DRAFT

SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, JULY 18, 2013

BOARD MEMBERS PRESENT:
Mr. Charles Bird
Mr. Jerome Brooks
Dr. Laurie Forlano, Alternate Rep. for VDH
Ms. Anna Jolly
Mr. Satish Korpe, Outgoing Vice Chair, new Board Chair
Dr. James Mundy, New Vice Chair
Mr. Marc Olmsted, Secretary
Mr. Danny Sutton
Mr. Chuck Stiff

BOARD MEMBERS ABSENT:
Mr. Gregory Hart
Ms. Rebecca LePrell
Ms. Milly Rodriguez
Mr. Tommy Thurston, Outgoing Chair

STAFF PRESENT:
Courtney M. Malveaux, Esq., Commissioner
Mr. Jim Garrett, Director of VOSH Programs
Mr. Ron Graham, Director, Health Compliance
Mr. John Crisanti, Manager, Planning and Policy
Mr. Jay Withrow, Director, Legal Support
Ms. Reba O'Connor, Regulatory Coordinator
Ms. Regina Cobb, Senior Management Analyst
Mr. Harvey Trice, Safety/Health Compliance Officer
Ms. Stephanie Sacco, Intern
Ms. Mary Horner, Intern
Ms. Mayme Donohue, Intern

OTHERS PRESENT:
Mr. Bala Chandran, Image-in-Asian TV
Ms. Terry L. Simmer, Court Reporter, Halasz Reporting & Videoconference
Elizabeth B. Meyers, Esq., Assistant Attorney General
Mr. Robert Miller, OAG, Intern
Mr. Jerry Conner, IUOE #147
Mr. S. Brumberg, Association of Electric Co-ops

ORDERING OF AGENDA

In Chairman Thurston's absence, Vice Chairman, Satish Korpe, called the meeting to order at 10:00 a.m. Mr. Korpe introduced Dr. Laurie Forlano, alternate for Ms. Rebecca LePrell of the Virginia Department of Health, who was unable to attend the meeting. A quorum was present.

Mr. Korpe requested a motion to approve the Agenda. Mr. Stiff moved to accept the Agenda, and Mr. Sutton properly seconded the motion. The Agenda was approved, as submitted, and the motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Korpe asked the Board for a motion to approve the Minutes from the March 14, 2013, Board meeting. On proper motion by Ms. Jolly and seconded by Mr. Sutton, the Minutes were approved by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Korpe asked for nominations for the office of Chair. Dr. Mundy nominated Mr. Korpe and Mr. Olmsted seconded the nomination. Mr. Stiff nominated Ms. Jolly and Mr. Sutton seconded the nomination. Both nominees described their qualifications for the position of Chair. By a show of hands, the Board elected Mr. Korpe as Chair. Next, Mr. Korpe asked for nominations for Vice Chair. Mr. Korpe nominated Dr. Mundy and Ms. Jolly seconded the nomination. Mr. Bird nominated Ms. Jolly, who declined the nomination. There were no other nominees. Dr. Mundy was unanimously elected as Vice Chair.

PUBLIC COMMENTS

Chairman Korpe opened the floor to comments from the public, however, there were no comments.

OLD BUSINESS

Notice of Periodic Review of Certain Existing Regulations – Departmental Review and Findings

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, explained that in accordance with the Administrative Process Act §2.2-4017 of the Code of Virginia, Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review of existing regulations. She continued by stating that the Executive Order requires that state agencies conduct a periodic review of regulations every four years. She listed the six regulations of the Board that have been identified for review in 2013 as follows:

1) 16VAC25-30, 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;

2) 16VAC25-70, Virginia Confined Space standard for the telecommunications Industry;

3) 16VAC25-97, Reverse Signal Procedures – General Industry-Vehicles/Equipment Not Covered by Existing Standards;

4) 16VAC25-140, Virginia Confined Space Standard for the Construction Industry;

5) 16VAC25-150, Underground Construction, Construction Industry; and

6) 16 VAC25-270, Virginia Excavation Standard, Construction Industry

After explaining the current status and process of the regulatory review, Ms. O'Connor explained the factors that the Department was obligated to consider while evaluating the economic impact of these regulations on small business. On behalf of the Department, Ms. O'Connor concluded by recommending that all of the above –referenced regulations be retained with no changes, and she requested that the Board vote to retain the regulations

On proper motion by Mr. Stiff and seconded by Dr. Mundy, Ms. O'Connor's recommendation was approved by unanimous voice vote.

