

FINAL

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, MAY 24, 2012**

BOARD MEMBERS PRESENT: Mr. Satish Korpe, Secretary, Presiding Officer
Mr. Charles Bird
Mr. Jerome Brooks
Mr. Gregory Hart
Ms. Rebecca LePrell
Dr. James Mundy
Mr. Marc Olmsted
Mr. Mike Pischke
Mr. Danny Sutton
Mr. Chuck Stiff

BOARD MEMBERS ABSENT: Ms. Anna Jolly
Ms. Eloisa Rea
Ms. Milly Rodriguez, Chair
Mr. Tommy Thurston, Vice Chair

STAFF PRESENT: Courtney M. Malveaux, Esq., Commissioner, Dept. of
Labor and Industry
Mr. Bill Burge, Assistant Commissioner – VOSH
Mr. Jim Garrett, Director of VOSH Programs
Mr. Ron Graham, Director, Occupational Health
Compliance
Mr. John Crisanti, Manager, Office of Planning and
Evaluation
Ms. Reba O'Connor, Regulatory Coordinator
Ms. Jennifer Wester, Director, Cooperative Programs
Division
Ms. Regina Cobb, Senior Management Analyst
Ms. Sharon Sykes, Policy and Planning Specialist
Ms. Kendall Hamilton, Legal Intern

OTHERS PRESENT: Ms. Debroah Carter, CMRS, CCR, Commonwealth
Reporters, LLC
Ms. Beverly Crandell, Federal OSHA
Joshua N. Lief, Esq., Office of the Attorney General
Mr. C. Ray Davenport, VA AFL-CIO
Mr. Ed Boulanger, Safety Resource Associates, LLC

ORDERING OF AGENDA

Mr. Satish Korpe, Secretary/Presiding Officer, called the meeting to order at 10:01 a.m., and noted that there was a quorum. Mr. Korpe asked for a motion to approve the Agenda. Dr. James Mundy moved to accept the Agenda, and Mr. Jerome Brooks 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 for the October 13, 2011, Board meeting. On proper motion by Mr. Marc Olmsted and seconded by Mr. Gregory Hart, the Minutes were approved, as submitted, by unanimous voice vote.

PUBLIC COMMENTS

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

OLD BUSINESS

There was no Old Business.

NEW BUSINESS

Corrections and Technical Amendments to Multiple Standards

Mr. John Crisanti, Manager of the Office of Planning and Evaluation, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's Corrections and Technical Amendments to Multiple Standards, as published in 76 FR 80735 on December 27, 2011.

Mr. Crisanti summarized the corrections and technical amendments by stating that federal OSHA has made non-substantive technical amendments to, and has corrected typographical errors in, 16 different general industry, construction and shipyard employment standards. He stated that the technical amendments include updating or revising cross-references and updating OSHA recordkeeping log numbers. He added that the technical amendments and corrections do not modify or revoke existing rights and obligations. He then listed the 16 standards revised as follows: A) Process Safety Management of Highly Hazardous Chemicals, §1910.119; B) Hazardous Waste Operations and Emergency Response, §1910.120; C) Permit-Required Confined Spaces, §1910.146; D) Medical Services and First Aid, §§1910.151 and 1926.50; E) Servicing Multi-piece and Single-Piece Rim Wheels, §1910.177; F) Mechanical Power Presses, §1910.217; G) Pulp, Paper, and Paperboard Mills, §1910.261; H) Sawmills, §1910.265; I) Grain Handling Facilities, §1910.272; J) Commercial Diving Operations, §1910.440; K) 13 Carcinogens (4-Nitrobiphenyl, etc.), §1910.1003; L) Lead, §§1910.1025 and 1926.62; M) Bloodborne Pathogens, §1910.1030; and N) Air Contaminants, §1915.1000.

With respect to the Basis of the Corrections and Technical Amendments, Mr. Crisanti informed the Board that these non-substantive technical amendments in 16 existing standards were made

to reflect various updated references, consolidations, correction of typographical errors, as well as to address continuity and consistency issues.

He continued by stating that no impact on employers, employees or the Department is anticipated from the adoption of these technical amendments.

In conclusion, Mr. Crisanti recommended that the Board adopt federal OSHA's Corrections and Technical Amendments to Multiple Standards, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2012.

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

Acetylene Standard, §1910.102, Revising Other Standards Referenced Therein; Direct Final Rule

Mr. Ron Graham, Director of Occupational Health Compliance, requested that the Board consider for adoption federal OSHA's Direct Final Rule for the Acetylene Standard, §1910.102, Revising Other Standards Referenced Therein, as published in 76 FR 75782, on December 5, 2011.

