

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
MEETING MINUTES  
THURSDAY, December 11, 2014**

**BOARD MEMBERS PRESENT:**

Mr. John Fulton  
Mr. Travis Parsons  
Ms. Rebecca LePrell  
Mr. Courtney Malveaux  
Mr. David Martinez  
Mr. Kenneth Richardson, II  
Mr. Chuck Stiff, Presiding Member  
Mr. Tommy Thurston

**BOARD MEMBERS ABSENT:**

Mr. Jerome Brooks  
Mr. Lou Cernak  
Ms. Anna Jolly  
Ms. Milagro Rodriguez  
Mr. Danny Sutton

**STAFF PRESENT:**

Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. Bill Burge, Assistant Commissioner  
Mr. Paul Schilinski, Director, Occupational Safety Compliance  
Mr. Ron Graham, Director, Occupational Health Compliance  
Ms. Reba O'Connor, Regulatory Coordinator  
Mr. John Crisanti, Manager, Office of Policy and Planning  
Mr. Jay Withrow, Director, Legal Support, BLS, and VPP  
Mr. Ed Hilton, Director, Boiler Safety  
Ms. Regina Cobb, Senior Management Analyst

**OTHERS PRESENT:**

Ms. Marian G. Whitlow, Court Reporter, Halasz Reporting & Videoconference  
Joshua E. Laws, Esq., Office of the Attorney General

**ORDERING OF AGENDA**

In the absence of a Chairman, Vice Chairman, and Secretary, Board members agreed that Mr. Chuck Stiff would preside over today's meeting which was called to order at 10:03 a.m. A quorum was present.

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

## **APPROVAL OF MINUTES**

Mr. Stiff asked the Board for a motion to approve the Minutes from the June 5, 2014, Board meeting. On proper motion by Mr. John Fulton and seconded by Mr. Travis Parsons, the Minutes were approved by unanimous voice vote.

## **ELECTION OF OFFICERS**

Mr. Stiff asked for clarification on how terms run. Mr. John Crisanti explained that terms expire 30 June, and that Elections are held during the first meeting after July 1 of each year. Mr. Stiff asked for nominations for the office of Chair. Mr. Tommy Thurston nominated Ms. Milly Rodriguez. The nomination was properly seconded. There were no other nominations. By voice vote, the Board unanimously elected Ms. Rodriguez, in absentia, as Chair.

Next, Mr. Stiff asked for nominations for Vice Chair. Mr. Thurston nominated Mr. Stiff. The nomination was properly seconded. There were no other nominations. Mr. Stiff was unanimously elected Vice Chair by voice vote.

## **PUBLIC COMMENTS**

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

## **OLD BUSINESS**

None

## **NEW BUSINESS**

### **Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266; Corrections**

Mr. Paul Schilinski, Director of Occupational Safety Compliance for the Department of Labor and Industry, requested, on behalf of the Department, that the Board consider for adoption federal OSHA's Corrections to the Standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266, as published in 79 FR 37189 on July 1, 2014.

Mr. Schilinski began by summarizing the corrections. He stated that federal OSHA corrected non-substantive typographical errors in its standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266. He explained that the first typographical error corrected was in the title of a national consensus standards organization referenced in §1910.67(c)(5), which states that all welding done on vehicle-mounted elevating and rotating work platforms must conform to Automotive Welding Society Standards incorporated by reference in §1910.6. However, as §1910.6(i) specifies, the correct title of the organization is the American Welding Society Standards. In §1910.67(c)(5), federal OSHA replaced "Automotive" with "American".

He continued by stating that the second typographical error was in a reference in the Logging Operations Standard to another federal OSHA standard, specifically, in §1910.266(d)(1)(iv), which was adopted by the Safety and Health Codes Board on December 19, 1994. He explained that this

subparagraph, which establishes personal-protective-equipment requirements when logging employees operate chain saws, states that the requirement does not apply to employees who operate chain saws from a vehicle-mounted elevating and rotating work platform that meets the requirements of §1910.68. However, §1910.67, not §1910.68 (Manlifts), addresses vehicle-mounted elevating and rotating work platforms. Therefore, in §1910.266(d)(1)(iv), federal OSHA inserted “§1910.67” and removed “§1910.68”.

