

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
TUESDAY, May 24, 2005**

A regular meeting of the Safety and Health Codes Board was called to order at 10:00 a.m.

BOARD MEMBERS PRESENT: Mr. Roger Burkhart, Secretary
Mr. Louis Cernak
Mr. James J. Golden
Ms. Anna Jolly, Chair
Mr. Satish Korpe
Dr. James H. Mundy
Mr. Kenneth Rigmaiden
Ms. Milagro Rodriguez
Mr. Linwood Saunders
Mr. Chuck Stiff
Mr. Daniel A. Sutton
Dr. Khizar Wasti

BOARD MEMBERS ABSENT: Ms. Juanita Garcia, Vice Chair
Mr. Alvin Keels, Sr.

STAFF PRESENT: Mr. Ray Davenport, Labor and Industry Commissioner
Mr. Bill Burge, Assistant Commissioner - Programs
Mr. Fred Barton, Director/Chief Inspector –Boiler Safety
Compliance
Mr. Ronald Graham, Health Compliance Director
Mr. Jay Withrow, Office of Legal Support Director
Mr. John Crisanti, Office of Planning and Evaluation
Manager
Ms. Reba O’Connor, Regulatory Coordinator
Ms. Regina Cobb, Agency Management Analyst Sr.
Ms. Melodee Brown, Office Manager Sr.

OTHERS PRESENT: Mr. Tom Pope, Federal OSHA
Ms. Anne Burkhart

ORDERING OF AGENDA

After calling the meeting to order, Chairperson Anna Jolly welcomed new member, Daniel Sutton of Tysons Food to the Board. Mr. Sutton will represent Agricultural Employers. As the first order of business, Ms. Jolly asked for a motion from the Board to accept the proposed Agenda. Mr. Linwood Saunders made the motion to accept the Agenda as submitted and Mr. Rigmaiden seconded the motion. The motion was carried by voice vote.

APPROVAL OF MINUTES

Chairperson Jolly asked for a motion from the Board to approve the Minutes of the December 14, 2004 meeting. Dr. Mundy made the motion to accept the Minutes as submitted, and Mr. Saunders seconded the motion. The motion was carried by voice vote. There was no discussion.

PUBLIC COMMENT

Chairperson Jolly opened the floor to comments from the public on matters relevant to the Board, however, no members of the public had any comments for the Board.

OLD BUSINESS

16 VAC 25-55, Proposed Regulations Governing Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors

Mr. John Crisanti, Office of Planning and Evaluation Manager, informed the Board that he was presenting this package for Mr. Fred Barton, Director/Chief Inspector, Boiler Safety Compliance, because the revisions were administrative and procedural in nature rather than technical. Next, he asked the Board to consider for adoption as a proposed regulation of the Board a revised draft regulation governing the financial responsibility of boiler and pressure vessel contract fee inspectors and to repeal the existing proposed regulation previously adopted by the Board at its meeting on August 3, 2004.

Mr. Crisanti explained that the revised proposed regulation changed none of the intent of the original proposed regulation adopted by the Board in August. He noted that like the previous proposed regulation the new proposed regulation requires contract fee inspectors operating in the Commonwealth to demonstrate financial responsibility for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

He informed the Board that the basis, impact and purpose of the proposed regulation are unchanged. He explained that the revision was due to the Department of Planning and Budget (DPB), which is charged to review and approve all regulations to be promulgated. DPB determined that the proposed regulation, as adopted by the Board, failed to take into account the type, capacity and number of boilers inspected in the determination of "market share" as well as minor grammatical or technical writing deficiencies.

He noted that the impact of the revised proposal on employers, employees, the general public, and the Department of Labor and Industry remains unchanged from the original proposed regulation presented last August. He added that there are no technological feasibility issues associated with this regulation.

Mr. Crisanti called the Board's attention to an error on page 4, second paragraph of section H. Benefit/Cost concerning the approximate amount of financial responsibility requirements the proposed regulation would cost contract fee inspectors. He informed the Board that instead of the figure "\$7,500 - \$10,000" the figure should read: "\$2,500 - \$10,000."

He stated that there is no implementation schedule for the revised draft which is being offered as a proposed regulation of the Board for public comment and the regulation is not being considered as final regulatory language at this time.

On behalf of the Boiler Safety Compliance Program, Mr. Crisanti recommended that the Board adopt the amended proposed contract fee inspector financial responsibility regulation as a proposed regulation of the Board, as authorized by §§40.1-51.9:2C and 40.1-51.6, and rescind the previous version adopted at the August 3, 2004 meeting.

Chairperson Jolly asked if the revised proposed regulation would be opened to public comment again. Mr. Crisanti assured her that the revised proposed regulation would be opened to the public. He informed her that since DPB did not approve the original regulation, it never reached that point initially.

Mr. Korpe questioned the difference in the definition of “Market Share”. Mr. Crisanti informed him that the original language and revised language both appear in the amended proposed briefing package. Mr. Saunders made the motion to adopt the amended proposed regulation and rescind the previous version. Mr. Korpe seconded the motion which was carried by voice vote.

NEW BUSINESS

16 VAC 25-1926.60, Methylenedianiline in Construction, §1926.60, Final Rule; Correction

On behalf of the Department of Labor and Industry, Mr. Ron Graham, Director of VOSH Occupational Health Compliance, requested the Board to consider for adoption federal OSHA’s correction to the final rule on Methylenedianiline (MDA) in Construction, as published in 69 FR 70373 on December 6, 2004.