He explained that this Direct Final Rule (DFR) updates the standards-developing organization ("SDO") standards, referenced in paragraph (a) of §1910.102 (Cylinders), by deleting the reference to the 2003 Edition of the Compressed Gas Association ("CGA") Pamphlet G-1 ("Acetylene") and replacing it with CGA Pamphlet G-1-2009 ("Acetylene"), which is the most recent edition of that pamphlet.

He informed the Board that the DFR is a legislative process that OSHA and other federal government agencies institute in situations wherein they feel that the changes to a standard are not controversial, provide equivalent or equal protection to the employees; and do not impose on employers significant compliance costs. He added that with this DFR, there were no adverse comments.

Mr. Graham explained that the purpose of this DFR is to update references to recognize the latest edition of the Compressed Gas Association Standard, CGA G-1-2003, in the Acetylene Standard.

With respect to the impact of this DFR, Mr. Graham stated that the DFR should enhance compliance with the standard since employers will be utilizing the most recent version of the Compressed Gas Standard for Acetylene. He added that the adoption of the DFR will cause no adverse impact on employers, employees or the Department. He stated that with the adoption of the DFR, VOSH will be "as effective as" federal OSHA. He added that since employers should have already been complying with the 2003 version of CGA Pamphlet, and there were only technical changes to the 2009 version, there are no additional costs in complying with the standard.

In conclusion, Mr. Graham recommended, on behalf of the Department, that the Board adopt federal OSHA's Direct Final Rule for the Acetylene Standard, §1910.102, revising other standards referenced therein, as authorized by Virginia Code §40.1-22(5) and 2.2-4006A.4(c), with an effective date of September 15, 2012.

Mr. Stiff moved to accept Mr. Graham's recommendation. Mr. Hart seconded the motion which was unanimously approved by voice vote.

Correcting Amendments for: Construction Industry Standard for Sanitation, 16VAC25-160, and Field Sanitation Standard, 16VAC25-180

Mr. Graham informed the Board that these two standards are Virginia unique standards that do not have comparable OSHA standards. He began by requesting the Board to authorize the Department's Correcting Amendments to the Construction Industry Standard for Sanitation; in General, 16VAC25-160-10, and the Field Sanitation Standard, 16VAC25-180-10, with an effective date of September 15, 2012.

He stated that the VOSH Program seeks to correct a reference in the definition of "Potable water" which appears in both of the Virginia unique Construction Industry Standard for Sanitation; in General, 16VAC25-160-10 (b)(i)(2) and the Field Sanitation Standard, 16VAC25-180. The correction would delete the single word "Interim" from the reference "U.S. Environmental Protection Agency's Interim Primary Drinking Water Regulations", published in 40 CFR Part 141. Also in 16VAC25-160-10 (b)(i)(2), VOSH seeks to insert the word "National" before "Primary" to more accurately reflect the title of the referenced regulations. VOSH wants to change the text in both standards to reflect the current EPA terminology which basically requires that worksites have water that is fit for human consumption.

He stated that these correcting amendments will clean up the standards and make them consistent with the federal OSHA standards as well. He added the U.S. Environmental Protection Agency (EPA) actually sets the standards for potable drinking water and has made these national standards.

He informed the Board that adoption of these minor correcting amendments are not expected to impact Virginia employers, employees or the Department.

In conclusion, Mr. Graham recommended that the Board adopt correcting amendments to the final rules for the Construction Industry Standard for Sanitation; in General, 16VAC25-160-10, and for Field Sanitation Standard, 16VAC25-180-10, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.3, with an effective date of September 15, 2012.

Mr. Danny Sutton moved to accept Mr. Graham's recommendation. Mr. Charles Bird seconded the motion which was unanimously approved by voice vote.

Regulation Concerning Certified Lead Contractor Notification, Lead Project Permits, and Permit Fees, 16VAC25-35

On behalf of the Department of Labor and Industry, Mr. Graham requested the Board to amend the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits, and Permit Fees, 16VAC25-35, with an effective date of September 15, 2012.

Mr. Graham informed the Board that when contractors are performing asbestos and lead abatement projects they must provide the Department with written notification. He began by giving an overview of how lead abatement works in Virginia. He explained that the State receives a grant or funding from the U.S. Environmental Protection Agency (EPA) to administer requirements under regulations which govern lead abatement projects – basically child-occupied facilities and target housing. He stated that the goal is to reduce lead poisoning in children in these units. He added that there are three major agencies involved in this process: the Department of Health, the Department of Professional and Occupational Regulation (“DPOR”), and the Department of Labor and Industry (“DOLI”).

