

DRAFT

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, JANUARY 20, 2011**

BOARD MEMBERS PRESENT: Mr. Chuck Stiff, Chair
Mr. Charles Bird
Mr. Jerome Brooks, DEQ representative
Ms. Anna Jolly, Secretary
Mr. Satish Korpe
Ms. Rebecca Le Prell, VDH representative
Ms. Milly Rodriguez, Vice Chair
Mr. Tommy Thurston

BOARD MEMBERS ABSENT: Mr. Gregory Hart
Dr. James Mundy
Ms. Eloisa Rea
Mr. Danny Sutton

STAFF PRESENT: Mr. Courtney M. Malveaux, Commissioner, Dept. of Labor
and Industry
Mr. Bill Burge, Assistant Commissioner -- VOSH
Mr. Glenn Cox, Director of VOSH Programs
Mr. Ron Graham, Director, Occupational Health
Compliance
Mr. John Crisanti, Manager, Office of Planning and
Evaluation
Ms. Reba O'Connor, Regulatory Coordinator
Elizabeth Peay, Esq., Assistant Attorney General
Ms. Sharon Sykes, Intern
Ms. Zannette W. Taylor
Ms. Jennifer Wester, Director, Cooperative Programs
Division
Ms. Regina Cobb, Agency Management Analyst Senior

OTHERS PRESENT: Ms. Beverly Lukowsky, Shorthand Reporter, Chandler &
Halasz, Inc.
Ms. Beverly Crandell, Federal OSHA

ORDERING OF AGENDA

Chairman Chuck Stiff called the meeting to order at 10:05 a.m., and noted that there was a quorum. Mr. Stiff then asked for a motion from the Board to approve the Agenda. On proper

motion by Ms. Rodriguez and seconded by Ms. Jolly, the Agenda was approved, as submitted. The motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Stiff asked the Board for a motion to approve the Minutes for the August 18, 2010 Board meeting. On proper motion by Ms. Jolly and seconded by Ms. Rodriguez, the Minutes were approved, as submitted, by unanimous voice vote.

UPDATE AND INTRODUCTION OF NEW BOARD MEMBERS

Mr. John Crisanti, Manager of the Office of Planning and Evaluation for the Department, introduced two relatively new members, both who had attended the August 2010 Board meeting, but were not formally introduced: Ms. Rebecca LePrell, who represents the Health Commissioner (*ex officio*), Dr. Karen Remley, and Mr. Jerome Brooks, who represents the Director of the Department of Environmental Quality (*ex officio*), Mr. David Paylor.

Mr. Crisanti then informed the Board that the terms of five Board members expired last June. He stated that of those five expired terms, two members, Mr. Roger Burkhart and Mr. Linwood Saunders, expressed a desire not to be considered for re-appointment. He noted that the other three individuals whose terms expired were: Mr. Lou Cernak, Mr. Frank Hartsoe and Mr. Daryl Hines, whose positions have been filled by new members.

Next, Mr. Crisanti introduced recently appointed members: Mr. Charles E. Bird, representing labor in the Construction Industry; Mr. Thomas Thurston, representing labor in the manufacturing industry; Mr. Gregory Hart (absent), representing an Insurance Company; and Mr. Michael J. Pischke (absent), representing the Boiler and Pressure Vessel industry.

Chairman Stiff then welcomed all new members.

CHAIR APPOINTS SECRETARY

Chairman Stiff appointed Anna Jolly as Board Secretary.

PUBLIC COMMENTS

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

OLD BUSINESS

Update on 16 VAC 25-73, Tree Trimming Operations

Mr. John Crisanti filled in for Mr. Jay Withrow, Director of the Division of Legal Support for the Department of Labor and Industry, who is currently on medical leave.