Mr. Graham explained that this is a technical correction to the final rule that federal OSHA adopted in 2002 entitled, “Exit Routes, Emergency Action Plans, and Fire Prevention Plans.” Mr. Graham stated that with the publication of the final federal rule on exits routes, OSHA had intended to clarify and make consistent provisions regarding emergency action plans and fire prevention plans in several general industry standards. He informed the Board that OSHA had intended to revise all health standards to reflect the change, however, the same provision in the MDA standard for construction (§1926.60) was not similarly revised at that time.

Mr. Graham stated that this correction should have no impact on employer nor employee safety and health nor have any financial impact on employers.

Mr. Graham concluded by recommending that, on behalf of the staff of the Department of Labor and Industry, the Board adopt the correction to the final rule for Methylenedianiline (MDA) in Construction, §1926.60, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of August 15, 2005.

There was no discussion. Dr. Mundy made the motion to adopt the correction to the final rule for Methylenedianiline in Construction, §1926.60. Mr. Stiff seconded the motion. The motion was carried by voice vote.

Standards Improvement Project, Phase II; Final Rule

Mr. Ron Graham requested, on behalf of the Department, that the Safety and Health Codes Board consider for adoption Phase II of federal OSHA's final rule for the Standards Improvement Project, as published in 70 FR 1111 on January 5, 2005.

As background, Mr. Graham explained that in June 1998, federal OSHA published Phase I of the Standards Improvement project to change a number of provisions in regulations and standards that were outdated, duplicative, unnecessary, inconsistent, or could be clarified or simplified by being rewritten in plain language. He stated that in this final rule numerous health provisions were rewritten into plain language to simplify and clarify regulatory requirements. He noted that the final rule revised or removed 40 health provisions in 23 OSHA standards in general industry, shipyard employment, and construction.

Without going into great detail about the numerous revisions, Mr. Graham continued by mentioning some standards that were impacted by the revisions, e.g., reference to first aid supplies; monthly and quarterly exposure monitoring; semiannual updating of compliance plans; and notifying employees of their exposure monitoring results.

Mr. Graham noted that these revisions should have no impact on employer or employee safety, but should enhance compliance and he added that employers will not be required to provide as much paperwork as they had been required to provide.

On behalf of the staff of the Department of Labor and Industry, Mr. Graham recommended that the Board adopt Phase II of the final rule for the Standards Improvement Project, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of August 15, 2005.

There was no discussion. Ms. Rodriguez made the motion to adopt Phase II of the final rule for the Standards Improvement Project. Mr. Rigmaiden seconded the motion. The motion was carried by voice vote.

Items of Interest from the Department of Labor and Industry

Commissioner Davenport welcomed Mr. Sutton to the Board. He then announced that he had a couple items to bring before the Board. He began by stating that during the last General Assembly session, the Department was successful in securing additional matching funds to hire additional compliance officers. He noted that there have been a number of years that the Department did not have full matching funds to hire the benchmarks required by federal OSHA. He said that new employees will be brought on as full compliance officers or as registered Apprentices in the Department's newly established Registered Apprentice office now that the program is up and running.

Commissioner Davenport also mentioned a recent Virginia Court of Appeals decision in the *Summit Contractor* case (*C. Ray Davenport, Commissioner, Department of Labor and Industry v. Summit Contractors, Inc., d/b/a SCI, Corp.*) which was issued on May 3, 2005. He informed

the Board that he did not want to go into details at this time about the case which could potentially affect the Department's ability to issue citations to controlling employers (general contractors). He stated that the Department is in discussions with the Attorney General's Office and federal OSHA about the decision and its potential impact on the Virginia Safety and Health program. He said that these discussions also include what steps are appropriate to take, including possible appeal of the decision.

Next, the Commissioner introduced Assistant Commissioner Bill Burge. He mentioned that Mr. Burge has had a long history with the Department and is well respected within the agency and the safety and health community from both employers and employees.

Having concluded his statement, Commissioner Davenport asked if anyone had questions. Mr. Korpe then asked the Commissioner to elaborate on the limitation to issuing citations to the controlling contractor. The Commissioner responded that the Department is in ongoing discussions with the Attorney General's Office and federal OSHA about the impact.

Next, Mr. Crisanti brought the Board up-to-date on the two Notices of Intended Regulatory Action (NOIRA) approved by the Board at its December 2004 meeting: the NOIRAs to amend the Administrative Regulations to the VOSH Program and to amend the Telecommunications regulation, §1910.268. He stated that these NOIRAs have been approved by the Department of Planning and Budget (DPB), by the Secretary of Commerce and Trade, and are on the Governor's desk awaiting his approval before further action can proceed.

Items of Interest from the Board

Chairperson Anna Jolly announced the upcoming 10th Annual Virginia Occupational Safety and Health Conference to be held from June 8-10, 2005 in Portsmouth, VA. She invited everyone who has an opportunity to stop by.

Adjournment

There being no further business to come before the Board, Mr. Saunders moved to adjourn the meeting and Mr. Cernak seconded the motion, which was carried by voice vote. The meeting adjourned at 10:35 a.m.