DRAFT

SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
WEDNESDAY, SEPTEMBER 12, 2012

BOARD MEMBERS PRESENT: Mr. Tommy Thurston, Newly Elected Chair, Presiding Officer
Mr. Charles Bird
Mr. Jerome Brooks
Mr. Gregory Hart
Ms. Anna Jolly
Mr. Satish Korpe, Newly Elected Vice Chair
Dr. James Mundy
Mr. Marc Olmsted
Mr. Danny Sutton
Mr. Chuck Stiff

BOARD MEMBERS ABSENT: Ms. Milly Rodriguez, Outgoing Chair
Mr. Mike Pischke
Mr. Danny Sutton

STAFF PRESENT: Courtney M. Malveaux, Esq., Commissioner, Dept. of Labor and Industry
Mr. Bill Burge, Assistant Commissioner – VOSH
Mr. Jim Garrett, Director of VOSH Programs
Mr. Ron Graham, Director, Health Compliance
Mr. John Crisanti, Manager, Planning and Evaluation
Ms. Reba O'Connor, Regulatory Coordinator
Mr. Ed Hilton, Director, Boiler Safety Compliance
Ms. Jennifer Wester, Director, Cooperative Programs
Ms. Regina Cobb, Senior Management Analyst
Ms. Sharon Sykes, Policy and Planning Specialist
Mr. Thomas Dash, DOLI, Norfolk
Mr. George Dillon, DOLI, Norfolk
Mr. Jay Hufton, DOLI, Norfolk
Mr. Bobby Myers, DOLI, Roanoke
Mr. Chris Stoltz, DOLI, Verona
Ms. Zelma Wilkins, DOLI, Richmond
Mr. Jeff Napier, DOLI, Richmond
Mr. Stan Dykstra, DOLI, Richmond

OTHERS PRESENT: Ms. Heather Gunn, Court Reporter, Halasz Reporting & Videoconference
Ms. Beverly Crandell, Federal OSHA
Steven P. Jacks, Esq., Office of the Attorney General
Mr. Ed Boulanger, Safety Resource Associates, LLC

ORDERING OF AGENDA

Mr. Tommy Thurston, Vice Chair/Presiding Officer, called the meeting to order at 10:00 a.m., and noted that there was a quorum. Mr. Thurston asked for a motion to approve the Agenda. Dr. Jim Mundy moved to accept the Agenda, and Mr. Satish Korpe 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 May 24, 2012 Board meeting. On proper motion by Mr. Korpe and seconded by Dr. Mundy, the Minutes were approved, as submitted, by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Thurston requested nominations for the office of Board Chair. Mr. Chuck Stiff nominated the current Vice Chair, Mr. Thurston, for Chair. There were no other nominations. Mr. Thurston was elected as Chair.

Next, Chairman Thurston requested nominations for the office of Vice Chair. Mr. Korpe nominated himself. There were no other nominations. Mr. Korpe was elected as Vice Chair. With respect to appointing a Secretary, Mr. John Crisanti informed Mr. Thurston that he did not have to appoint a Secretary today; instead, prior to the next meeting, Mr. Thurston can select someone who agrees to hold the position and announce his selection at the next meeting.

PUBLIC COMMENTS

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

OLD BUSINESS

Report on Periodic Review of Certain Regulations: Public Participation Guidelines, 16VAC25-11, and Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, informed the Board 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.

She continued by stating that, at its meeting on May 24, 2012, the Department notified the Board that these two regulations had been identified for Periodic Review. Since that meeting, these regulations were reviewed by the Department. The Public Comment period for these regulations was from August 13, 2012 through September 3, 2012. No comments were received for either regulation.

Ms. O'Connor explained that, pursuant to § 2.2-4007.1E and F of the *Code of Virginia*, the Department is obligated to evaluate the economic impact of these regulations on small businesses. Such evaluation is to include the following factors: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. She added that the discussion must also include the agency's determination as to whether the regulation should be amended, repealed, or retained consistent with the stated objectives of applicable law, to minimize economic impact of regulations on small businesses.

As a result of this Periodic Review, Ms. O'Connor recommended, on behalf of the Department, retention of these existing regulations in their current forms.

Ms. O'Connor's recommendation, on behalf of the Department, was properly moved and seconded and the motion was approved unanimously by voice vote.