NEW BUSINESS

Revising the Exemption for Digger Derricks in the Cranes and Derricks in Construction Standard, §1926.952 and 1926.1400

Mr. Garrett, Director of the Department of Labor and Industry's VOSH Programs, explained that federal OSHA expanded the digger-derrick exemption in the Cranes and Derricks in Construction Standard to include all digger derricks used in construction work subject to Part 1926 Subpart V. He informed the Board that a digger derrick is a specialized type of equipment designed to install utility poles, and it typically comes equipped with augers to drill holes for the poles, and with a hydraulic boom to lift the poles and set them in the holes. He added that employers also use the booms to lift objects other than poles, for example, electric utilities, telecommunication companies, and their contractors use booms both to place objects on utility poles and for general lifting purposes at worksites.

Mr. Garrett explained that on January 20, 2011, the Board adopted the revised Final Rule for Cranes and Derricks in Construction, §§1926.1400 through 1926.1442, and Other Related Standards, with an effective date of April 15, 2011. He continued by stating that subsequently on November 9, 2012, federal OSHA published both a Direct Final rule (DFR) and a companion proposed rule to broaden the exemption for digger derricks in Subpart CC of its standard for Cranes and Derricks to exempt the placement of padmount transformers. He added that OSHA received a significant adverse comment on the DFR causing OSHA to withdraw the DFR on February 7, 2013 before the Board had a chance to act upon this DFR. After considering the significant adverse comment, OSHA eventually issued this current final rule on May 29, 2013.

With respect to impact of this final rule, Mr. Garrett informed the Board that OSHA streamlined the final rule by exempting its application to all digger derricks used in the electric-utility industry; thereby, removing duties and costs for the electric-utility industry. He noted that the final standard does not impose any new duties on any employer and would not impose significant economic costs on a substantial number of small entities. Employee protections are not reduced by this final rule, and there will be no significant impact on the Department. Additionally, Mr. Garrett stated that the final rule is technologically feasible because it reduces or removes current requirements on employers, and it is economically feasible because it does not require any costs associated with additional protective measures and it reduces or removes current expenditures for employers.

In conclusion, Mr. Garrett recommended that the Board adopt the Final Rule for Revising the Exemption for Digger Derricks in the Cranes and Derricks in Construction Standard, §§1926.952 and 1926.1400, as

authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 1, 2013.

A motion was properly made by Mr. Bird and seconded by Dr. Mundy to accept the Department's recommendation which was approved unanimously by voice vote.

Cranes and Derricks in Construction: Underground Construction and Demolition, §1926.850, 1926.856 and 1926.858; Final Rule

Mr. Garrett summarized this federal-identical regulation by stating that this new federal OSHA final rule replaces the attempted 2012 federal Direct Final Rule (DFR) which did not become effective and which applies the same crane rules to underground construction and demolition that are already being used by other construction sectors to streamline OSHA's standards by eliminating the separate cranes and derricks standards currently used for underground and demolition work. He also mentioned that this final rule corrects errors made to underground and demolition standard in 2010. He stated that the amendments in this final rule will result in more stringent requirement s for cranes and derricks used in underground construction or demolition work.

Mr. Garrett explained that on September 12, 2012, the Board adopted OSHA's Direct Final Rule (DFR) on Cranes and Derricks in Construction; Demolition and Underground Construction, with an effective date of January 1, 2013. He added that this action was based on the assumption that the DFR would become effective for federal OSHA. OSHA, however, received a significant adverse comment to the DFR and its companion proposed rule, and therefore, the federal DFR did not become effective and OSHA proceeded with the current final rule. He noted that this action is the continuation of that companion rulemaking.

Mr. Garrett explained that the significant adverse comment raised a concern about potential ambiguity in the introductory language of federal OSHA's proposed demolition standard, §1926.800(t) of Subpart S. He stated that OSHA intends for Subpart CC to apply as a comprehensive regulatory scheme to ensure that the significant benefits of Subpart CC extend to demolition and underground construction, and that construction workers in those sectors receive the same safety protections from new Subpart CC as other construction workers.

With respect to impact on employers, Mr. Garrett informed the Board that construction contractors engaged in underground construction and demolition work will benefit by being subjected to a single standard which will clarify employer obligations in all construction work involving demolition and underground construction. He stated that workers will be protected from hazards associated with hoisting equipment used during construction activities, and no employee protections put in place by the 2010 Cranes and Derricks Final Rule will be reduced. He also stated that there was no significant impact anticipated for the Department apart from expenses incurred for training the staff.

Mr. Garrett stated that the final rule affects two construction sectors: NAICS 237990, Other Heavy and Civil Engineering Construction, which includes all establishments engaged in underground construction, and NAICS 238910, Site Preparation Contractors, which includes all establishments and demolition. He informed the Board that the total annualized compliance costs for both sectors in Virginia was estimated to be approximately $174,000.

In conclusion, Mr. Garrett recommended, on behalf of the Department, that the Board adopt the Final Rule for Cranes and Derricks in Construction: Underground Construction and Demolition, §§1926.850, 1926.856 and 1926.858, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 1, 2013.

A motion was properly made by Dr. Mundy and seconded by Mr. Sutton. The Department's recommendation was approved unanimously by voice vote.

