

FINAL

**SAFETY AND HEALTH CODES BOARD
PUBLIC HEARING MINUTES
THURSDAY, NOVEMBER 20, 2008**

BOARD MEMBERS PRESENT: Mr. Roger Burkhart
Mr. Louis Cernak
Mr. M. Frank Hartsoe, Vice Chair
Mr. Daryl Hines
Ms. Anna Jolly
Mr. Satish Korpe
Dr. James Mundy
Mr. Chuck Stiff, Chair
Mr. Linwood Saunders
Dr. Carl Armstrong

BOARD MEMBERS ABSENT: Mr. Mike Murphy, DEQ representative
Ms. Eloisa Rea
Ms. Milly Rodriguez
Mr. Danny Sutton

STAFF PRESENT: Mr. Ray Davenport, Commissioner, Dept. of Labor and
Industry
Mr. Bill Burge, Assistant Commissioner
Mr. Glenn Cox, Director of VOSH Programs
Mr. Jay Withrow, Director, Division of Legal Support
Mr. Ronald Graham, Director, Health Compliance
Mr. John Crisanti, Manager, Office of Planning and
Evaluation
Ms. Jennifer Wester, Director, Cooperative Programs
Ms. Reba O'Connor, Regulatory Coordinator
Mr. Eric Delia, Policy Analyst
Ms. Regina Cobb, Agency Management Analyst Senior

OTHERS PRESENT: Mr. Mark Whiting, Red Cross
Ms. Beverly Crandell, Federal OSHA
Mr. Joseph C. Burkhart
Mr. Chuck Morris, Chandler Chevrolet
Mr. Howard L. Hobson, Jr. Construction Safety
Consultants
Mr. Steve Vermillion, AGC
Mr. Mark Anderson, American Boiler Inspectors
Mr. Dennis Stuart, Monument Inspection Services
Mr. Mike Aulgur, ODEC
K. Redfern, Circle Safety and Health Consultants

The Public Hearing was called to order at 10:00 a.m. by Chair Chuck Stiff to receive public comments on 16 VAC 25-95, Proposed Regulation to Amend the Medical Services and First Aid Standards for General Industry, §1910.151(b), and 16 VAC 25-177, Proposed Medical Services and First Aid Standards for the Construction Industry.

The first speaker to address the Board on this issue was Mr. Mark Whiting, Vice President for the Center for Community and Corporate Education, Greater Richmond Chapter, American Red Cross, Richmond, Virginia. He stated that last year the Center for Community and Corporate Education provided life saving training to over 38,000 individuals in the Greater Richmond region, and that 80% of those people were trained in their workplace. He acknowledged that the inclusion of a CPR requirement for high-risk workplaces is “one more step to help save lives in our community.” He stated that individuals trained in the workplace used their lifesaving skills to save the life of a family member, friend or, in many cases, a perfect stranger.

Mr. Whiting stated that this regulatory change is fully supported by the Greater Richmond Chapter of the American Red Cross which commends the Virginia Department of Labor and Industry for taking this measure.

He noted that recently there has been an increase in the number of firms that provide on-line computer-based training in CPR and First Aid. He stated that while some, including the Red Cross provide on-line training in conjunction with instructor-led hands-on skills practice, others do not; and you pay your money, take a test, and print your certification card. He stated that the Red Cross believes that “this is not an ideal teaching method and is, in fact, dangerous.”

He recommended an amendment to the proposed regulation, if possible, to not accept on-line training.

He added that this proposed regulation will help business and industry across the Commonwealth be Trained-Empowered-Prepared, which is the motto of the Red Cross.

The next speaker was Mr. Jay Withrow, Director, Division of Legal Support with the Department of Labor and Industry. Mr. Withrow updated the Board on the six comments that the Department had received concerning this proposed regulation. He noted that the comment period continues until November 29, 2008. He stated that two of the comments were received on the Regulatory Town Hall and both were in favor of the proposed regulation. He added that four other comments were sent directly to Department and a couple of them concerned the issue of who is a recognized first aid provider. He assured the Board that Department staff would look at this issue to see if the Agency should supply a list of recognized first aid providers or possibly make a change to the proposed regulation to include language, such as “training provided by a nationally recognized group” and then in the Department’s directive or on the standard include a list of nationally recognized groups.

Mr. Withrow mentioned an inquiry from the Virginia Retail Merchants Association which concerned how the standard would apply in retail. Mr. Withrow responded that the basic rule is- if a place of business does not have any job classifications or occupational hazards that can cause death or serious physical harm, it will not be covered by this regulation; as such, a majority of

retail establishments will not be covered by this regulation. Some retail businesses also may have a warehouse in the back with forklifts. The warehouse part of the operation will be covered by the proposed regulation.

