

DRAFT

**SAFETY AND HEALTH CODES BOARD
HEARING MINUTES
WEDNESDAY, APRIL 21, 2004**

The Safety and Health Codes Board ("Board") met for a Public Hearing on Wednesday, April 21, 2004 in Courtroom A of the State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia. The Public Hearing was scheduled for comments on 16 VAC 25-155, Proposed Regulation for General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry, Subpart V, §1926.950 (c)(1)(i), and the repeal of 16 VAC 25-175-1926.950 (c)(1). The Public Hearing was called to order at 10:00 a.m. by Chairman Linwood Saunders and adjourned at 10:05 a.m. as there were no comments from the public.

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
WEDNESDAY, APRIL 21, 2004**

Immediately following the Public Hearing, the Board meeting was then called to order at 10:10 a.m.

BOARD MEMBERS PRESENT: Mr. Linwood Saunders
Mr. Frank Owens
Mr. Chuck Stiff
Mr. Louis Cernak
Mr. James J. Golden
Dr. James H. Mundy
Mr. Kenneth Rigmaiden
Ms. Anna Jolly
Dr. Khizar Wasti

BOARD MEMBERS ABSENT: Mr. Alvin Keels, Sr.
Mr. Roger Burkhart
Ms. Juanita Garcia
Mr. Rod Parker

STAFF PRESENT: Mr. C. Ray Davenport, Commissioner of the
Department of Labor and Industry
Mr. Glenn Cox, Director of VOSH Programs
Mr. Ronald Graham, Health Compliance Director
Mr. Jay Withrow, Director, Office of Legal Support
Mr. John Crisanti, Manager, Office of Planning and
Evaluation

Ms. Jennifer Wester, Director, Cooperative Services
Ms. Jennifer Cavedo, Regulatory Coordinator
Ms. Regina Cobb, Agency Management Analyst Sr.
Ms. Nenette Alfonte, Web Master

OTHERS PRESENT:

Mr. D. R. "Cotton" Sizemore, State Building Trades
Ms. Carolyn Bratcher, Assoc. for Professionals in
Infectious Control (APIC) VA (St. Mary's)
Ms. Janis Ober (APIC) VA (St. Mary's)

ORDERING OF AGENDA

As the first order of business, Chairman Saunders asked for a motion from the Board to accept the proposed Agenda. Mr. Lou Cernak made the motion to accept the Agenda as submitted and Mr. James Golden seconded the motion. The motion was carried by voice vote.

APPROVAL OF MINUTES

Chairman Saunders asked for a motion from the Board to approve the Minutes of November 5, 2003 meeting. Mr. Lou Cernak made the motion to accept the Minutes and Mr. Chuck Stiff seconded the motion. The motion was carried by voice vote.

ELECTION OF OFFICERS

Chairman Saunders announced that there is a vacancy in the Boards officers as the result of the death of Vice Chairman Richard Schneider. He informed the Board that elections will be held at the next Board meeting in August so it would be unnecessary to elect a vice chairman now as elections will be held at the next meeting in August.

PUBLIC COMMENT

Chairman Saunders opened the floor to comments from the Public, however, no one had any comments.

OLD BUSINESS

INITIAL REVIEW OF THE BYLAWS OF THE SAFETY AND HEALTH CODES BOARD

Mr. John Crisanti, Manager of the Office of Planning and Evaluation, addressed the Board on the issue of revising the Bylaws. Mr. Crisanti explained that this item is listed under Old Business because he initially suggested revising the Board Bylaws at the November 5, 2003 meeting. At the previous meeting, he asked the Board if it wanted the

Department to review the Bylaws and compare them to administrative changes that have occurred since the Bylaws were last revised. The Board previously agreed that the Bylaws should be reviewed by the Department.

Mr. Crisanti requested, on behalf of the VOSH Program, that the Board review its current bylaws and consider the draft revised bylaws developed by staff for its consideration. Additionally, he requested that the Board members review both documents and mail their comments back to him by June 15, 2004, in the attached self-addressed envelope. He further informed the Board that a summary of their comments and changes will be provided at an upcoming Board meeting.

In summarizing the changes in the draft Bylaws, Mr. Crisanti stated that the bylaws reflect current statutory and regulatory requirements, the draft attempts to be more of a complete workplan document in that it sets out the statutory responsibilities of the Board, the terms of member appointments, resignation of membership, procedures for filing vacancies, and reimbursement policy. He continued by stating that other changes include greater detail as to the duties of the Board's officers during meetings, elimination of the possibility of voting by proxy, reflects the impact of the internet on public participation in the regulatory process and the precedence of statutory and regulatory provisions dealing with issues such as conflict of interest and freedom of information, and finally replacement of the ex-officio membership of the Executive Director of the former Department of Waste Management with that of the current Department of Environmental Quality (DEQ).