Mr. Crisanti briefly explained the regulatory process and informed the Board that Gov. McDonnell approved the Tree Trimming Operations regulation on December 16, 2010, for publication in the Virginia Register. He explained that the Department needs to notify the Register when the Department wants the regulation to be published and what the effective date needs to be, but the Department has not determined that yet. He continued by explaining that the Department needs to finalize the news release far enough in advance so that the tree care industry associations can disseminate information to interested communities before the information is published. He added that the Department also needs to work out a solution with the Registrar's Office for dealing with removing references in the tree trimming final regulation to 16 VAC 25-95, Medical Services and First Aid Standards for General Industry and for the Construction Industry, which was not approved by the Secretary's Office. Mr. Crisanti added that Mr. Withrow believes that he has developed language that will satisfy the Registrar.

Mr. Crisanti explained that when Mr. Withrow returns from medical leave hopefully in February, the Department needs to distribute outreach and training materials so that Department compliance personnel can enforce the new standard.

Mr. Crisanti informed the Board that the Department would update them by email as these issues are resolved.

16 VAC 25-95, Medical Services and First Aid Standards for General Industry and for the Construction Industry

Mr. Crisanti stated that once again he was standing in for Mr. Withrow. He reminded the Board that it formally approved the first aid final regulation late in 2009. He explained that the regulatory process as follows: after the Board approval the regulation as final, it was reviewed by the Department of Planning and Budget, which approved the regulation with some reservations in terms of the fiscal impact; then the final regulation went to the Secretary's Office where it was not approved to go to the Governor's office for final approval.

Mr. Crisanti concluded by requesting the Board to consider the Department's request to rescind the Board's approval of the First Aid Regulation and allow the Department to go forward with the discussions with interested parties.

Chairman Stiff asked Mr. Crisanti why the Secretary did not approve the final regulation. Mr. Crisanti responded that the Department has not gotten into the substantive issues concerning why the secretary did not want to move forward with this regulation. He added that the Department was waiting for the Board's blessing before proceeding. Mr. Crisanti promised to keep the Board updated once the Department meets with interested parties and determines what the issues are and how to address them. Ms. Rodriguez asked if the Board votes to rescind would this open the regulation up for more discussion. Mr. Crisanti assured her and Ms. Jolly that the Department would return to work on the regulation from the proposed stage again once the outstanding issues have been determined and there has been an effort to reach accommodation with interested parties.

Mr. Korpe asked about the time anticipated to redo this regulation. Mr. Crisanti informed him that it depends on what the issues are and how difficult it is to reach accommodation with those parties that have concerns and, once the issues are ironed out, there would be a 60-day comment period, perhaps another hearing, development of a final board package, etc. Mr. Crisanti estimated that the Department might be looking at early to late fall, or by the end of the year. He added that the Department would keep the Board involved by email once there are concrete changes to report.

Ms. Jolly moved to accept Mr. Crisanti's motion, which was seconded by Ms. Rodriguez and unanimously approved by voice vote.

NEW BUSINESS

Notice of Periodic Review of Certain Existing Regulations

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, stated that Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review or re-evaluation of existing regulations and the regulatory process to promulgate new regulations or amend current regulations.

After explaining the review process, she informed the Board that two regulations of the Board have been identified for review in 2010: 1) 16 VAC 25-55, Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors; and 2) 16 VAC 25-75, Telecommunications, General, Approaches Distances.

Ms. O'Connor stated that the Department is asking for approval to publish a notice of periodic review in the Virginia Register and to begin the review of these regulations. She added that she will present the recommendations for the Board's consideration at the next meeting.

Ms. Jolly moved to go forward with the periodic review, and Ms. Rodriguez seconded the motion which was unanimously approved by voice vote.

Cranes and Derricks in Construction, §§1926.1400 through 1926.1442, Final Rule, and Other Related Standards

Mr. Glenn Cox, Director of VOSH Programs for the Department of Labor and Industry, requested the Board to consider for adoption federal OSHA's final rule for Cranes and Derricks in Construction, and other related standards, as published in 75 FR 47906 on August 9, 2010.

Mr. Cox informed the Board that the revised standard will require employers to perform crane inspections, utilize qualified or certified crane operators, address ground conditions, maintain safe distances from power lines using the encroachment prevention precautions, and to fulfill other obligations under the standards. He added that OSHA stated that the new rule is designed to prevent the leading cause of fatalities, including electrocution, crush by, struck by hazards during assembly and disassembly and collapse and overturns.