Mr. Withrow stated that the last comment was from the Virginia Trucking Association, concerning long distance truckers where two drivers travel together and one drives while the other rests. He informed the Board that this association wanted to know how the regulation would apply to them. Mr. Withrow stated that, if all the drivers are doing is driving from point A to point B, and the only occupational hazard would be traffic accidents, which are handled by the State Police, then the regulation would not apply to them. He continued by stating that where truckers are involved in other activities, a more involved response will be given in the form of an interpretation, which will be binding on the Department once the regulation is final.

The hearing was adjourned at 10:10 a.m.

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ORDERING OF AGENDA

Immediately following the Public Hearing, Chair Chuck Stiff called the Board meeting to order at 10:10 a.m. The presence of a quorum was established. Mr. Stiff then asked for a motion from the Board to approve the Agenda. On proper motion and second, the Agenda was approved, as submitted. The motion was carried by unanimous voice vote.

Next, Chair Stiff appointed Mr. Roger Burkhart as Secretary of the Board.

APPROVAL OF MINUTES

Mr. Stiff asked for a motion from the Board to approve the Minutes of the July 10, 2008, meeting. On proper motion and second, the Minutes were as approved, as submitted. The motion was carried unanimously by voice vote.

PUBLIC COMMENTS

Chair Stiff then opened the floor to comments from the public, however, no one had any comments.

OLD BUSINESS

16 VAC 25-50, Proposed Regulatory Action to Amend the Boiler and Pressure Vessel Rules and Regulations

Mr. Ed Hilton, Chief Boiler Inspector for the Department of Labor and Industry, requested that the Board consider for adoption as a proposed regulation of the Board, amendments to 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations.

Mr. Hilton stated that the Boiler Safety Compliance Program seeks to amend the Boiler and Pressure Vessel Rules and Regulation and he listed the suggested amendments as follows:

1. In Paragraph A of 16 VAC 25-50-150, add a fee of \$10.00 for the reprinting of a certificate to cover direct administrative costs, i.e., printing, mailing and employee's work-related time.
2. In Paragraph D of 16 VAC 25-50-150, Inspection Certificate and Inspection Fees, revise fees from "\$800" to "\$1000" to reflect cost of living adjustment;
3. In 16 VAC 25-50-360, Paragraph C.5.a., the Factors of safety are modified for vessels and a dual standard is established. Prior to January 1, 1999, the Factor of Safety remains 4.5. Vessels built on or after this date would have a lower factor of safety of 4.0. This revision is necessary to conform to current International Boiler and Pressure Vessel Code.

4. In 16 VAC 25-50-380, paragraph B.3., Factors of safety are modified for vessels and a dual standard is established. Prior to January 1, 1999, the Factor of Safety remains 4.0. Vessels built on or after this date have a lower factor of safety of 3.5. This revision is necessary to conform to current International Boiler and Pressure Vessel Code.
5. In Paragraph A of 16 VAC 25-50-430, change "1.5" to "1.25" for the maximum allowable working pressure for a hydrostatic pressure test, when applied to boilers or pressure vessels. The revision is necessary to conform to current International Boiler and Pressure Vessel Code;
6. Delete last two sentences of Paragraph D of 16 VAC 25-50-480, which reads as follows: "A seal weld is a tube-to-tubesheet weld used to supplement an expanded tube joint to ensure leak tightness. Seal welds on carbon steel (P-1) tube joints made by qualified welders will not require an inspection nor a Form R-1."
7. Delete the term "welded" from Form R-1, Report of Repairs to conform to current forms;
8. Incorporation by reference of the most recent edition (2006) of B31.1, ASME Code for Pressure Piping, American National Standards Institute;
9. Incorporation by reference of the most recent edition (2006) of API510 as listed in the National Board Inspection Code;
10. Incorporation by reference of the most recent edition (2006) of CSD-1 and related section on maintenance that includes revised inspector's checklist;
11. Incorporation by reference of the most recent edition (2007) of the National Board Inspection Code (NBIC); and
12. Incorporation by reference of the most recent edition (2007) of the International Boiler and Pressure Vessel Code, including sections XII and VIII, Div 2.

