

FINAL

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, JUNE 5, 2014**

BOARD MEMBERS PRESENT:

Mr. Charles Bird
Mr. Gregory Hart
Ms. Anna Jolly
Ms. Rebecca LePrell
Mr. Courtney Malveaux
Mr. Kenneth Richardson, II
Ms. Milagro Rodriguez
Mr. Chuck Stiff, Presiding Member

BOARD MEMBERS ABSENT:

Mr. Jerome Brooks
Mr. Marc Olmsted
Mr. Danny Sutton
Mr. Tommy Thurston

STAFF PRESENT:

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

OTHERS PRESENT:

Ms. Sandra Loonam, Court Reporter, Halasz Reporting & Videoconference
Mr. Don Head, Balfour Beatty Construction

ORDERING OF AGENDA

In the absence of a Chairman, Vice Chairman and Secretary, Board members selected Mr. Chuck Stiff to 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 Ms. Anna Jolly 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 July 18, 2013, Board meeting and the Minutes from the December 5, 2013 Public Hearing. On proper motion by Ms. Jolly and seconded by Mr. Greg Hart, the Minutes were approved by unanimous voice vote.

PUBLIC COMMENTS

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

OLD BUSINESS

Final Regulation to Amend the Standard for Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

Mr. Ron Graham, Director of Occupational Health Compliance for the Department of Labor and Industry, summarized the final adoption of this State Unique regulation by stating that the Department seeks to eliminate the \$2,000 contractor fee requirement that would trigger a lead project notification with the Department, as provided in Paragraph A. of 16VAC25-35-30 of the regulation. He explained that this change would require that licensed lead contractors submit written notification for all lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project.

He added that the basis or rationale for this amended regulation is so that the Department would be in compliance with the actual Environmental Protection Agency (EPA) notification requirements for lead abatement projects. He stated that, as with federal OSHA, whenever the Department is delegated authority to enforce a federal regulation, the Department needs to make sure that its regulation is just as effective as federal OSHA's. He informed the Board that there was no \$2,000 trigger for lead abatement projects in regard to the cost of the project, so the purpose of this amendment is to eliminate the provision requiring a \$2,000 trigger.

He stated that the Department does not anticipate that the adoption of this amendment would have a major impact on employers. He added that there could be an increase in the number of lead abatement notifications that the Department receives, however, current Department staff is capable of handling any increases in the amount of paperwork required. He also stated that there would be no impact on Virginia employees, and the Department would incur no added costs nor would staffing levels need to be increased as a result of the change.

Mr. Graham reviewed the history of this amended regulation – the Board approved a Notice of Intended Regulatory Action (NOIRA) in May of 2012, and it was published in the *Virginia Register* in August of 2012 for the 30-day comment period; the Board adopted the proposed regulation in March 2013; approval by the Office of the Attorney General in March 2013; approval by the Department of Planning and Budget in April 2013; publication of the proposed text in the *Virginia Register* in November 2013 for the 60-day public comment period; and a public hearing in December 2013.

Mr. Graham stated that no comments were received during the public comment periods, nor during the public hearing.

When asked if there had been any general telephone calls or general conversations regarding this amendment, Mr. Graham responded that the Department has not been receiving a very significant number of lead abatement notifications. He continued by stating that typically abatement projects involve the permanent removal of the lead-based paint source, and that there are different means that can be used to reduce or mitigate the lead-based paint hazard. He stated that the narrow definition of a "lead abatement project," which is consistent with the Department of Professional and Occupational Regulations (DPOR) definition, primarily involves child-occupied housing or a daycare center.

In closing, Mr. Graham recommended, on behalf of the Department of Labor and Industry, that the Board consider for adoption as a final regulation of the Board the amendment to the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, pursuant to the Virginia Administrative Process Act, §2.2-4007.01.

On proper motion by Ms. Milagro Rodriguez and seconded by Mr. Hart, Mr. Graham's recommendation was approved by unanimous voice vote.

NEW BUSINESS

Notice of Periodic Review of Certain Existing Regulations

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, requested the Board's permission to proceed with the periodic review of one of the Board's regulations, 16VAC25-145, Safety Standards for Fall Protection and Steel Erection, Construction Industry, which was last reviewed in 2010.