He explained that the correction of the two typographical errors was needed because one section contained a title error and the other referenced a wrong standard. He added that there was no impact on Virginia employers, employees or the Department of Labor and Industry from the adoption of these non-substantive corrections.

He concluded by recommending that the Board adopt federal OSHA’s Corrections to the Standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

A motion was properly made by Mr. Parsons and seconded by Mr. Richardson. The Department’s recommendation was approved unanimously by voice vote.

***Electric Power Generation, Transmission, and Distribution, §1910.269; Electrical Protective Equipment; Correcting Amendments***

Mr. Paul Schilinski, Director of Occupational Safety Compliance for the Department of Labor and Industry, requested the Board to consider for adoption federal OSHA’s Final Rule for the Electric Power Generation, Transmission, and Distribution, §1910.269; and Electrical Protective Equipment, as published on September 24, 2014 in 79 FR 56955, with a proposed effective date of February 15, 2015.

Mr. Schilinski summarized the proposed amendments by stating that since federal OSHA published the final Rule for Electric Power Generation, Transmission, and Distribution; and Electrical Protective Equipment on April 11, 2014, federal OSHA has found and corrected numerous errors in the Final Rule’s preamble and regulatory text. Rather than detailing the numerous corrections listed in the briefing package, Mr. Schilinski called the Board’s attention to the correction concerning training “qualified and unqualified” employees. One of the errors involved an explanation of training requirements for unqualified employees. The preamble stated that unqualified employees who operate, but do not maintain circuit breakers must receive training in accordance with §1910.269(a)(2)(i) or §1926.950(b)(1); but, in other places in the preamble, in general, neither §1910.269 or Subpart V govern electrical safety-related work practices used by unqualified employees. Therefore, OSHA corrected the preamble to indicate that unqualified employees generally must receive training under §1910.332 or §1926.21(b) whichever is applicable.

Mr. Schilinski explained that in Appendix A-2 to §1910.269, there is a flow chart that inaccurately describes how to determine whether §1910.269 or Subpart S (Electrical §§1910.301-399) of Part 1910 contains the applicable safety requirements for electrical safety related work practices. The chart begins by asking if the employee is qualified as defined in §1910.269(x). He stated that in final Subpart V (Construction Electrical Generation and Transmission – §§1926.950-968), §1926.950(a)(1)(ii) states explicitly that Subpart V does not apply to electrical safety related work practices for unqualified employees. Thus, for purposes of Subpart V, if a worker is not a qualified employee, as defined in

1926.968, Subpart V does not address the electrical safety-related work practices that employees must use.

The exemption in final §1910.269(a)(1)(ii)(B) is less direct, excluding electrical safety-related work practices covered in Subpart S of Part 1910. Section 1910.331(b) of Subpart S provides that §§1910.332 through 1910.333, which address training, selection and use of work practices, use of equipment and safeguards for personnel protection, apply to work performed by unqualified persons on, near, or with electric power generation, transmission, or distribution installations. Consequently, electrical safety-related work practices for employees who are not qualified persons, as that term is defined in Subpart S (§1910.399), are in Subpart S, not §1910.269. Mr. Schilinski continued by explaining that §1910.269 does apply to electrical safety-related work practices for employees qualified under Subpart S, but not qualified under §1910.269. This class of employees includes, in particular, line clearance tree trimmers. He stated that, for this reason, OSHA changed the first question in the flow chart in Appendix A-2 to §1910.269 so that it refers to the definition of “qualified” employee in §1910.399, instead of §1910.269(x).

