

**FINAL  
SAFETY AND HEALTH CODES BOARD  
PUBLIC HEARING AND MEETING MINUTES  
SEPTEMBER 17, 2019**

**BOARD MEMBERS PRESENT:** Mr. Travis Parsons, Interim Chair  
Mr. John Fulton  
Ms. Anna Jolly  
Mr. Kenneth Richardson, II  
Ms. Milagro Rodriguez  
Mr. Louis J. Cernak, Jr.

**BOARD MEMBERS ABSENT:** Mr. David Martinez, Newly Elected Chair  
Mr. Charles Stiff, Newly Elected Vice Chair  
Dr. Dwight Flammia  
Ms. Tina Hoover  
Mr. Courtney Malveaux  
Mr. Jerome Brooks  
Mr. Phil Glaize

**STAFF PRESENT:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Jennifer Rose, Director, VOSH Safety Compliance  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Edward G. Hilton, Director of Boiler Safety  
Mr. James Garrett, VOSH  
Ms. Deonna Hargrove, Regional Director

**OTHERS PRESENT:** Mr. Joshua Laws, Attorney General's Office  
Mr. Sam Revenson, Associated Risk Management  
Ms. Marquita Edmonds, Hourigan Construction  
Ms. Monica Vannoy, Virginia Department of Corrections  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**ORDERING OF AGENDA**

Interim Chair Travis Parsons called the Public meeting to order at 10:00 a.m. A quorum was present.

**REMEMBERENCE OF DAVID MARTINEZ**

Commissioner Davenport took a moment to reflect on David Martinez's service as a board member and asked for a moment of silence.

## **APPROVAL OF AGENDA**

Interim Chair Parsons requested a motion to amend the agenda to strike the election of officers and to accept the amended Agenda. A motion to accept the amended Agenda was made, properly seconded, and carried by unanimous voice vote.

## **APPROVAL OF MINUTES**

Interim Chair Parsons asked the Board for a motion to approve the Minutes from the March 19, 2019 Board meeting. A motion was made and properly seconded. The Minutes were approved by unanimous voice vote.

## **OLD BUSINESS**

Ms. Princy R. Doss, Director of Policy, Planning, & Public Information for the Department introduced herself to the board, before proceeding with the periodic review of four regulations.

She stated that the Administrative Process Act §2.2-4017 of the Code of Virginia and Executive Order 14 (2018) (Amended), entitled "Development and Review of State Agency Regulations" governs the periodic review of existing regulations. This Executive Order requires that agencies conduct a periodic review of regulations every four years. There were four regulations the Board identified for review in 2019: Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16 VAC 25-35; Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors, 16 VAC 25-55; and Regulation Applicable to Tree Trimming Operations, 16 VAC 25-73; Telecommunications, General, Approach Distances, 16 VAC 25-75.

The Safety and Health Codes Board authorized the Department of Labor and Industry ("Department") to begin reviewing the above-noted regulations at the March 19, 2019 meeting. On April 2, 2019, the Department filed Notices of Periodic Review in the *Virginia Register*. The Office of the Attorney General ("OAG") certified the statutory authority for the four regulations on April 4, 2019. A public comment period of 21 days began on April 29, 2019 and closed on May 20, 2019. The Department received no comments on any of the regulations. Following the comment period, the Department staff reviewed the regulations and prepared the following recommendations for the Board's consideration at this meeting.

**Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16 VAC 25-35**, mandates that all contractors who perform lead related activities which require such contractors to be licensed by the Virginia Board of Asbestos, Lead, and Home Inspectors are to notify the Department of Labor and Industry of any lead project before beginning any lead project. The regulation provides the identification of certain lead abatement projects and the tracking of active projects. This inspection ensures protection of the health of the workers and also the health of the general public by controlling the release of lead into the environment or residence. It also provides a concise procedure for the notification and payment of fees associated with lead projects. The fees cover the costs that area associated with compliance inspections conducted by the Department.

The Department recommended that the regulation be retained as is, and asked if there were any questions. Mr. Parsons asked if the Board had any discussion, but none indicated in the affirmative.

The regulation concerning **Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors, 16VAC25-55**, authorizes the Department to promulgate regulations requiring contract fee inspectors as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. By requiring contract fee inspectors to provide annual proof of indemnification, this regulation protects small business owners of boiler and pressure vessels by providing proof that contract fee inspectors have indemnified these owners against losses caused by negligent inspection and certification. Contract fee inspectors will have to invest a small portion of time in copying and mailing a certificate of insurance or proof of other indemnification. This regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law.

