

FINAL

**SAFETY AND HEALTH CODES BOARD
PUBLIC HEARING AND BOARD MEETING MINUTES
THURSDAY, AUGUST 13, 2009**

BOARD MEMBERS PRESENT: Mr. Roger Burkhart, Secretary/Presiding Officer
Mr. Louis Cernak
Dr. Diane Helentjaris, VDH representative
Mr. Daryl Hines
Ms. Eloisa Rea
Ms. Milly Rodriguez
Mr. Linwood Saunders
Mr. Danny Sutton

BOARD MEMBERS ABSENT: Mr. M. Frank Hartsoe, Vice Chair
Ms. Anna Jolly
Mr. Satish Korpe
Dr. James Mundy
Mr. Mike Murphy, DEQ representative
Mr. Chuck Stiff, Chair

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

OTHERS PRESENT: Ms. Beverly Crandell, Federal OSHA
Mr. Bryan Giere, NVTE, Inc.
Ms. Anne Burkhart
Ms. Regina Hines
Mr. Peter Girardi, Truetimber Tree
Mr. John D. Fulton, E. McLauchlan & Sons, Inc.
Ms. Diane Paarfus, Court Reporter, Chandler & Halasz

PUBLIC HEARING

Mr. Roger Burkhart, Secretary of the Board, called the Public Hearing to order at 10 a.m. Mr. Burkhart presided in the absence of the Chairman, Mr. Chuck Stiff, and the Vice Chairman, Mr. Frank Hartsoe. Mr. Burkhart then noted that there was a quorum. He explained that the sole purpose of the hearing is for the Board members to receive comments from the public regarding the proposed amendments to 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations.

Since there were no comments made, Mr. Burkhart adjourned the hearing at 10:01 a.m.

BOARD MEETING

ORDERING OF AGENDA

Immediately following the Public Hearing, Secretary Roger Burkhart called the Board meeting to order at 10:02 a.m. Mr. Burkhart asked for a motion from the Board to approve the Agenda. On proper motion by Ms. Rodriguez and second by Mr. Saunders, the Agenda was approved, as submitted. The motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Burkhart asked the Board for a motion to approve the Minutes of the April 16, 2009, Public Hearing and Board Meeting. On proper motions by Mr. Cernak and Mr. Saunders, respectively, and seconds by Mr. Sutton and Ms. Rea, respectively, both Minutes were approved, as submitted, by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Burkhart explained that the normal flow of the election is for the Vice Chair to become the Chair and for the Secretary to become the Vice Chair. He then proposed that the Vice Chair, Mr. Frank Hartsoe, become Board Chair and requested nominations for Chair. Mr. Frank Hartsoe was nominated for Board Chair. There were no other nominations. On proper motion by Ms. Rodriguez and second by Mr. Cernak, Mr. Frank Hartsoe was unanimously elected as Chair. Next, Mr. Burkhart opened the floor for nominations for Vice Chair. Mr. Burkhart was nominated. There were no other nominations. On proper motion by Mr. Saunders and second by Mr. Hines and Ms. Rodriguez, Mr. Burkhart was elected Vice Chair by unanimous voice vote.

PUBLIC COMMENTS

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

OLD BUSINESS

16 VAC 25-60, Final Regulation to Amend the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16 VAC 25-60-240 and 16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths

Mr. Jay Withrow, Director of the Office of Legal Support for the Department of Labor and Industry, requested the Board to consider for adoption as a final regulation of the Board various amendments to the Administrative Regulation for the VOSH Program, including the amendment to 16 VAC 25-60-240, and the addition of a new section, 16 VAC 25-60-245, to establish procedures for the Commissioner or his appointed representatives under Va. Code §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10, pursuant to Va. Code §40.1-22(5).

Mr. Withrow then summarized the rulemaking process for this regulatory amendment. In summarizing the final regulation, he called the Board's attention to page 3 of the briefing package where he explained that a number of the changes were housekeeping changes primarily in response to a request from the Registrar of Regulations to correct sections which did not comply with Virginia Administrative Code (VAC) formatting requirements. Such changes included: placing definitions in alphabetical order and renumbering and cross-referencing sections using proper VAC format.

Additionally, on page 3 of the briefing package, Mr. Withrow called the Board's attention to a substantive change -- an amendment to Section 90, Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas. Mr. Withrow explained that in this amendment the phrase, "for any purpose, except to the individual giving the statement", was removed. He continued by explaining that some attorneys for employers have identified employees who were interviewed during a VOSH inspection and requested the employee to request copies of their confidential interview statements so the employer could then review the statements. He further explained that this recommended change is to clarify the original regulatory intent because current practice could compromise an employee's willingness in future accident investigations to provide a statement to VOSH, or to be completely forthcoming with regards to safe working conditions on the job site if they know their employer can gain access to the interview statement.

He noted that, with respect to the basis, purpose and impact of the regulation, the final rulemaking has made no additional changes from the proposed stage.

