(b); 16 VAC 25-177, Proposed Regulation to Amend the Medical Services and First Aid Standards for the Construction Industry, §1926.50(c)

On behalf of the VOSH Program, Mr. Withrow requested the Board to consider for adoption as proposed regulation of the Board these proposed amendments to the medical services and first aid standards for general industry, §1910.151(b) and the Construction Industry, §1926.50(c), pursuant to Va. Code §40.1-22(5). Mr. Withrow explained that the basic change being made is to provide that first aid and CPR-trained employees must be onsite for the length of time that employees are working there; in other words, all shifts for any worksite where employees are exposed to occupational hazards that could cause death or serious physical harm. He stated that there is additional language that will give employers some flexibility about how to meet that requirement.

Mr. Withrow addressed provisions providing employers with options that concerned mobile crews of employees and individual mobile employees. He added that employers can either train one of the employees on mobile work crew in first aid and CPR, or they can make written arrangements with a contractor at the job site. Mr. Withrow stated that for the single mobile employee, the employer can provide the employee with access to a communication system that will allow for immediate request for medical assistance through 911 emergency call.

Mr. Withrow briefly reviewed the regulatory history of the proposed amendment. He informed the Board of one inquiry and an official comment received during the 30-day comment period. He stated that the comment concerned single employees assigned to work. Mr. Withrow's response to the inquiry was to train the person in first aid.

He added that a reasonable alternative already in use by the commenter's company is a call out system that is activated when the employee is on site. Mr. Withrow stated that a second commenter, Donald Hall from the Virginia Automobile Dealers Association, questioned the list of hazardous occupations, appearing on the Department of Labor and Industry's website. Mr. Withrow responded that it depends on the work site, whether automotive mechanics are exposed to the types of hazards that could result in serious physical injury or death. Lastly, Mr. Withrow stated that Mr. Hall asked that the proposed rulemaking eliminate motor vehicle dealers associations from consideration. Mr. Withrow responded that the Department does not feel that there is sufficient reason for excluding them.

Mr. Withrow then addressed the impact of the proposed regulation. He stated that some employers would have to incur the additional cost of securing such training but he added that the employer could get somebody in a train-the-trainer situation. He further stated that because the regulations will be limited to only those facilities that have serious hazards, there will be many places that will be exempt from the regulation which would be a cost savings to those who currently are covered by the regulations. He stated that he did not anticipate any significant regulatory or fiscal impact on the Department.

After a lengthy discussion about the single mobile employee issue, Mr. Withrow recommended, on behalf of the Department of Labor and Industry, that the Board consider for adoption the proposed regulation to Amend Medical Services and First Aid Standards for General Industry, 16 VAC 25-95, and the Construction Industry, 16 VAC 25-177, to require employers to train

employees to render first aid and cardiopulmonary resuscitation, when employees are exposed to occupational hazards which could result in serious physical harm or death. Mr. Withrow informed the Board that there will be a 60 day comment period as well as a public hearing on these issues discussed.

Ms. Jolly moved that the Board adopt the proposed regulation and Messrs. Cernak, Stiff and Mundy all seconded the motion which was approved by unanimous voice vote.

Proposed Regulation 16 VAC 25-96 to Amend Reverse Signal Operation Safety Procedures Dealing with Vehicular Equipment, Motor Vehicles, Material Handling Equipment and Motor Vehicle Equipment in Existing Standards: 16 VAC 25-90-1910.269; 16 VAC 25-175-1926.601; 16 VAC 25-175-602 and 16 VAC 25-175-952; and Proposed Regulation 16 VAC 25-97 to Establish Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for General Industry and the Construction Industry.

On behalf of the Virginia Occupational Safety and Health (VOSH) Program, Mr. Withrow requested the Board to consider for adoption as a proposed regulation of the Board the following proposed amendments pursuant to Va. Code §40.1-22(5):

Amend the following Part 1910 General Industry and Part 1926 Construction Industry standards governing the reverse signal operation safety procedures for off-road motor vehicles and vehicular or mechanical equipment, 16 VAC 25-96:

- A. §1910.269(p)(1)(ii) - Vehicular Equipment for Electric Power Generation, Transmission and Distribution; §1926.601(b) - Motor Vehicles; §1926.602(a)(9)(ii) - Material Handling Equipment; §1926.952(a)(3)- Mechanical Equipment, Power Transmission and Distribution; and
- B. Establish new reverse signal operation safety procedures for all vehicles, machinery and equipment with an obstructed view to the rear in General Industry and the Construction Industry, 16 VAC 25-97.

Mr. Withrow informed the Board that the proposed comprehensive regulation at 16 VAC 25-97 will provide additional protection for employees by requiring that construction and general industry vehicles, machinery and equipment (“covered vehicles”), whether for operation in off-road work zones or over the road transportation or hauling, shall not be operated in reverse unless the vehicle has a reverse signal alarm audible above the surrounding noise level and the vehicle is backed up only when a designated observer or ground guide signals that it is safe to do so, and that the proposed regulation provides a definition of the phrase “obstructed view to the rear.”