Next, Mr. Cox called the Board's attention to the list of exclusions from the standard on page 4 of the briefing package. He informed the Board that OSHA excluded many lifting devices, including machinery that has been converted to a non-hoisting lifting use, as well as air lifts, forklifts, except when they are configured to hoist and lowered by means of a wench or a hook or horizontally moves the suspended the flow; and that would be big items: excavators, backhoes, and digger derricks.

He explained that it is estimated that there are approximately 7,250 establishments in Virginia with more than 130,000 employees that will be affected by this standard. He added that the training has to be done at no cost to the employees.

With respect to the standard's impact on employees, Mr. Cox explained that employees will be safer. He added that the impact on the Department will be minimal, mostly in the preparation of the standard and answering the questions.

Mr. Cox explained that the benefit and costs of the revised regulation will result in fewer fatalities and injuries. He stated that the cost of the Cranes and Derricks standard in Virginia would be approximately \$190,000.

He listed many of the significant requirements in the final standard, including: qualified rigger required; pre-erection inspection of tower crane parts; use of synthetic slings; assessment of ground conditions, qualification or certification of crane operators; employers must provide training for overhead power lines; signal persons; operators and operators-in-training; competent persons and qualified persons; crush/pinch points; tag out; and training administration; authority to stop operations; and operational aids.

Mr. Korpe asked about the levels of inspection for cranes and derricks. Mr. Cox responded that the employer must ensure the inspection of the crane is conducted and that the assembly or disassembly either has to follow the manufacturer's requirements or an engineer has to approve the assembly or disassembly of the crane. Mr. Bird, who has been involved with the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C-DAC) since the development of the revised final rule, explained that there is an AD assembly and disassembly supervisor that is required for that process, and they need to be a qualified person. He added that there are some inspection requirements for the tower crane, particularly. The new standard includes pre-assembly inspections.

In conclusion, Mr. Cox recommended that the Board adopt federal OSHA's final Rule for Cranes and Derricks in Construction, §§1926.1400 through 1926.1442, and other related standards, as authorized by Virginia Code §40.1-22(5) and 2.2-4006.A.4(c), with an effective date of April 15, 2011.

Ms. Jolly moved to accept Mr. Cox's recommendation. Mr. Bird properly seconded the motion which was unanimously approved by voice vote.

Mr. Cox added that there is a conflict between the requirements of Virginia's Overhead High Voltage Line Safety Act and the revised Crane standard. He informed the Board that, in order to

eliminate the conflict with the existing Virginia Overhead High Voltage Line Safety Act (“the Act”), which VOSH enforces directly, the Department will be developing a statutory amendment package for the 2012 General Assembly session that will amend §59.2-413 of the Code of Virginia to exempt the Act from applicability to cranes and derricks covered by the new standard where the voltages in question are in excess of 50 KV. This statutory change will allow for the greater safety distances incorporated in this new standard to be applicable without being in conflict with the Act.

Items of Interest from Members from the Department of Labor and Industry

Commissioner Malveaux thanked the Board members for their time and effort in serving on the Board and his staff for their due diligence throughout the Department. Additionally, he congratulated the newly appointed Board members.

He informed the Board about the additional two percent budgetary cut that the Department has experienced. He stated that there are about 18 unfilled positions across the board that the Department would love to have filled. He also informed the Board that the Department of General Services will be relocating Labor and Industry to the old Verizon Building at 6th and East Main Streets by the end of the year.

Commissioner Malveaux also stated that the severe violators enforcement program (SVEP) will include substantial increases of penalties, and that the Occupational Safety and Health State Plan States Association (OSHSPA) would be meeting at the end of January to discuss how the OSHSPA states, including Virginia, will deal with SVEP to make sure that Virginia is “as effective as” the federal program while doing things that make sense in Virginia.