Mr. Hilton stated the basis of this regulatory action is authorized by Title 40.1-51.6.A of the Code of Virginia. He stated that the purpose of the proposed regulatory action is to conform to the most current editions of ASME and National Board safety and inspection codes, as well as in-house administrative fee adjustments to cover increased costs of doing business.

With respect to the impact on employers, employees and the Department, Mr. Hilton stated that the increased cost would affect 15 of the approximately 50 "R" Stamp holders in the Commonwealth who have their reviews performed by the Department. He added that the increased cost to employers who request a review is \$200 once in a three-year period and that this will increase the total cost for the review to \$1,000.

With respect to the impact on employees, Mr. Hilton stated that the proposed regulation will provide both increased protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the

Commonwealth of Virginia. He stated that the Department anticipates no additional fiscal impact beyond the cost to promulgate the revisions to the regulation.

Mr. Hilton then referenced the comments and the Agency's responses to those comments which appear on pages 4-8 of the briefing package.

He stated that the proposed amendments are technologically feasible for implementation by the Department and the regulated community.

He concluded by recommending that the Board adopt these amendments to 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations, as a proposed regulation of the Board, as authorized by §40.1-51.6.

Mr. Frank Hartsoe moved to accept Mr. Hilton's recommendation and Mr. Burkhart seconded the motion which was carried unanimously by voice vote.

Final Regulation 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 25-175-1926.602 and 16 VAC 25-175-1926.952; and Final Regulation to Establish Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for General Industry and the Construction Industry, 16 VAC 25-97

Mr. Jay Withrow, Director of the Division of Legal Support for the Department of Labor and Industry, first updated the Board on the proposed regulations for Tree Trimming and the Administrative Regulations for the VOSH Program. He informed the Board that both regulations had been reviewed by the Department of Planning and Budget, the Secretary's Office and are currently in the Governor's office for review.

Mr. Withrow then began by stating that, since the Reverse Signal regulation has been discussed previously in great detail, this time he would discuss only the highlights. On behalf of the Department of Labor and Industry, Mr. Withrow requested that the Board consider for adoption as a final regulation of the Board VOSH amendments to the following sections: 1910.269(p)(1)(ii); 1926.601(b); 1926.602(a)(9)(ii) and 1926.952(a)(3) and to establish a 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.

He then summarized the rulemaking process for the final regulations.

He noted that since the July 2008 Board meeting, there had been no changes to the following sections of the briefing package: Summary, Basis, Purpose and Impact, Board Authorization and Mandate.

He referenced the last 30-day comment period which extended from September 29, 2008 through October 29, 2008, and noted that the Department had received one comment. He

explained that a commenter was concerned about the retrofit language in paragraph B of the regulation under “covered vehicle requirements”. He stated that the commenter wanted to know what constitutes “at a reasonable and economically feasible cost”; what criteria will be used in making that determination; and who will be making that determination. He explained that the commenter was concerned that this regulation would be a mandate to retrofit all trucks operating in Virginia with back-up alarm systems. Mr. Withrow reiterated the Agency’s response, which was originally provided to the Board at the July 10, 2008, Board meeting is as follows:

“The new text regarding retrofit packages is added for consistency purposes – federal OSHA has a similar policy for older industrial trucks (forklifts) that were originally manufactured without seat belts. OSHA’s policy is that if a manufacturer offered to retrofit a seatbelt onto a forklift, and OSHA can prove that the retrofit package was offered to and refused by the employer, then OSHA will issue a citation to the employer for failure to provide a seatbelt. If no retrofit package is available or it was not offered to the specific employer, no citation can be issued for failure to have the retrofit completed.” Mr. Withrow added that the Department will not use this provision to mandate retrofitting of all trucks with back-up alarms.

Mr. Cernak asked what type of vehicles will be covered by the final regulations. Mr. Withrow responded that any vehicle, with an obstructed view to the rear. Mr. Korpe asked Mr. Withrow if rear view cameras were still an option. Mr. Withrow responded that they are probably more of an option in general industry than in the construction industry. In response to Mr. Burkhart’s question concerning who would be responsible for having a back-up camera at a facility, Mr. Withrow responded that while back-up cameras are optional, the owner of the vehicle (the individual driving the vehicle, etc.) will be responsible for the back-up alarm mechanism or back-up camera option, if chosen. Mr. Withrow continued by stating that with retail sites which have loading zones, people are generally not permitted to walk around; if however, there are people walking around, the driver will need to get out of the vehicle and talk to the people that they are delivering to and make sure there is no one walking in the path of the delivery truck backing up or ask for help to back-up safely.