He stated that the amendments provide specific requirements for training the person giving the signals and for the truck drivers and a refresher training requirement is included if there is an accident or a near-miss. He informed the Board that if vehicles are not equipped with the reverse signal alarm upon manufacture or are not later retrofitted with one, they may be exempt from having a reverse signal alarm, but drivers must still comply with the other requirements of the regulation which means they have to have a designated observer or ground guide when backing up.

He added that to the extent that these regulations apply to vehicles covered by the Department of Transportation (DOT) regulations, the DOT regulations would take precedence over the Department of Labor and Industry's regulation.

Mr. Withrow informed the Board that the public comment period for the Notice of Intended Regulatory action was from September 4, 2006 to October 4, 2006 and the Department did not receive any public comments.

With respect to impact on employers, Mr. Withrow stated that employers would be required to train drivers of covered vehicles, machinery and equipment and the designated employee signalers. He added that some cost would be associated with the training although employers are given some flexibility with video technology and other exemptions already discussed.

Mr. Withrow stated that to the extent that any federal Department of Transportation (DOT) regulation applying to covered vehicles conflicts with this section, the federal DOT regulation will take precedence. He noted that a significant reduction in employee deaths attributed to covered vehicles is anticipated, and that no significant impact on employers or the Department of Labor and Industry is anticipated.

Mr. Withrow concluded by recommending, on behalf of the Department of Labor and Industry, that the Board consider for adoption the proposed regulation 16 VAC 25-95 to amend the following standards listed below:

Vehicular Equipment for Electric Power Generation, Transmission and Distribution in General Industry, 16 VAC 25-90-1910.269(p)(1)(ii); Motor Vehicles in the Construction Industry, 16 VAC 25-175-1926.601(b)(4); Material Handling Equipment in the Construction Industry, 16 VAC 25-175-1926.602(a)(9)(ii); and, Mechanical Equipment, Power Transmission and Distribution in the Construction Industry, 16 VAC 25-175-1926.952(a)(3).

and also consider for adoption the proposed comprehensive regulation:

Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry, 16 VAC 25-97.

Mr. Cernak asked for a motion and Dr. Mundy moved to approve Mr. Withrow's recommendation. Mr. Frank Hartsoe seconded the motion which was approved unanimously by voice vote.

NEW BUSINESS

Occupational Exposure to Hexavalent Chromium, Final Rule; Part 1910 for General Industry, Part 1915 for Shipyards and Part 1926 for Construction; Correcting Amendments

Mr. Ron Graham, Director of Occupational Health Compliance with the Department of Labor and Industry informed the Board that he would be presenting two matters. He stated that the first one dealt with changes to the hexavalent chromium standard, and the second one deals with changes to the respiratory protection standard.

Mr. Graham requested, on behalf of the Virginia Occupational Safety and Health (VOSH) Program, that the Board consider for adoption federal OSHA's correcting amendments to the final rule for the Occupational Exposure to Hexavalent Chromium for Parts 1910, 1915 and 1926, as published in 71 FR 36008 on June 23, 2006, with a proposed effective date of March 15, 2007.

Mr. Graham summarized the amendment by stating that when federal OSHA published the standards for hexavalent chromium for Parts 1910, 1915 and 1926, errors existed in the regulatory text of the standards. He continued by stating that the purpose of this action was to keep VOSH in compliance with the federal standard as corrected by OSHA and updated some of these technical requirements. He stated that specifically corrections were needed to be made in the Z Tables in §1910.1000 where there were some incorrect entries. He also mentioned changes in the construction standard, §1926.55.

He stated that the error correcting amendments should not have any impact on employers, employees or the Department.

In conclusion, Mr. Graham recommended, on behalf of the staff of the Department of Labor and Industry, that the Safety and Health Codes Board adopt the correcting amendments to the final rule for the Occupational Exposure to Hexavalent Chromium, §§ 1910.1000, 1915.1000 and 1926.55, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of March 15, 2007.

Mr. Saunders made the motion to accept Mr. Graham's recommendation. Ms. Jolly seconded the motion which was adopted by the Board unanimously by voice vote.

Assigned Protection Factors for Respirators, Parts 1910, 1915 and 1926; Final Rule

Mr. Graham requested, on behalf of the VOSH Program that the Board consider for adoption federal OSHA's revised final rule for the Assigned Protection Factors for Respirators as published in Volume 71 of the Federal Register, page 50121 on August 24, 2006, with a proposed effective date of March 15, 2007.

Mr. Graham summarized the amendment by stating that the Respiratory Protection standard was designed to provide employers with a comprehensive framework for which to establish a Respiratory Protection program and that part of the framework in establishing a respiratory protection program was to have assigned protection factors for respirators. He stated that initially OSHA did not have information which it felt was sufficient to actually get a respirator to an assigned protection factor. He informed the Board that an assigned protection factor is basically a numerical value that is assigned to a respirator or a class of respirators that tells employers how efficiently a respirator will protect an employee in the workplace.