NEW BUSINESS

Bloodborne Pathogens Standards, §1910.1030; and Corrections and Technical Amendment

Mr. Ron Graham, Director of Occupational Health Compliance, explained that federal OSHA made a technical amendment to its Bloodborne Pathogens Standard by moving the paragraph on sharps injury log requirements from paragraph (i), entitled "Dates," to paragraph (h), entitled "Recordkeeping."

He explained that on January 18, 2001, when federal OSHA revised the Bloodborne Pathogens Standard to include requirements of the Needlestick Safety and Prevention Act, these revisions included adding a fifth subparagraph entitled "Sharps injury log," to paragraph (h) of 1910.1030. However, in the July 1, 2001, publication of the Code of Federal Regulations (CFR), subparagraph (5) was placed under paragraph (i) ("Date"). The corrections and technical amendment made in this action removed subparagraph (5) from paragraph (i) and relocated it to paragraph (h) ("Recordkeeping").

In conclusion, Mr. Graham requested on behalf of the Department of Labor and Industry, that the Board adopt the Corrections and Technical Amendment to the Bloodborne Pathogens Standard, §1910.1030, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

A motion was properly made and seconded and the Department's recommendation was approved unanimously by voice vote.

Rigging Equipment for Material Handling Construction Standard, §1926.251; Correction and Technical Amendment

Mr. Jim Garrett, Director of VOSH Programs, explained that federal OSHA has removed several outdated tables that specify safe working loads, and revised other provisions that referenced the outdated tables. He stated that OSHA added requirements that prohibit employers from loading slings in excess of the recommended safe working load prescribed on identification markings located on or attached to each sling. He stated that these requirements also prohibit the use of slings that do not have such markings. He informed the Board that the purpose of this revision is to remove the outdated tables that specify safe working loads and to revise other provisions that referenced the outdated tables.

Mr. Garrett informed the Board that no impact on employers, employees or the Department is anticipated as a result of adopting these revisions.

In conclusion, Mr. Garrett recommended that the Board adopt the Correction and Technical Amendment to the Final Rule for Rigging Equipment for Material Handling Construction Standard, §1926.251, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

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

Corrections and Technical Amendments to Multiple Standards

Mr. Garrett explained that federal OSHA has corrected the medical evaluation questionnaire in Appendix C of its Respiratory Protection Standard, §1910.134, by removing the term "fits" and leaving the word "seizures" in a Question 7.d. He stated that OSHA has corrected its Mechanical Power Presses Standard for General Industry, §1910.217, by restoring requirements that were removed inadvertently from the regulatory text. He added that the third revision was to Subpart L of its Scaffold Standards for Construction, Part 1926, to correct a cross reference made in two paragraphs in Appendix A.

Mr. Garrett informed the Board that no impact on employers, employees or the Department is anticipated as a result of adopting these revisions.

In conclusion, Mr. Garrett recommended, on behalf of the Department of Labor and Industry, that the Board adopt the Corrections and Technical Amendments to the following final rules: Respiratory Protection, §1910.134; Mechanical Power Presses, §1926.251, and (Non-Mandatory) Appendix A to Subpart L of Part 1926, Scaffold Specifications, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

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

Updating OSHA Standards Based on National Consensus Standards for Head protection; Direct Final Rule for Multiple Standards; and Correction to Direct Final Rule

Mr. Garrett began by explaining that on January 22, 2012, federal OSHA issued this Direct Final Rule to revise the personal protective equipment sections of its general industry, shipyard employment, longshoring, and marine terminal standards regarding requirements for head protection, along with an identical proposed rule at 77 FR 37617. He stated that OSHA updated the references in §§1910.135 (b)(1), 1915.155 (b)(1), 1917.93(b)(1), 1918.103(b)(1), to recognize the 2009 Edition of the American National Standard for Industrial Head Protection, ANSI Z89.1.

He continued by explaining that the provisions in the 2009 Edition of ANSI Z89.1 permit optional testing for helmets worn in the backwards position, reverse wearing; optional testing for helmets in colder temperatures than provided in the previous editions; and optional testing for the high-visibility coloring of helmets.

Mr. Garrett informed the Board that changes in the 2009 Edition of ANSI Z89.1 include the following: 1) removing the definition of "cap" and "hat" and inserting the definitions of "manufacturer" and "test plaque" in the 2009 Edition; 2) permitting the testing facility to determine an appropriate size of the headform if the manufacturer did not specify the size; 3) requiring orientation of test samples in the normal wearing position when conducting various test procedures; and 4) removing vertical guard rails from the lists of necessary components for specified test equipment.