Updating OSHA Standards Based on National Consensus Standards; Signage

Mr. Garrett summarized this regulation by stating that OSHA issued a Direct Final Rule (DFR) on June 13, 2013, to update its general industry and construction signage standards by adding references to the latest versions of the American National Standards Institute ("ANSI") standards on specifications for accident prevention signs and tags, ANSI Z535.1-2006 (R2011), Z535.2-2011 and Z535.5-2011, along with an identical proposed rule. He added that OSHA also retained the existing references to the earlier ANSI standards, ANSI Z53.1-1967, Z35.1-1968 and Z35.2-1968, in its signage standards, thereby providing employers an option to comply with the updated or earlier standards. Additionally, OSHA incorporated by reference Part VI of the Manual of Uniform Traffic Control Devices ("MUTCD"), 1988 Edition, Revision 3, into the incorporation-by-reference section of the construction standards, which was inadvertently omitted from §§1926.201, Signaling, and 1926.202, Barricades, during an earlier rulemaking.

Mr. Garrett explained that this DFR provides employers with additional options for meeting the design-criteria requirements for signage protection by not requiring an employer to update or replace its signage solely as a result of this rule if the employer's current signage protection meets the revised standards. This DFR has no significant impact on employees or the Department.

In conclusion, Mr. Garrett recommended, on behalf of the Department of Labor and Industry, that the Board adopt the Direct Final Rule Updating OSHA Standards Based on National Consensus Standards for Signage, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 1, 2013.

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

Items of Interest from the Department of Labor and Industry

Commissioner Malveaux began by commending Board members for their service in attending these meetings and Department staff for diligence with respect to regulatory actions.

Commissioner Malveaux updated the Board on the near completion of the Department's expansion of the Volunteer Protection Program (VPP) for larger employers. He stated that the Department recently hired new employees to go out and push voluntary compliance. He informed the Board that the Department went from a staff of one to five, with someone to be hired in the Hampton Roads area soon. These individuals with be working with employers to improve workplace safety. Commissioner Malveaux commended Jay Withrow for his leadership role with the Voluntary Protection Program.

He added that the Department is adapting VPP and utilizing our resources to Building Excellence in Safety and Training (BEST), an agreement that the Department will work with the associated general

contractors and adapt criteria that will work for the construction industry. He stated that the Department wants to expand and have more partnerships with other associations as well for their members and for those who are in construction, and industry which has 40 percent of the workplace hazards and incidents. He continued by stating that Jim Garrett, along with Bill Burge, has taken a leadership role in determining how the Department does its targeting and trying to take the general inspection lists we receive from the federal Department of Labor and augment that with information that we receive from the Workers' Compensation Commission, for example to learn where workers are getting hurt.

Commissioner Malveaux discussed that the Department's next horizon is working more with small businesses through our consultation staff and with the Safety and Health Achievement Recognition Program (SHARP).

He discussed increasing the Department's outreach with media, trying to reach as many people as we can, by using the Department's quarterly newsletter, Facebook, and 60-second public service announcements on YouTube, and on the Department's website.

Commissioner Malveaux encouraged the Board to join the Department for its 18th Annual VOSH Conference which will be held on October 8 - 10, 2013, at the Embassy Suites Hampton Roads Hotel, Spa and Convention Center in Hampton, VA.

Items of Interest from Members from the Board

Ms. Jolly informed the Board that she had received an interesting question related to heat. She stated that one of her clients employs a Muslim man who is fasting during Ramadan and, therefore, is not allowed to eat or drink anything. She asked how employers should deal with this situation particularly during the summer months. Chairman Korpe stated that fasting has a time frame, like sunrise to sunset, and it is not mandatory, but more of a voluntary compliance. He added that exceptions can be made on an individual basis. Mr. Stiff suggested that employers could limit the employee's exposure to the heat. Mr. Crisanti suggested that Ms. Jolly check the federal guides of interpretation on this issue. Commissioner Malveaux offered to have department staff look into this matter.

Mr. Bird followed up his concern expressed at the March 14th meeting about parapet wall heights and working on flat sloping roofs. He explained that his concern was for during construction and then maintenance workers after construction is completed for such buildings. He added that, although he has been unable to get a breakdown of the fall fatalities from flat or low-sloped roofs, he thinks that more than 50 percent of those fall fatalities are from sloped or steep-sloped roofs. Mr. Korpe asked if department staff could provide more information on this issue and he asked if this issue could be placed on the agenda to be discussed at the next meeting.

Chairman Korpe then recognized Assistant Attorney General, Elizabeth Meyers, and her intern, Robert Miller. He also recognized Ms. O'Connor's intern, Stephanie Sacco.

Adjournment

There being no further business, Ms. Jolly made the motion to adjourn the meeting. Mr. Sutton properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:00 a.m.