He explained that the purpose of these amendments is to correct regulatory oversight errors, and to address and conform to a series of changes to the related DPOR regulations, as well as to eliminate confusion on the part of lead contractors who must be licensed by DPOR and who also must file lead project permits with DOLI. These changes clarify terminology and provide consistency in the lead contract regulations enforced by DPOR and DOLI. DPOR does not use the designation “certified” for lead contractors performing lead-based paint activities. Instead, he continued to explain, DPOR uses the term “licensed lead contractor” or to a “licensed lead abatement contractor”. In compliance with DPOR’s terminology, DOLI seeks to delete the term “certified” wherever it is referenced in its lead abatement notification regulations and replace that term with “licensed”. He referred the Board to page 3 of the briefing package for the proposed changes to the existing regulatory text.

He discussed other proposed changes which include: replacing DOLI’s term “residential building” for DPOR’s term “residential dwelling”; replacing the “Virginia Board for Asbestos and Lead’s Virginia Lead-Based Paint Activities Regulation” for DPOR’s “ Virginia Board for Asbestos, Lead, and Home Inspector’s Lead-Based Paint Activities Regulation”. Mr. Graham mentioned that, although the licensing board with DPOR is actually the Virginia Board for Asbestos, Lead, Mold and Home Inspectors, the mold regulations will be deregulated as of July 1 of this year.

Mr. Graham stated that adoption of these amendments should not present any impact on employers because employers will still be required to notify DOLI of lead abatement projects in the same manner as before, and there should be no impact on employees as their work processes or workloads within the DOLI substantially will remain unchanged.

Mr. Korpe asked Mr. Graham if there would be similar changes in the language for Asbestos Licensing as it is for Lead. Mr. Graham responded that the asbestos notification regulations were written somewhat differently, and are based upon the NESHAP regulations which were developed by the EPA. He assured Mr. Korpe that DOLI will be looking at the asbestos

notification regulations which have been included in the Periodic Review of Existing Regulations that will be presented during today's meeting.

Mr. Stiff inquired about whether the reporting requirements would be the same for public and private work. Mr. Graham responded that he would address that issue with the next item on the Agenda – Notice of Intended Regulatory Action (NOIRA): Amendments to Certified Lead Contractors Notification, Lead Project Permits and Permit Fees. He added that just as DOLI is required to be “as effective as” with the OSHA regulations, the EPA requires the same level of enforcement activity in the adoption of standards. He stated that so far as the requirement for notifying lead abatement projects goes, it either has to be a child-occupied facility or target housing. Target housing is housing built prior to 1978. After 1978, the Consumer Products Safety Commission basically banned the use of lead-based paint.

Mr. Stiff asked whether one must also be certified to be licensed or is there some sort of a process for verifying the contractors' qualification. Mr. Graham responded that the terms are used somewhat synonymously which is one of the reasons why DOLI would not be impacted by the changes. DOLI has interpreted licensure and certification to mean the same thing. DPOR is the authorizing agency through their board. DPOR uses the terminology “license”; and to get that license, one must complete the EPA-approved course. Since DPOR grants the license, DOLI wants to be consistent with DPOR. Ms. Rebecca LePrell added that she believes that in the Department of Health's care manual for children with elevated blood lead levels, the term “licensed contractor,” not “licensed lead abatement contractor” or “lead contractor” is used.

In conclusion, Mr. Graham recommended that the Board adopt the correcting amendments to the final rule for the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.3., with an effective date of September 15, 2012.

Dr. Mundy moved to accept Mr. Graham's recommendation. Mr. Stiff properly seconded the motion which was unanimously approved by voice vote.

Notice of Intended Regulatory Action (NOIRA): Amendments to Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

Mr. Graham requested the Board to authorize the Department to initiate the full Virginia Administrative Process Act (APA) regulatory process to amend the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to §2.2-4007.01.

Mr. Graham explained that the Department of Labor and Industry (DOLI) is seeking to remove the \$2,000 minimum contract price provision for lead contractors to be required to file a lead project notification with the Department, as provided in Paragraph A. of 16VAC25-35-30. This change would require that licensed lead contractors submit written notifications for *all* lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project. He added that the Environmental Protection Agency (EPA) has no price amount stipulated when the notification is required and DOLI wants to be in compliance with the EPA's requirements.

He informed the Board that the purpose of this intended regulatory action is to provide both increased protection to employees and employers performing lead-based paint abatement projects.

Mr. Graham stated that this proposed revision will not have a significant impact on Virginia employers since the lead abatement projects are being performed in residential dwellings, and DOLI does not charge a fee for lead projects in residential dwellings. At most, there may be additional paperwork on the employer's behalf. He added that DOLI has modified its forms to make the process easier. He stated that he did not believe that Virginia employees would be substantially impacted by the proposed regulatory changes. He added that employee protections could be enhanced in that DOLI would have perhaps more facilities that it would actually inspect to insure employee protection as well as the protection for the general public. Other than changes made to Department forms, no significant impact on the Department is anticipated.

In conclusion, Mr. Graham recommended that the Board direct the Department to initiate the full Virginia Administrative Process (APA) by filing a Notice of Intended Regulatory Action (NOIRA) to amend the Regulation Concerning Certified Lead Contactors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, pursuant §2.3-4007.01.