She informed the Board that the Administrative Process Act of the Code of Virginia and Executive Order 14 requires that state agencies conduct a periodic review of regulations every four years. She stated that if approval is granted by the Board, the process of periodic review will begin with the publication of a notice of periodic review in the *Virginia Register*, and with the publication of the notice of periodic review, a public comment period of at least 21 days, but not longer than 90 days, begins.

She stated that the Department will review the regulation and any public comments and then prepare recommendations for the Board's consideration at the next meeting. Based on the Board's decision, the Department will post a report on the Virginia Regulatory Town Hall's website to indicate that either the Board will retain the regulation as is or begin a regulatory action to amend or repeal the regulation.

On proper motion by Mr. Charlie Bird and seconded by Ms. Jolly, the Board unanimously voted to approve the Department's request to proceed with the periodic review process for 16VAC25-145, Safety Standards for Fall Protection and Steel Erection, Construction Industry.

Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Parts 1910 and 1926; Final Rule

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 and Electrical Protective Equipment, Part 1910, General Industry, and Part 1926, Construction Industry, as published on April 11, 2014 in 79 FR 20316, with a proposed effective date of September 1, 2014, and to consider for repeal 16VAC25-155, General

Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (§1926.950 (c)(1)(i)). He added that some provisions carry later effective dates which are outlined in the briefing package.

Mr. Schilinski summarized the regulation by stating that federal OSHA adopted the new final rule and revised the corresponding general industry standards, §§1910.137 and 1910.269, and revised the general industry standard for foot protection at §1910.136 to make the Construction Industry standard more consistent with the General Industry Standard. He added that the final rules for Construction and General Industry include new or revised provisions on training, job briefings, fall protection, insulation and working position on or near live parts, minimum approach distances, electric arc protection, deenergizing of equipment, protective grounding, operating mechanical equipment near overhead power lines and working in manholes and vaults. He continued by stating that the new provisions also include requirements for host employers and contract employers to exchange information on hazards and on the conditions, characteristics, design, and operation of the host employer's installation. Additionally, he informed the Board that the new standard also revises the General Industry and Construction Industry standards for electrical protective equipment, which applies to all Construction Industry work and replaces the incorporation of out-of-date consensus standards with a set of performance-oriented requirements that is consistent with the latest revisions of the relevant consensus standards. He stated that the new final rule for Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment now provides comprehensive and uniform levels of worker protections across industries that previously were lacking in this standard and were addressed by the board in 2004 through the adoption of the Virginia Unique regulation, 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950 (c)(1)(i)). He informed the Board that since this Virginia Unique regulation is no longer necessary, it should be repealed should the Board choose to adopt the new federal final rule.

With respect to impact on employers, Mr. Schilinski informed the Board that the final rule is technologically feasible for all affected industries, that employers can achieve compliance with all of the final requirements by using readily and widely available technologies. He added that most companies are probably doing both construction and general industry work, so this would just be a carryover of procedures already in use. With respect to Virginia employees, he stated that there would be an increased degree of safety for affected employees and a reduction in the number of accidents and fatalities. Lastly, beyond expenses incurred for training staff on the final rule, there is no anticipated impact on the Department.

In conclusion, Mr. Schilinski recommended, on behalf of the Department, that the Safety and Health Codes Board adopt the Final Rule for Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Parts 1910 and 1926, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014; and repeal the Virginia Unique regulation which would no longer be necessary: 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950 (c)(1)(i)).

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

Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1); Amendment

Mr. Schilinski requested the Safety and Health Codes Board to consider for adoption as an amendment federal OSHA's Direct Final Rule for Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1), as published on November 20, 2013 in 78 FR 69543. The proposed effective date for this amendment is September 1, 2014.