He noted that when he has attended the OSHSPA meetings with other commissioners, he has learned that Virginia has lower unemployment and better workplace safety than most states. He added that Virginia’s numbers for fatality and incidents have been decreasing. He stated that the downturn of the economy could not account for the decreases in incidents, therefore, it must be attributed to the Board’s work, and the Department staff’s work, and new regulations and continued diligence.

Items of Interest from Members from the Board

Mr. Korpe stated that he had a couple of items that he wanted to discuss concerning the election of officers. He stated that he, like others, had been on the Board for a number of years without being given the opportunity to serve as an officer on the Board. He stated that there is no process in place for determining how members are appointed and become board officers. He added that some members get appointed over and over again, while others do not get selected because they do not belong to the employers’ side or to labor’s side (the traditional alternating scheme). He added that some members represent the public, and they do not get a chance to hold an office.

His second issue was that he felt that the board members should have coffee before the meeting or lunch after the meeting to get to know each other, but repeatedly the Board has been told by

the staff that such meetings were against statutory restrictions; that anything outside the meeting room between two or more members would constitute a meeting of the Board. He stated that the Board should not restrict its connections to every three months, four times a year, and the members do not know what the other members are thinking about the issues.

Mr. Korpe then returned to his first issue in which he expressed his concerns about the nomination process – he stated that traditionally the chairman appoints the secretary who automatically becomes the [Vice] Chair, therefore, there is no proper procedure of nomination or discussion. He recommended that the Board needs to have a procedure in place, e.g., seniority, or recommendation and give the position to someone who never had a position.

In response to Mr. Korpe, Chairman Stiff disagreed that there is no process for electing officers of the Board. Chairman Stiff informed Mr. Korpe that the process is in the Board's Bylaws. Chairman Stiff agreed with Mr. Korpe that the Board has a process in place where traditionally the elected officer positions alternate from employer side to labor side which was an equity issue that the Board tried to address in the form of a public meeting. He continued by stating that the election process involved nominations and discussions and then voting. Chairman Stiff acknowledged that the position of public sector representative, which was his initial appointment to the Board, is something that the Board can discuss. Chairman Stiff then addressed Mr. Korpe's second issue about Board members meeting outside of the public venue. Chairman Stiff then stated that there was some limitation to Board members meeting outside of the public venue. He then asked Department staff for a refresher course on the Bylaws and what statutory limitations exist.

Mr. Crisanti reminded Mr. Korpe of a previous discussion they had had about meetings of three or more Board members constituting a public meeting of the Board, and this discussion was followed by an email or letter addressing this issue. Mr. Crisanti pointed out that there are specific provisions of the Freedom of Information Act that address the interaction of three or more Board members for Board-related business representing a meeting of the Board. He added that with such "meetings" all of the filings need to come into play under the Administrative Process Act ("the APA"). Mr. Crisanti stated that this Act covers every policy board in the state and also impacts local government. Mr. Crisanti continued by stating that such meetings are not legal, and there are criminal sanctions for violating the Act, when three or more Board members meet outside of the Board meeting and discuss Board business, whether it is local government or state government. Mr. Crisanti offered to re-send the email addressing this issue to Mr. Korpe. In response to Mr. Korpe's question, Mr. Crisanti admitted that two members could meet and that would not be considered a "meeting".

In response to Mr. Korpe's statement that there is no procedure in place, Chairman Stiff stated that the process according to the Bylaws is that the chair and the vice chair are nominated, the nominations are discussed and voted on, and the secretary is appointed by the Chair.

After a very lengthy discussion, Chairman Stiff requested that the Department staff briefly refresh the board on a couple of points in the Bylaws. Mr. Crisanti agreed to provide a refresher session and to entertain any changes the Board wishes. Mr. Crisanti then requested Board

members to send him their resumes and he would get a package together and forward it to each Board member so that the Board members could learn more about each other.

Adjournment

There being no further business, Mr. Stiff requested a motion for adjournment. Ms. Rodriguez made the motion to adjourn the meeting. Mr. Korpe seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:18 a.m.