The Department recommended that the Board retain the regulation as is, and asked if there were any questions. None indicated in the affirmative.

**Regulation Applicable to Tree Trimming Operations, 16VAC25-73**, mandates that the Board adopts standards that most adequately assure employee safety and health in places of employment over which it has jurisdiction. This regulation addresses non-logging, tree-trimming, and cutting operations on residential and commercial work sites. The regulation was adopted at the request and in consultation with representatives of the tree care industry. It is designed to eliminate or reduce injuries, illnesses, and fatalities associated with tree trimming hazards. This regulation is the least burdensome alternative for the protection of employees working in tree trimming occupations. No alternatives were considered for this regulation because there were no viable alternatives. Prior to the adoption of this regulation, VOSH applied the Logging Standard, which did not apply to tree trimming activities where a tree was not "felled" or cut down, so there was no specific regulation to address hazards associated specifically with tree trimming.

The Department recommended that the Board retain the regulation as is, and asked if there were any questions. Mr. Parsons asked the Board if there were questions or discussion, but none indicated in the affirmative.

**Telecommunications, General, Approach Distances, 16 VAC 25-75**, makes telecommunications requirements identical to Federal Identical General Industry Standards, and provides safety protections for telecommunications workers equal to those afforded general industry electrical transmission and distribution workers. There is a continued need for this regulation because it ensures uniformity of the regulation for general industry, construction, and telecommunications workers who perform the same type of electrical transmission work. It provides safety protections for telecommunications workers equal to those afforded general industry electrical transmission and distribution workers. No alternatives were considered because in the past the establishment of less stringent compliance requirements directly resulted in fatal electrocution hazards for employees.

The Department recommended that the Board retain the regulation as is, and asked if there were any questions for discussion. None indicated in the affirmative.

Mr. Parsons thanked Ms. Doss and asked if the Board heard the review and the Department's recommendations. He asked if there should be a discussion or if the Board had any questions. None

indicated in the affirmative. Mr. Parsons asked if there was a motion to accept, and Mr. Richardson made a Motion to accept. Ms. Jolly seconded the motion. Mr. Parsons asked for all those in favor of the motion to please signify by saying aye, and all indicated aye. None opposed. The motion was carried.

## **NEW BUSINESS**

### **Federal OSHA Standards Improvement Project - Phase IV; Final Rule**

Mr. Withrow, the Director of Legal Support for the Department discussed the Federal OSHA Standards Improvement Project - Phase IV; Final Regulation. He stated that the action requested from the Department, the VOSH Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's final rule for the Standards Improvement Project - Phase IV, as published in the Federal Register on May 14, 2019. This is a federal identical regulation. As a state plan, Virginia is required to adopt federal identical regulations for our own unique regulation within six months of any action taken by federal OSHA. The proposed effective date is November 15, 2019.

The Summary of the Amended Standards, OSHA is making 14 revisions to existing standards in recordkeeping, general industry, maritime, and construction standards. The revisions include an update to the consensus standards incorporated by reference for signs and devices used to protect workers near automobile traffic, a revision to roll-over protective structures to comply with the current consensus standards, updates for storage of digital x-rays, and the methods of calling emergency services to allow for use of current technology in the construction industry. OSHA is also revising a few standards to align with current medical practice in the area of employee x-rays. To protect employee privacy and prevent identity, OSHA is also removing from a number of standards a requirement that employers include an employee's Social Security number on exposure monitoring, medical surveillance, and other records.

The first revision regarding the Recordkeeping Regulation, added a cross reference from one regulation to another, and made three revisions concerning standards for Asbestos, Inorganic Arsenic, Cadmium, Coke Oven Emissions, and Acrylonitrile in both general industry and construction and maritime. Those revisions concern x-rays and the use of them as a screen for lung cancer. The regulation moves the requirement for periodic screening because studies indicated that its effectiveness or usefulness to detect lung cancer was proven not to be beneficial. This change was supported by both employers and labor representatives because it reduced lifetime exposure of employees to x-rays.

The second revision allows employers to use digital radiography and other reasonably-sized standard films for x-rays instead of the very specific language in those regulations.