Mr. Crisanti covered the historical development of the Bylaws to the present. He informed the Board that thirteen years have elapsed since the current bylaws were amended. He continued by stating that the bylaws no longer accurately or adequately reflect statutory and regulatory changes which have occurred that govern or otherwise impact the functioning of policy boards of the Commonwealth, nor do the current bylaws include various administrative procedures such as what to do if a quorum is not present, removal of officers and the procedure to execute the completed actions of the Board.

NEW BUSINESS

Revocation of the Final Rule for Respiratory Protection for M. Tuberculosis, §1910.139; and the Application of Respiratory Protection Standard, General Industry, §1910.134, to Respiratory Protection Against Tuberculosis

On behalf of the VOSH Program, Mr. Ron Graham, Director of Occupational Health Compliance, requested the Board to consider for repeal the final rule for Respiratory Protection for M. Tuberculosis, §1910.139, as published in 68 FR 75776 on December 31, 2003, with a proposed effective date of July 1, 2004. The Board was also requested to apply the General Industry Respiratory Protection Standard, §1910.134, to Respiratory

Protection against Tuberculosis, with a proposed effective date of July 1, 2004, and with a six-month delay of effective date ending on December 31, 2004, to assist in employer compliance with additional requirements of §1910.134.

In summarizing the action, Mr. Graham stated that on December 31, 2003, OSHA withdrew its 1997 Tuberculosis proposal and revoked the existing federal §1910.139, Respiratory Protection for M. Tuberculosis. Mr. Graham stated that, with the withdrawal of the Tuberculosis proposal and revocation of §1910.139, OSHA would begin applying the general industry respiratory protection standard for protection, 29 CFR 1910.134, against Tuberculosis on July 1, 2004. He continued by pointing out new requirements in the revised respiratory protection standard, §1910.134, which include:

- Updating the facility's respirator program;
- Complying with amended medical evaluation requirements;
- Annual fit testing of respirators; and
- Training and recordkeeping provisions.

Mr. Graham noted that on January 14, 2004, federal OSHA issued an announcement that it would delay until July 1, 2004, enforcing several provisions of the respiratory protection standard for establishments required to provide respirators for protection from potential exposure to Tuberculosis.

Mr. Graham informed the Board that on October 17, 1997, OSHA published a Proposed Rule on Occupational Exposure to Tuberculosis that identified risk factors for contracting Tuberculosis and included protective measures. He stated that on January 8, 1998, OSHA revised its 1971 General Industry Standard for Respiratory Protection. Additionally, he stated that on December 31, 2003, OSHA revoked its respiratory Protection for M. Tuberculosis proposed regulation, 29 CFR 1910.139, and it announced its application of the General Industry Respiratory Protection Standard, 29 CFR 1910.134, for respiratory protection against Tuberculosis. On the same day in a separate action, OSHA withdrew its proposed Tuberculosis standard because the risk of Tuberculosis to occupationally exposed workers has declined.

Mr. Graham stated that OSHA's revocation of §1910.139 and the application of §1910.134 to Respiratory Protection against Tuberculosis caused no significant impact on employers, employees or the Department of Labor and Industry.

On behalf of the staff of the Department of Labor and Industry, Mr. Graham recommended that the Safety and Health Codes Board repeal Respiratory Protection for M. Tuberculosis, §1910.139, as authorized by Virginia Codes §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of July 1, 2004. Mr. Graham also recommended that

the Board approve the application of 16 VAC 25-90-1910.134, Respiratory Protection Standard, General Industry, §1910.134, to respiratory protection against Tuberculosis, with an effective date of July 1, 2004, and a six-month delay of effective date ending on December 31, 2004.

Chairman Saunders asked for a motion from the Board to adopt the recommendation to repeal the Respiratory Protection Standard for M. Tuberculosis, §1910.139, with an effective date of July 1, 2004. Ms. Anna Jolly made the motion and Mr. Chuck Stiff seconded it. The motion was carried by voice vote. Chairman Saunders asked for a second motion to apply 16 VAC 25-90-1910.134, Respiratory Protection Standard, General Industry, §1910.134, to respiratory protection against Tuberculosis, with an effective date of July 1, 2004. Dr. James Mundy made the motion and Mr. Kenneth Rigmaiden seconded it. The motion was carried by voice vote.

16 VAC 25-90-1910.401 and 16 VAC 25-90-1910.402, Commercial Diving Operations, §§1910.401 and 1910.402; and Appendix C to Subpart T of Part 1910

Mr. Glenn Cox, Director of VOSH Programs, on behalf of the VOSH Program, requested the Safety and Health Codes Board to consider for adoption federal OSHA's revised final rule for Commercial Diving Operations, Subpart T, §§1910.401 and 1910.402, and Appendix C to Subpart T of Part 1910, as published in 69 FR 7351 on February 17, 2004.