He added that the 2009 revision to the General Industry and Maritime Industry personal protective equipment standards, however, did not address the construction standards requiring personal protective equipment. Therefore, the construction standards at §1926.100 (b) and (c) still required compliance with the older ANSI Z89.1-1969 and ANSI Z89.2-1971, respectively. To bring the construction standard up-to-date and to ensure consistency across all of its standards, federal OSHA amended §1926.100 and replaced the outdated head protection references with the same three most recent editions of ANSI Z89.1-2003, or ANSI Z89.1-2009.

Mr. Garrett explained that the 2009 Edition of ANSI Z89.1 defines Types I and II helmets by the area of the head to which the helmets afford protection, rather than by whether the helmets have a brim. It also renames the classes of helmets tested for protection against electrical hazards (i.e., classes G, E, and C instead of A, B, and C), although it still bases helmet classification on the capacity of the helmet to protect employees from electrical hazards. The 2009 edition of ANSI Z89.1 eliminates a fourth class of helmets used in fire fighting. More importantly, ANSI revised the performance requirements and test methods. The 2009 Edition of ANSI Z89.1 includes fundamental updates such as more and different types of test methods, and use of different equipment for performing these test methods.

He explained that the purpose of this Direct Final Rule is to update the references in OSHA's standards to recognize the 2009 Edition of the American National Standard for Industrial (ANSI) Z89.1, Head Protection, and to delete the outdated 1986 Edition of that national consensus standard.

Mr. Garrett continued by stating that adopting this Direct Final Rule will enable employers to continue to use the same equipment they are using currently to meet their compliance obligation under the existing standards' design-criteria requirements. The Direct Final Rule will eliminate confusion and clarify employer obligations, while providing up-to-date protection for workers exposed to falling objects. It also provides employers with additional options for meeting the design-criteria requirements for head protection – options most employers are already using. These revisions will enhance employee protection by making the requirements of its Head Protection Standards consistent with current industry practices. He added that no impact on the Department is anticipated by adopting these revisions.

In conclusion, Mr. Garrett recommended that the Board adopt federal OSHA's Direct Final Rule Updating OSHA Standards Based on National Consensus Standards for Head Protection affecting Multiple Standards; and the Correction to the Direct Final Rule, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

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

Cranes and Derricks in Construction; Demolition and Underground Construction; Direct Final Rule

Mr. Garrett informed the Board that this Direct Final Rule has applied the same crane rules to underground construction and demolition that were already being used by other construction sectors, and has streamlined federal OSHA's standards by eliminating the separate cranes and derricks standard currently used for underground demolition work. He also informed the Board that the Direct Final Rule corrected several errors introduced in the 2010 rulemaking.

Next, he explained Direct Final Rulemaking and that it is typically used where OSHA anticipates that a rule will not be controversial, e.g., minor substantive changes to regulations, direct incorporations of mandates from new legislation, and in this case, minor changes to regulations resulting from a judicial remand.

By way of background, Mr. Garrett explained that on August 9, 2010, federal OSHA issued new requirements for Cranes and Derricks in Construction under Subpart CC. For most construction work, the new Cranes and Derricks in Construction Standard replaced the prior Cranes and Derricks Standard, §1926.550, which had been in place for more than 40 years. For demolition and underground construction work, however, the protective requirements of §1926.550 were no longer covered in federal OSHA's construction regulations. As a result, federal OSHA had to reestablish the substance of the demolition and underground construction provisions in a new subpart DD, which was in the updated Cranes and Derricks in Construction Standard. A second error was made, however. In the rulemaking process for the final rule for Cranes and Derricks in Construction, federal OSHA inadvertently deleted the requirements addressing material, personnel, overhead hoists, and elevators in demolition and underground construction work by requiring employers to follow the requirements of Subpart DD for demolition and underground construction work.

With respect to impact, Mr. Garrett informed the Board that these revisions clarify employer obligations by avoiding the confusion that would result if Subpart CC covers part of a project and existing Subpart DD covers another part of the project. Employer compliance is anticipated to increase because all construction operations involving cranes and derricks are subject to a single rule rather than by having a few operations subject to a different rule. Also, demolition and underground construction contractors will no longer be subject to the outdated requirements in prior §1926.550. Employee safety is enhanced by the assurance that the construction workers involved in demolition and underground construction receive the same safety protections from recently published Subpart CC s other construction workers. He stated that no additional impact on the Department is anticipated as a result of the adoption of the Direct Final Rule.