He summarized this regulation by stating that federal OSHA issued a Direct Final Rule (DFR) on November 20, 2013, to make two main revisions to its Mechanical Power Presses Standard, §1910.217. He informed the Board that the standard has a new subparagraph, (e)(1), which instructs employers to establish and follow a program with both a general and a directive component which requires weekly inspections. Under the general component, the employer is to conduct periodic regular inspections to ensure that all parts - auxiliary equipment, safeguards, including clutch brake, antirepeat, signal-stroke mechanisms, are in safe operating condition. A new instruction requires employers to perform necessary maintenance or repair before operating the press. The employer is also required to maintain a certification record of each maintenance and repair task performed under the general component of the inspection. He added that former subparagraph §1910.217(e)(1)(i) required that employers develop and maintain certification records of periodic inspections performed on the power presses. In this amendment, federal OSHA added a requirement that employers must develop and maintain certification records of any maintenance or repairs they perform on the presses during the periodic inspections. As a result of the revision to subparagraph (e)(1)(i), federal OSHA removed the requirement from subparagraph (e)(1)(ii) of the same standard, §1910.217, that employers develop and maintain certification records of weekly inspections and tests performed on the presses. These requirements in former subparagraph (e)(1)(ii) will no longer be necessary as any repairs to the mechanical power press will be recorded as they occur. Subparagraph (e)(1)(ii) now specifies that employers perform the inspections and tests "on a regular basis at least once a week" to emphasize the importance of establishing a consistent, systematic schedule for completing the tasks.

Mr. Schilinski informed the Board that there was no significant impact on employers, other than a reduction in paperwork. There is no significant impact anticipated on employees or the Department with the adoption of the amended standard.

In conclusion, Mr. Schilinski recommended, on behalf of the Department of Labor and Industry, that the Board adopt the amendments to the Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1), as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014.

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

Terminals Handling Intermodal Containers or Roll-On Roll-Off Operations; Vertical Tandem Lifts, §1917.71(i), Public Sector Only; Final Rule; Remand

Mr. Schilinski requested, on behalf of the Department, that the Board adopt federal OSHA's implementation of a court-ordered remand of certain portions of the standard for Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations; Vertical Tandem Lifts (VTLs), §1917.71(i), Public Sector Only, as published in 79 FR 22018 on April 21, 2014.

Mr. Schilinski explained that vertical tandem lifts (VTLs) are lifts by cargo cranes of containers two at a time, one stacked on top of each other. He explained that a 2009 final rule permitted VTLs of no more than two such empty containers provided certain safeguards were followed. The National Maritime Safety Association petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the VTL standard, arguing that two of the standard's requirements were not technologically feasible, and the Court agreed with respect to: 1) the interbox connector inspection requirement in §1917.71(i)(9); and 2) the ban on VTLs of platform containers in §1917.71(i)(10). OSHA believed that the only reasonable way to implement the Court's decision, vacating the provision banning VTL of platform containers, was to exempt VTLs of such containers from the scope of §1917.71(i), in addition to removing existing §1917.71(i)(10). Federal OSHA also added paragraph (vii) in §1917.71(i)(9) to make the inspection requirements in §1917.71(i)(9) inapplicable to ship-to-shore VTLs.

Mr. Schilinski stated that there is no expected impact on Virginia employers, employees or the Department.

He concluded by recommending, on behalf of the Department, that the Safety and Health Codes Board adopt the federal OSHA's Final Rule and Remand for Terminals Handling Intermodal Containers or Roll-on Roll-off Operations; Vertical Tandem Lifts, Public Sector Only, §1917.71(i), as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014.

Ms. Jolly asked if this regulation actually covers anybody in Virginia since it involves the maritime industry. Mr. Schilinski responded that he did not anticipate anyone being affected by the regulation. Mr. John Crisanti added that the Department has a public sector impact as it has existed for the last 20 or 30 years. He stated Virginia does not really have any public sector freight, as outlined in this standard. He added that the Department is asking the Board to adopt this maritime regulation because OSHA wants the Department to keep up with maritime public sector requirements by adopting maritime regulations. Mr. Crisanti added that adopting this regulation in a sense is a housekeeping function.

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

Items of Interest from the Department of Labor and Industry

Mr. C. Ray Davenport began by introducing himself to the Board as the new Commissioner of the Department of Labor and Industry, appointed by Gov. McAuliffe, as of April 21, 2014. He then congratulated the newly appointed Board members: Kenny Richardson and former Department of Labor and Industry Commissioner, Courtney Malveaux, and reappointed Board member, Anna Jolly. Commissioner Davenport stated that he looks forward to working with the Board and hopefully will continue to move the ball on worker safety and health down the field.

Items of Interest from the Board

There were no items of interest from the Board.

Adjournment

There being no further business, Mr. Malveaux made the motion to adjourn the meeting. Ms. Rodriguez properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 10:35 a.m.