Mr. Schilinski explained that the next correction affects Table 1 to Appendix A-2 of §1910.269 which has separate columns to indicate when compliance with Subpart S would be considered to be compliance with certain paragraphs of §1910.269 and, conversely, when compliance with specified paragraphs of §1910.269 would be required, regardless of compliance with Subpart S. This table in the final rule inadvertently listed the paragraph numbers as they appeared in the previous version of §1910.269. OSHA corrected these references to match corresponding provisions of the final rule. OSHA also made additions and deletions to Table 1.

Mr. Schilinski informed the Board that OSHA added references to new provisions that had no counterpart in Subpart S to the list of provisions requiring compliance regardless of compliance with Subpart S. Those were the information transfer requirements in §1910.269(a)(3) and requirements on protection from flames and electric arcs in §1910.269(l)(8).

He added that OSHA also moved §1910.269(i)(3), related to portable and vehicle mounted generators, from the list of provisions that apply regardless of compliance with Subpart S to the list of provisions for which compliance with Subpart S is deemed to be compliant with §1910.269.

Another error was identified in the text of final §1910.269(h) which contains requirements for portable ladders and platforms. A strength requirement for ladders that was included in the previous version of §1910.269(h)(2)(iv) was inadvertently dropped when OSHA copied the language from final §1926.955(b)(1). This amendment corrects that oversight and restores the language from the previous version of the standard.

Mr. Schilinski informed the Board that these amendments corrected more than 70 errors found in the preamble and regulatory text of the recent Final Rule on Electric Power Generation, Transmission and Distribution. Some of the corrections were non-substantive, such as fixing typographical errors, while other changes corrected mistakes, such as references to the wrong OSHA standard.

He added that it is not anticipated that adopting these correcting amendments to the final rule will impose any burden on Virginia employers, employees or the Department of Labor and Industry; instead, these correcting amendments should increase the clarity of the final rule and, therefore, increase compliance with the final rule.

In conclusion, Mr. Schilinski recommended that the Safety and Health Codes Board adopt the Correcting Amendments to the Final Rule for Electric Power Generation, Transmission and Distribution, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

A motion to accept the Department's recommendation was properly made by Mr. Fulton and seconded by Mr. Thurston. The motion was approved unanimously by voice vote.

***Cranes and Derricks in Construction: Operator Certification, §1926.1427(k); Amendment***

Mr. Schilinski requested, on behalf of the Department, that the Board adopt federal OSHA's Amendment to the Final Rule for Cranes and Derricks in Construction: Operator Certification, as published in 79 FR 57785 on September 26, 2014.

He began summarizing the proposed amendment by stating that it would extend for an additional three years the employer duty to ensure crane operator competency for construction work and also extended for three years the requirement for operator certification. Those dates are extended from November 10, 2014, until November 10, 2017.

He continued by stating that in January 2011, the Board set Virginia unique dates for compliance, but VOSH currently seeks to extend the deadline to November 10, 2017, to be consistent with federal OSHA implementation. VOSH believes that adopting the federal timetable and schedule will benefit employers who may operate in multiple states or jurisdictions. The requirement that employers continue with the Virginia unique implementation schedule would result in a shortfall of approximately three months; however, having federal identical enforcement dates outweighs any loss caused by the three month shortfall.

The crane standard went through a negotiated rulemaking process and the federal final rule was adopted on August 9, 2010. VOSH adopted the final rule on January 20, 2011. The final rule included four options for certifying operators which (with minor changes) had been recommended by the rulemaking committee. After publishing the final rule, OSHA was notified by several entities that certification was insufficient for determining whether an operator could operate their equipment safely on a construction site. OSHA held additional meetings and felt that an extension was needed in order to allow the agency to study and address the problem.