Mr. Withrow concluded by recommending that the Board consider for adoption as a final regulation of the Board multiple amendments to 16 VAC 25-60, the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, which include the revision of 16 VAC 25-240 and the addition of 16 VAC 25-60-245, to establish procedures for the Commissioner or his appointed representatives under 40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

The motion to adopt this final amendment was properly made by Mr. Sutton, seconded by Dr.

Helentjaris and unanimously carried by voice vote.

16 VAC 25-73, Final Regulation on Tree Trimming Operations

Mr. Withrow requested, on behalf of the VOSH Program, that the Safety and Health Codes Board consider for adoption a final regulation applicable to Tree Trimming Operations, pursuant to Va. Code §40.1-22(5).

Mr. Withrow summarized the rulemaking process for this final regulation. He noted that there had been no changes to the summary of the final regulation since the proposed stage. He next reviewed the major changes to the original proposed regulation. He reminded the Board that this regulation was based on an ANSI standard for Tree Trimming and that the Department made changes to this ANSI standards and that some of the changes were a result of public comments. Mr. Withrow called the Board's attention to item 3 on page 5 of the briefing package which involves a major change which recommends revising the first aid requirement to exempt an employer from compliance with 16 VAC25-95.E.1 if it can document in writing that it initiated first aid/CPR training for all new crew personnel within two months (60 days) of hire, or whenever a previously employed person has accumulated forty-five (45) work days for the same employer during the previous year.

He called the Board's attention to revisions on the bottom of page 5 of the briefing package to the Electrical Standard and to revisions on page 6 of the briefing package to the vehicle and mobile equipment section regarding maintenance of skid resistant surfaces. The last major change that Mr. Withrow mentioned was a revision to the work procedures section which requires that qualified arborist assure that each component of the climbing system is approved by the manufacturer for its intended use as well as its compatibility with other components of the climbing system.

He noted that there had been no change from the proposed regulation with respect to the basis, purpose and impact of the regulation, comments, and meeting with interested parties.

He referred the Board to page 20 of the briefing package where the Summary of Comments began. Since he had discussed the comments in detail at previous meetings, he decided not to do so at this meeting, unless the Board wanted him to do so or if there was a specific issue that the Board wanted him to address. He mentioned using a crane to lift a worker into the trees safely. With regards to cranes, he stated that the Department added a requirement for compliance with manufacturers' specifications and limitations.

On behalf of the Department of Labor and Industry, Mr. Withrow concluded by recommending that the Board consider for adoption as a final regulation, 16 VAC 25-73, Tree Trimming Operations.

Mr. Withrow explained that he had forgotten to add information with regard to a table in the electrical line clearing/tree trimming regulation which dealt with approach distance. He stated that the Department had deleted the table but found references in the briefing package to the deleted table that had been inadvertently included on pages 69, 71, 84, 88-89 and 93 and,

therefore, need to be deleted. The motion to accept Mr. Withrow's recommendation with additional amendments was properly made by Mr. Saunders and seconded by Mr. Cernak and unanimously carried by voice vote.

NEW BUSINESS

Various Corrections and Technical Amendments for Part 1910 – General Industry and Part 1915 – Shipyard Employment

Mr. John Crisanti, Manager of the Office of Planning and Evaluation for the Department of Labor and Industry, requested the Board to consider for adoption federal OSHA's revised final rule for Corrections and Technical Amendments to Parts 1910 and 1915 (for those provisions which, among other things, removed "§1910.20" and added "§1910.1020" in items 1, 24 and 36), as published in 71 FR 16669 on April 3, 2006. Except for the above, all other corrections and technical amendments in this 2006 revision were adopted by the Board on June 19, 2006, and became effective on September 1, 2006. The proposed effective date is November 15, 2009.

Mr. Crisanti summarized this amendment by stating that federal OSHA amended various safety and health standards as part of its ongoing regulatory review which included making necessary corrections, housekeeping changes or technical amendments. He added that these revisions do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations.

He explained that, during its June 19, 2006, meeting, the Board adopted most of the corrections and technical amendments to Parts 1910 – General Industry, 1915 – Shipyard Employment and 1926-Construction Industry, as published in 71 FR 16669 on April 3, 2006, but it did not adopt any amendments that substituted "§1910.1020" for "§1910.20" when referencing the regulation for Access to Employee Exposure and Medical Records [items 1, 34 and 36] because the Virginia unique regulation [16 VAC 25-80 (§1910.20)], not the current federal regulation, §1910.1020, was in effect in Virginia at that time. He added that in §1913, "Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records" under item 34, paragraph (n) was removed because it specified an effective date that expired over 20 years ago.

Mr. Crisanti explained that adopting these housekeeping and technical amendments have no impact on employers, employees or the Department. He concluded by recommending that the Board adopt these corrections and technical amendments, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 15, 2009.

Mr. Cernak moved to accept Mr. Crisanti's recommendation. Dr. Helentjaris properly seconded the motion which was unanimously approved by voice vote.

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

There were no items of interest from the Department.

Items of Interest from Members from the Board

There were no items of interest from the Board.

Adjournment

There being no further business, Mr. Burkhart requested a motion for adjournment. Mr. Sutton made the motion to adjourn the meeting. Ms. Rodriguez seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 10:38 a.m.