The third revision updates terminology and references to the International Labour Organization guidelines for x-rays included in the Asbestos Standards concerning updates to lung function testing requirements in the Cotton Dust Standard. This brings the regulation in accordance with current medical practice.

The fourth revision removes the term "feral cat" from the definition of vermin that was contained in the Maritime Standard.

The fifth revision updates the construction standard 1926.50, concerning first aid and medical services, to change 911 service posting requirements for job sites where you would not be able to have normal phone connections for calls to call for medical assistance.

The sixth revision clarifies 1926.55, the OSHA Occupational Health and Environmental Controls standard for gases, vapors and fumes, dusts and mists. It changes "threshold limit values" to "permissible exposure limits," which is used in all other OSHA regulations.

The seventh revision takes out the 31 pages of regulatory text concerning Process Safety Management of Highly Hazardous Chemicals in the PSM Construction Standard and cross references it to identical wording in the General Industry Standard.

The eighth revision changes the minimum breaking strength in safety belts, lifelines, and lanyards in 1926-104(c) from 5,400 to 5,000 pounds for consistency between the OSHA construction standards.

The ninth revision, changes 1926(g) of the Construction Standards to update the incorporation by reference to Part 6 of the manual on Uniform Traffic Control Devices, the national standard that is used for construction work zones. Virginia has a unique regulation in 1926, 16VAC25-60 referred to as the Administrative Regulations Manual, that references the old Part 6 of the MUTCD 1988 Edition. The requires updating in order for the Department to enforce the Virginia Department of Transportation's Work Area Protection Manual which is VDOT's version of the Part 6 of the manual on Uniform Traffic Control Devices.

Revision 10 makes changes to 1926.250(a)(2) which requires posting of maximum safe load limits in buildings. OSHA is removing a reference to single-family residential structures and wood-framed multifamily residential structures from that regulation.

Revision 11 amended 1926.800 regarding underground construction, changing references to the sections from the Mine Safety and Health Administration regulations that were incorporated by reference. OSHA needed to update this regulation to match a revision made to the MSHA regulation a few years ago. OSHA eliminated the reference to equipment used in deep-surface mines because OSHA Underground Construction Standard and the work processes were similar to the kinds of equipment that are used in metal and nonmetal mines, not in coal mines.

Revision 12 removed the provisions that specify the test procedures and performance requirements found under the Construction Asbestos Standards and replaced those revisions with references to the underlying National Consensus Standards from which they were derived.

Revision 13 deleted Coke Oven Emissions in Construction regulation because there is no coke oven emissions exposure in construction, only general industry. This revision removes the construction provision.

The last revision removed the need for employers to provide employee Social Security number with medical testing required by a number of different health standards. This change provides more secure protection of employee Social Security numbers.

The Standard Improvement Project IV is the fourth in a series of rulemaking actions aimed at improving readability and eliminating inconsistencies and confusion where possible to make the regulations understandable to employers without reducing employee protections. OSHA estimates this final rule will result in annual cost savings to employers a little over \$6 million nationally. In Virginia the cost is estimated to be a little bit over \$160,000 annually.

Mr. Withrow concluded his presentation, and Mr. Parsons asked if the Board had any questions. Mr. Withrow recommended that the Board adopt the final rule for Standards Improvement Project - Phase IV as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 15, 2019. The Department also recommended that the Board state in any motion it may make to amend this regulation that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

Mr. Parsons gave the Board an opportunity to discuss or ask questions and then asked if there was a motion to accept. Mr. Fulton made a motion to accept, and Mr. Richardson seconded that motion. Mr. Parsons asked for all those in favor, to please signify by saying aye, and all indicated aye. Mr. Parsons asked all those opposed, and none opposed. Mr. Parsons thanked the Board and the Department.