Mr. Withrow concluded by recommending that the Board consider for adoption the final regulation to amend the standards: 16 VAC 25-90-1910.269(p)(1)(ii); 16 VAC 25-175-1926.601(b)(4); 16 VAC 25-175-1926.602(a)(9)(ii); and 16 VAC 25-175-1926.952(a)(3) and also consider for adoption the final comprehensive regulation: 16 VAC 25-97.

Mr. Linwood Saunders made the motion to accept the Department’s recommendation and Mr. Korpe seconded the motion which was approved unanimously by voice vote.

NEW BUSINESS

Notice of Periodic Review of Certain Regulations

Ms. Reba O’Connor, Regulatory Coordinator for the Department of Labor and Industry, asked for the Board’s approval to gain the periodic review of some of the Department’s regulations.

She informed the Board that the Department is required to prepare periodic reviews based on Governor Kaine's Executive Order 36(06), Development and Review of Regulations Proposed by State Agencies. She then described the periodic review process.

She informed the Board that eleven regulations of the Board had been identified for review in 2008, and that a notice of periodic review will be published in *The Virginia Register*, requesting public comment for 21 days for the following regulations:

1. 16 VAC 25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees;
2. 16 VAC 25-30, 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;
3. 16 VAC 25-35, Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees;
4. 16 VAC 25-40, Standard for Boiler and Pressure Vessel Rules and Regulations;
5. 16 VAC 25-70, Virginia Confined Space Standard for the Telecommunications Industry;
6. 16 VAC 25-80, Access to Employee Exposure and Medical Records;
7. 16 VAC 25-140, Virginia Confined Space Standard for the Construction Industry;
8. 16 VAC 25-150, Underground Construction, Construction Industry;
9. 16 VAC 25-160, Construction Industry Standard for Sanitation;
10. 16 VAC 25-170, Virginia Excavation Standard, Construction Industry; and
11. 16 VAC 25-180, Virginia Field Sanitation Standard, Agriculture

Ms. O'Connor concluded by stating that during the next several months the Department will review these regulations and prepare the reports with recommendations to be presented for the Board's consideration at the next meeting.

Final Regulation: 16 VAC 25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees

Mr. Ron Graham, Director of Occupational Health Compliance for the Department of Labor and Industry, requested the Board to authorize the Department to amend the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees, 16 VAC 25-20, with an effective date of February 1, 2009.

In summarizing the intended regulatory action, Mr. Graham informed the Board that the Department seeks to delete the single word “material” in the definition of “Asbestos project” and to amend the related subject-verb agreement which is included in the Definitions subsection, 16 VAC 25-20-10.

He then explained the two-fold bases of this amendment: 1) the Board’s authority to authorize this amendment in accordance with §40.1-22(5) of the *Code of Virginia* and 2) in accordance with §2.2-4006.A.3., agency actions subject to the APA are exempted from the Article 2 promulgation requirements of the APA if the action consists only of changes in style or form or corrections of technical errors.

Mr. Graham stated that the purpose of this change was to correct longstanding regulatory oversight errors as well as to eliminate confusion on the part of asbestos contactors who must be licensed by the Department of Professional and Occupational Regulation (DPOR) but must file asbestos project permits with DOLI. He added that this change will make the DOLI regulatory language consistent with that of DPOR language. He informed the Board that the current DPOR Asbestos Licensing Regulations only exempt “nonfriable roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.” He explained that deletion of the extraneous word “material” in the definition of “asbestos project” prior to the term “roofing” and the correction of the related verb plurality would correct the error and clarify that roofing, flooring and siding are the only non-friable materials which do not become friable when installed, removed, etc., that are not regulated by DOLI’s Notification regulations.

With respect to the impact on employers, employees and the Department, Mr. Graham explained that this change will reduce confusion as to which projects require notification filing with DOLI for an asbestos project permit. He stated that there would be no impact on employees nor the Department since the Department had previously incorporated the change through interpretation.

Mr. Graham concluded by recommending that the Board adopt the correcting amendments to the final rule for Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees (16VAC25-20), as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.3., with an effective date of February 1, 2009.

Ms. Jolly made a motion to accept the Department’s recommendation and Dr. Mundy seconded the motion which was approved unanimously by voice vote.

Items of Interest from Members of the Board

The Board had no items of interest to report.

Adjournment

There being no further business, Chairman Stiff requested a motion for adjournment. Dr. Mundy made the motion to adjourn the meeting. Mr. Hartsoe seconded the motion which was approved by unanimous voice vote. The meeting adjourned at 10:50 a.m.