The Final Rule offered four options for certification:

- 1) Certification by an independent accredited testing organization. Only portable option, only one open to all employers. It is the one that OSHA felt would be most relied upon;
- 2) Employer's own independently audited qualification program;
- 3) U.S. military qualification includes federal DOD employees; and
- 4) Compliance with qualifying state/local licensing requirements

Additionally, the standard stated that for the purposes of compliance, an operator would only be deemed qualified to operate a particular piece of equipment if the operator is certified for that type and capacity of equipment or a higher capacity of that type of equipment.

Mr. Schilinski explained that OSHA delayed the operator certification requirement for four years until November 10, 2014, but during the phase-in period for certification, OSHA wanted to ensure that there was no reduction in worker protection so the employer has a duty to ensure the competency of operators.

He added that, as noted previously, OSHA continued to receive comments and also learned that, of the four accredited testing organizations, only two met the requirement for certifying by both type and capacity of crane. The other two only certified operators by type of crane. As a result of this finding, operators who received their certifications only by crane type and not including capacity would not have been able to operate on construction sites after Nov 10, 2014 and still remain in compliance with the standard.

He continued by stating that extending the certification requirement and the employer duty to ensure that operators are qualified by three years allows sufficient time for OSHA to determine whether changes are required while still ensuring operator competence through employer assessments. Also, without an extension, the construction industry would face a shortage of operators because of the time limitations for certification.

Mr. Schilinski noted that the total number of initial assessments and affected operators is difficult to estimate, but there are approximately 3,145 affected crane operators in Virginia. Annual assessments as a result of new operators, operators changing employers, or operators changing equipment types are expected to affect approximately 830 operators in Virginia. He stated that no impact is anticipated on the Department with the adoption of this amendment.

He added that OSHA estimated a cost savings of \$21.4 million dollars nationally to employers for the three years of the deferment. In Virginia, this translates to an estimated cost savings of \$575,000 per year for three years. Delaying operator certification should impose no new costs on employers. There will be continuing costs for the operator assessments but it is believed that those costs will be offset by a reduction in expenses that employers would incur to certify operators by the existing April 15 Virginia deadline. He referred to the unit assessment costs detailed in the briefing package.

Mr. Schilinski informed the Board that OSHA determined that compliance with these requirements is technologically feasible for all affected industries and that compliance with these requirements can be achieved with readily and widely available technologies. He noted that OSHA also believes that some businesses already implement the requirements of the standard to varying degrees.

He concluded by recommending, on behalf of the Department, that the Safety and Health Codes Board adopt the amendments to federal OSHA's standard for Cranes and Derricks in Construction: Operator Certification, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

A motion to accept the recommendation was properly made by Mr. Richardson and seconded by Mr. Parsons, and the Department's recommendation was approved unanimously by voice vote.

#### **Items of Interest from the Department of Labor and Industry**

Commissioner Ray Davenport began by welcoming the newly appointed Board members (John Fulton, Employer Representative of the Boiler and Pressure Vessel Industry; David Martinez, Representative of

an Insurance Company; Travis Parsons, Representative from Labor in the Construction Industry; and Lou Cernak, Labor Representative of the Boiler and Pressure Vessel Industry). Commissioner Davenport stated that the Board members have been chosen based on your subject-matter expertise. He noted that some of the Board members have served for a long time on the Board. Commissioner Davenport stated that overall the Board works very well together. The goal is to make the workplace safer. On behalf of the Agency, he welcomed each new member and wished all members a Merry Christmas and a Happy New Year.

#### **Items of Interest form the Board**

Ms. Rebecca LePrell informed the Board that she attended a NIOSH partners meeting in Cincinnati, Ohio earlier during the week, and that she also attended a Council for State and Territorial Epidemiologist (CSTE) subcommittee meeting in which occupational safety and health was discussed. She noted that there was a lot of interesting occupational health work being done by state health departments in collaboration with their state OSHA programs. She asked if it would be alright with the Board if she shared a meeting summary, once it's available.

#### **Adjournment**

There being no further business, Mr. Malveaux made the motion to adjourn the meeting. Mr. Fulton properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 10:36 a.m.