Mr. Davenport provided a brief update informing the Board that the Department was not successful in securing funding on the compliance side of the house in the last several general assembly sessions for compliance officer positions. Governor Northam did include full funding for 12 unfunded compliance officer vacancies on our compliance side in his proposed budget last December. Unfortunately, that was not looked favorably on by both the house and the senate and it did not end up in the final budget. The Department has moved forward and are again pursuing the funding for these 12 compliance officer vacancies this cycle. If included in the governor's budget, the Department hopes that the budget decision items will be looked at more favorably both by the House of Delegates and the Senate of Virginia. We believe that a full complement of compliance officers helps to prevent fatalities in the workplace. Year to date, VOSH investigated 31 fatalities. At the time of the last meeting, the Department had investigated seven fatalities. While all fatalities are tragic and preventable, one of the fatalities was a 16-year-old child that was working in an unprotected trench who died in Fairfax County. This fatality is currently under investigation by VOSH, the Department of Labor and Industry's Labor Law Division, and the Fairfax County Police Department. The Department has also been in contact with the local Commonwealth Attorney's Office. The Department completed calendar year 2016 with more than a 35 percent increase in fatal workplace accidents, that was over the previous two years. For calendar year 2017 VOSH investigated 34 fatalities. For calendar year 2018 VOSH investigated 35 fatalities. Unfortunately, if things continue as they have this year, the Department projects to investigate more than 35 fatalities for the year. We think we can do much better in Virginia.

Mr. Davenport continued to report the Department held its 24th Annual Occupational Safety and Health Conference in Virginia Beach last week. The conference had more than 400 participants attend, two general sessions, one keynote session, 41 concurrent sessions at the conference, and 33 vendors who participated in the conference. In closing, Mr. Davenport thanked each of the Board members for their service and commitment to safety and health and their service to the Safety and Health Codes Board of the Commonwealth.

#### **Items of Interest from Members of the Board**

Mr. Parsons asked the Board if there were items of interest from the Members Ms. Jolly brought up a concern about the hand washing regulation in Virginia. Mr. Withrow addressed Ms. Jolly and the Board by providing background and also note that this particular regulation, which is the Construction Sanitation Regulation, is up for periodic review in 2020. Mr. Withrow concluded that this was something the Department can look into for the periodic review in 2020, and when the Department publishes the

notice and asks for comment, can ask questions to address this particular issue. The Department can prepare questions for the Board to review at the next Board meeting, and the Department can reach out to stake holders in the construction industry to get their input. Mr. Parsons recommended the Department to look into the science to see if there are any changes in hand sanitizers. Mr. Parsons added another concern he had was regarding hexavalent chromium, especially on construction sites where employees are handling concrete. Mr. Withrow stated that the Department could consult with federal OSHA on the issue in the interim.

Mr. Parsons stated that the last time the Board met, Mr. Withrow provided a really good report on heat illness that was very informative, and this hazard is increasing. Mr. Parsons stated that he would personally like to see Virginia, DOLI, pursue a state standard on heat illness or a possible Special Emphasis Program in lieu of a regulation, although the regulation was his preference. Mr. Withrow provided information on how the board could move forward with creating a regulation, and Mr. Parsons put forth a motion for VOSH to pursue a state standard on heat illness. Mr. Parsons, asked the Department to consider the February 28, 2019, OSHA review commission case between Secretary of Labor and A.H. Sturgill Roofing, which was a 5 A 1 case that was basically reversed for heat illness. The results of that case setting a precedent that 5 A 1, which was being used in the past in lieu of a standard, may not be able to be used successfully because of the outcome of this case. Mr. Parsons directed the Department to review that case and determine what those applications might have on a Virginia standard. Mr. Parsons then made a motion that Virginia should consider a state program for heat illness prevention for all workers. Ms. Jolly seconded the motion. Mr. Parsons asked if the Board would like to discuss the motion, but none indicated in the affirmative. A motion to accept was made and properly seconded. Mr. Parsons asked for all those in favor to please signify by saying aye, and all indicated aye. None opposed.

Mr. Withrow stated that by the next Board meeting, the Department should be able to have a notice of intended regulatory authority or NORA. If the Board adopts the notice of intended regulatory action, it will be published with a 30-day comment period, and then the next step would be a proposed regulation. There are requirements that we have to follow under the Virginia Administrative Process Act and the executive order that every governor signs about the regulatory promulgation process. Mr. Withrow reminded the Board that with every action they take, that action has to be reviewed, usually by the Attorney General's Office, Department of Planning and Budget, Secretary of Commerce and Trade, then the Governor's Office. It is expected that the process will take 12 to 18 months, and the Department will begin working on this.

### ***Meeting Adjournment***

Mr. Parsons asked the Board if there is a motion to adjourn? Ms. Rodrigues motioned to adjourn. Ms. Jolly seconded that motion. Mr. Parsons adjourned the meeting of the Safety and Health Codes Board at 11:03 a.m., on September 17.