In conclusion, Mr. Garrett recommended that the Board adopt the Direct Final Rule for Cranes and Derricks in Construction: Demolition and Underground Construction, §§1926.856 and 1926.858, and 1926.800, respectively, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

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

Hazard Communication Standard, §1910.1200; Final Rule; and Other Related Standards in Parts 1910, 1915 and 1926

Mr. Graham began by requesting that the Board consider for adoption federal OSHA's revised final rule for the Hazard Communication Standard as well as other related standards found in parts 1910, 1915, and 1926.

He explained that hazard communication is currently addressed in many different international, national, and local authorities, and that these existing requirements are not always consistent, and often they contain different definitions of hazards and varying provisions for what information is required on labels and safety data sheets.

During his power point presentation about the Hazard Communication Standard, Mr. Graham discussed in detail what the Global Harmonization System is; why OSHA aligned the Hazard Communication Standard with the Global Harmonization System; principles and assumptions; notable Changes; organization of the final rule; appendices; purpose, scope and definitions; hazard classification; hazards not otherwise classified; written hazard communication program; labels and other forms of warning; HCS pictograms and hazards; safety data sheets and format; employee information and training; trade secrets; effective dates; and other affected standards.

After responding to numerous questions about the Hazard Communication Standard from Board members, Mr. Graham concluded by recommending that the Board adopt the final rule for the Hazard Communication Standard, §1910.1200 and other related standards in Parts 1910, 1925 and 1926, as authorized by Virginia Code §40.1-22(5) and 2.2-4006A.4(c), with an effective date of January 1, 2013.

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

Items of Interest from the Department of Labor and Industry

Mr. John Crisanti, Manager, Office of Planning and Evaluation, informed the Board that he had two issues to discuss with them: 1) he reminded the Board that the terms of five members expired at the end of June of this year, and that Board members continue to serve on the Board until they are reappointed or replaced. Also, he informed the Board that two members have left the Board: Eloisa Rea has moved away from Virginia, and, therefore, is no longer on the Board and more recently Mike Pischke, Boiler and Pressure Vessel Employee Representative, is taking a new job with another company and has also resigned his commission on the Board. 2) Two regulations that the Board approved previously on January 14, 2010 now have been approved by the Governor: Boiler and Pressure Vessel Rules and Regulations, 16VAC25-50, and the Amendment to the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60-240 and 16VAC25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths. These regulations will next be filed with *The Virginia Register of Regulations* to become effective after a 30-day publication period.

Courtney M. Malveaux, Esq., Commissioner of the Department of Labor and Industry, thanked the Board for their time and diligence and also John Crisanti, Regina Cobb, Jim Garrett and Ron Graham, who ensure that Virginia is compliant with federal OSHA. He praised the solid leadership of Jim Garrett, Bill Burge, and Chris Childress for working with the Workers' Compensation Commission (WCC) to utilize some of WCC's data to identify where workers are getting injured and trying to boost the Department's general inspection list.

Commissioner Malveaux then mentioned finding new ways for the Department to be responsive to where industry is going, and that the Department has submitted a request for additional positions with our Voluntary Protection Program (VPP). He stated that we do not have voluntary protection for construction, but added that the Department is "doing some very creative work and partnering with others and stakeholders" to expand VPP resources to assist in construction areas.

Commissioner Malveaux noted that Warren Rice has been the Department's point person for the Safety and Health Achievement Recognition Program (SHARP), VPP for small business. Again, partnering opportunities with the Workers' Compensation Commission to leverage funds to create new consultation positions are being looked into by Warren Rice and Nancy Sanders. He stated that the Department is "beefing up" voluntary compliance and working with industry to increase safety.

Commissioner Malveaux reminded the Board of the upcoming 17th Virginia Occupational Safety and Health (VOSH) Conference to be held at the Hotel Roanoke in Roanoke from October 2 - 5, 2012.

He mentioned that the Department is doing public service announcements and getting word out through electronic media, such as Facebook and Twitter. He informed the Board that Sharon

Sykes of the Department has been working on disseminating information. A vendor will produce PSAs for the Department.

He stated that there has been a very significant drop in fatalities over the past five-year span.

Items of Interest from Members from the Board

There Board members had no items of interest to share.

Adjournment

There being no further business, Mr. Stiff made the motion to adjourn the meeting. Ms. Jolly properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:45 a.m.