Mr. Graham stated that the purpose of this change is to ensure that respirators reduce or eliminate the significant risk to employee health resulting from exposure to hazardous substances. He added that the assigned protection factors will provide employers with a guideline to follow.

He informed the Board that this change should not have a significant impact on employers and that the increased cost from compliance will also yield additional benefits to employers as well as employees in selecting a proper respirator.

In conclusion, Mr. Graham, on behalf of the staff of the Department of Labor and Industry, recommended that the Board adopt the final rule for Assigned Protection Factors for Respirators, Parts 1910, 1915 and 1926, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of March 15, 2007.

Dr. Mundy moved to accept Mr. Graham's recommendation. Ms. Jolly seconded the motion which was adopted by unanimous voice vote.

Roll-over Protective Structures for the Construction Industry and the Agriculture Industry, Final Rule; Corrections and Technical Amendments

Mr. Glenn Cox, Director of the Occupational Safety Compliance with the Department of Labor and Industry, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's revised final Roll-Over Protective Structures in Construction (§1926.1002) and agriculture (§§1928.52 and 1928.53), as published in 71 FR 41127 on July 20, 2006, with a proposed effective date of March 15, 2007.

Mr. Cox explained that OSHA went back to testing procedures that it did before it went to the national consensus standard which allows more testing options to be done without reducing employee safety or protection at all.

Mr. Cox stated that fewer than ten original equipment manufacturers nationally are directly affected by the direct final rule and that none of the changes imposed conditions that would generate new costs for these equipment manufacturers including small manufacturing firms. He added that there are no significant impacts anticipated on the employees or the Department.

He concluded by recommending on behalf of the Department that the Board adopt the corrections and technical amendments to this direct final rule on Roll-Over Protection Structures in Construction, §1926.1002, and Agriculture, §1928.52 and 1928.53, as authorized by Virginia Code Section 40.1-22(5), and 2.2-4006.A.4(c), with an effective date of March 15, 2007.

Mr. Korpe moved to accept Mr. Cox's recommendation. Dr. Mundy seconded the motion which was adopted by unanimous voice vote.

Updating National Consensus Standards in OSHA's Standard for Fire Protection in Shipyard Employment, Part 1915; Direct Final Rule

Mr. John Crisanti, Manager of the Office of Planning and Evaluation with the Department, on behalf of the VOSH Program, requested the Board to consider for adoption federal OSHA's direct final rule, Updating National Consensus Standards in OSHA's Standard for Fire Protection in Shipyard Employment, 1915.5, 1915.505 and 1915.507, as published in 71 FR 60843 on October 17, 2006, with a proposed effective date of March 15, 2007.

Mr. Crisanti summarized the change by stating that on September 15, 2004, federal OSHA promulgated a new fire protection rule for shipyard employment that incorporated by reference 19 National Fire Protection Association (NFPA) standards. Ten of those NFPA standards had been updated by NFPA

since the fire protection rule was proposed and an additional NFPA standard has been updated since the final rule was published.

Mr. Crisanti stated that in this direct final rule, federal OSHA has replaced the references to those eleven NFPA standards by adding 10 of the most recent versions. He added that there are only 10 NFPA standards replacing eleven NFPA standards because the NFPA combined two of its standards, NFPA 11-1998 and NFPA 11A-1999, into the NFPA 11-2002 standard covering foam fire extinguishing systems.

He explained that the changes include the standard on Open-circuit self-contained Breathing Apparatus for Fire and Emergency Services, NFPA 1981 to 2002; Standard for Low, Medium and High Expansion Foam, BFOA 11-2005; Standard for Portable Fire Extinguishers, NFPA 10-2002; National Fire Alarm Code, NFPA 72-2002; and the Standard for Installation of Sprinkler Systems, NFPA 13-2002.

He informed the board that this change will enhance OSHA's fire protection in shipyard standards by adding the most current NFPA consensus standards to the OSHA standards. Additionally, he stated that incorporating this new version will not add any additional costs on private or public sector entities and no additional impact is anticipated by the Department.

In conclusion, Mr. Crisanti recommended, on behalf of the Department, that the Board adopt the direct final rule, Updating National Consensus Standards in OSHA's Standard for Fire Protection in Shipyard Employment, Part 1915, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of March 15, 2007.

Mr. Saunders moved to accept Mr. Crisanti's recommendation. Ms. Jolly seconded the motion which was adopted by unanimous voice vote.

Items of Interest from the Department of Labor and Industry

Commissioner Davenport wished everyone a Merry Christmas.

Items of Interest from Members of the Board

Mr. Cernak wished everyone a Merry Christmas.

Adjournment

There being no further business to come before the Board, the meeting was adjourned at 12:35 p.m.