Mr. Cox explained that this amendment will allow employers of recreational diving instructors and diving guides to comply with an alternative set of gas mixture requirements which obviate the need for the decompression chamber requirements in the current Commercial Diving Operations. He also explained the use of an open circuit, a semi-closed circuit and a closed-circuit self-contained underwater-breathing apparatus (SCUBA) supplied with a breathing gas that has a high percentage of oxygen mixed with nitrogen, the maximum depth of sea water, and no-decompression limits in the breathing gas mixture.

Mr. Cox further explained that the amendment has a positive impact on employers and employees, and that no impact on the Department is anticipated by adoption of this amendment.

On behalf of the staff of the Department of Labor and Industry, Mr. Cox recommended that the Safety and Health Codes Board adopt the revised final rule to Commercial Diving Operations, Subpart T, §§1910.401 and 1910.402, and Appendix C to Subpart T of Part 1910, as authorized by Virginia Code, §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of July 1, 2004.

Chairman Saunders asked for a motion from the Board to adopt the federal identical Commercial Diving Operations, Subpart T, §§1910.401 and 1910.402, and Appendix C to Subpart T of Part 1910. Mr. Frank Owens made the motion that was seconded by Ms. Jolly. The motion was carried by voice vote.

Periodic Review of Regulations

Ms. Jennifer Cavedo, Regulatory Coordinator for the Department, began by explaining that Executive Order Number 21 (02), Development and Review of Regulations Proposed by State Agencies, requires 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 all of the regulations promulgated by the Safety and Health Codes Board are included in the periodic review process which includes (i) a review by the Attorney General to ensure statutory authority for regulations, and (ii) a determination by the Governor as to whether the regulations are necessary for the protection of public health, safety and welfare and whether the regulations are clearly written and easily understandable. She added that, following this review by the Department, a determination will be made as to whether the regulations reviewed should be amended, repealed or retained and that a written report will be prepared of the findings.

Ms. Cavedo stated that eleven regulations were identified for review in 2004, and a notice of periodic review will be published in *The Virginia Register* on May 3 for the regulations to be reviewed. The notice will request public comment for a period from May 3 until May 25, 2004, for the eleven regulations that she listed.

Ms. Cavedo informed the Board that final reports will be due to the Secretary of Commerce and Trade and the Department of Planning and Budget no later than August 25, 2004.

She noted that staff of the Department of Labor and Industry will review the regulations and prepare the reports with recommendations to be presented for approval at the next Board meeting.

Ms. Cavedo concluded by stating that no action by the Board is requested at this time, and that approvals on periodic review reports will be requested at future board meetings.

Items of Interest from the Department of Labor and Industry

Commissioner Ray Davenport gave an overview of Agency activity. He began with the Boiler and Pressure Vessel Division. He informed the Board that there were more than 35,344 inspections of boilers and pressure vessels in Virginia in 2003. He stated that the majority of those inspections were by insurance companies, private contract fee inspectors and owners/users who qualified to obtain Virginia Commissions from the Department of Labor and Industry. He also discussed the Division's new policy changes to eliminate overdue inspections by sending out reminder notices 30 days prior to the expiration of certificates to the object owner/user.

Commissioner Davenport told the Board that there were over 69,000 total active objects registered in Virginia and over 35,000 acceptable inspections resulting in Certificates being issued by the Department.

With respect to the VOSH Program, the Commissioner discussed changes in personnel due to retirements, resignations and/or separations and hirings. He noted the retirements of Dr. Clarence “Butch” Wheeling, former Health Compliance Director, and Ms. Nancy Jakubec, Cooperatives Program Director, and their replacements, Mr. Ron Graham and Ms. Jennifer Wester, respectively.

Commissioner Davenport noted that the total number of safety and health inspections increased by 460 inspections over calendar year 2002. He added that falls remain the number one cause of occupational-related deaths in the Commonwealth, followed closely by “crushed by” deaths. He said that Northern Virginia continues to have the most occupational-related fatalities, which may be a result of the continued explosion of construction activity in that area.

Next, Ms. Regina Cobb, Agency Management Analyst Senior with the Department, announced that the Department would hold its Ninth Annual Virginia Occupational Safety and Health (VOSH) Conference in Roanoke, VA, from June 16–18, 2004. She informed the Board that this year the Department would be able to pay the expenses for two or three Board members to attend the conference. Mr. Cox added that during the conference, the Department would offer certification for the 10-hour General Industry course and the 10-hour Construction course.

Items of Interest from the Board

Ms. Anna Jolly encouraged all golfers who plan to attend the VOSH Conference to participate in the golf tournament to be during the conference.

There being no further business to come before the Board, the meeting adjourned at 10:48 a.m.