Mr. Stiff moved to accept Mr. Graham's recommendation. Mr. Michael Pischke properly seconded the motion which was unanimously approved by voice vote.

Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60, et seq.

Mr. Crisanti requested the Board to authorize the Department to amend Paragraph B.2. of §190, General Provisions, of the Administrative Regulation for the VOSH Program, 16VAC25-60, *et seq.*, to delete the old address of the Virginia Department of Labor and Industry and to insert the new address.

Mr. Crisanti informed the Board that on April 2, 2012, the Virginia Department of Labor and Industry moved its headquarters from 13 South Thirteenth Street, Richmond, Virginia to Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia 23219-2430. The reference to the old address is being replaced with the new address. He stated that the Department wanted to take a formal action since the old address actually appears in the regulation.

Mr. Crisanti concluded by recommending that the Board adopt this correcting amendment to Paragraph B.2. of §190, General Provisions, of the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60, *et seq.*, as authorized by §§40.1-22(5) and 2.2-4006.A.3, with an effective date of September 15, 2012.

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

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 process of two of the Board's regulations: Public Participation Guidelines, 16VAC25-11, and the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20.

Ms. O'Connor explained that Gov. McDonnell's Executive Order 14 (2010) requires that existing regulations undergo a periodic review every four years, and the Department has identified two regulations for review in 2012: Public Participation Guidelines, 16VAC25-11, and the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20. She informed the Board that, with its approval, a notice of periodic review will be posted on the Regulatory Town Hall and published in the Virginia Register, which opens a 21-day public comment period. The Department staff will then review these regulations and make recommendations to the Board at the next meeting.

She concluded by requesting the Board's permission to proceed with the periodic review of these two regulations.

Dr. Mundy moved to accept Ms. O'Connor's recommendation. Mr. Stiff properly seconded the motion which was unanimously approved by voice vote.

Items of Interest from the Department of Labor and Industry

Courtney M. Malveaux, Esq., Commissioner of the Department of Labor and Industry, thanked the Board for volunteering their time for our efforts. He also thanked his staff for their dedication.

Commissioner Malveaux spoke about the new headquarters. He informed the Board that the Department is on the second floor (upper lobby) and on the 17th floor. He then invited the Board members to visit headquarters.

He stated that the Department is continuing to undergo restructuring which will boost the efficiency of the Department, and especially VOSH in terms of workplace office safety. He continued by stating that one direction the Department is moving in is the expansion of the Voluntary Protection Program (VPP). Commissioner Malveaux stated that he, Bill Burge, and Jennifer Wester have been working on the expansion of VPP which has increased from one position to eight. He informed the Board that much more attention will be paid to employers or places of employment, expanding to places where the Department previously may not have been a presence. Commissioner Malveaux speculated about how to use the new VPP resources, and expressed his excitement about the opportunity provided by the new VPP resources.

Commissioner Malveaux stated that Virginia is the only state where the appeals process on Occupational Safety and Health is strictly within the judicial system. He explained that the

Department is seeking input on how Virginia Occupational Safety and Health can get an administrative judge-type legal process.

Mr. Stiff mentioned the importance of senior leadership in the Department in making sure that inspectors in the regions have the necessary technical backgrounds to have a beneficial impact on employers and employees.

Commissioner Malveaux stated that the Department is open to ideas, and we're always trying to "fine tune" how we do business. He explained that he has sought and will continue to seek input from organizations, such as the American Society of Safety Engineers (ASSE) and the Association of General Contractors (AGC). Additionally, the Department has invited various groups to speak at our internal bi-regional meetings or internal trainings.

Commissioner Malveaux then mentioned the VOSH conference which will be held in Roanoke this year.

Mr. Korpe asked that information on violations be shared throughout the state. Commissioner Malveaux responded that the Department would not be able to single-handedly make any changes in that regard because there is a statutory prohibition to prevent the Department from sharing that information. He stated that such information is generally releasable under the Freedom of Information Act (FOIA) once the citations have been issued and sent to the employer. Commissioner Malveaux added that, if there are ways to address that concern with the General Assembly, the Department can take a look at that with anyone who is interested in taking a look at that issue.

Mr. Crisanti added that, although individual cases may not be looked at, it would be possible to look at trends over time. Mr. Crisanti added that information about trends also can be obtained from organizations, such as NIOSH, OSHA, and the National Safety Council. Commissioner Malveaux added that these organizations mentioned have the resources to keep up with the changes in technology that impact everything from general industry to agriculture to construction.

Items of Interest from Members from the Board

There Board members had no items of interest to share.

Adjournment

There being no further business, Mr. Stiff made the motion to adjourn the meeting. Mr. Brooks properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:04 a.m.