

Date: December 21, 2005

**MINUTES
KENTUCKY OSH STANDARDS BOARD
PUBLIC HEARING**

August 18, 2005

On August 18, 2005, a public hearing of the Kentucky Occupational Safety and Health Standards Board, hereinafter referred to as Board, was held at the Frankfort Convention Center, 405 Mero Street, Frankfort, Kentucky with Mr. Philip J. Anderson, Board Chairman and Commissioner, Department of Labor, presiding. In addition to Chairman Anderson, members present were Mr. Carl Dowell, Ms. Pamela Chappell, Ms. Savannah Wade, Ms. Nancy Skiba, Ms. Elizabeth Jamison, Mr. Earl Goodman, and Mr. Donald Ecken. Also present representing the Department of Labor were the Honorable Fred Huggins, Mr. Chuck Stribling, and Mr. David Stumbo.

Chairman Anderson called the meeting to order at approximately 1:05 P.M. E.T. The roll was taken and a quorum was established.

Chairman Anderson informed the Board that Board member Mr. Mike Davis passed away and asked Mr. Carl Dowell to speak. Mr. Dowell thanked Chairman Anderson and stated that Mike was with the International Brotherhood of Electrical Workers, Local 2100, and served as an elected official for several years. Mike was well known in that membership, served the Board well, and will be missed by all.

Chairman Anderson swore in the newest Board member, Mr. Donald L. Ecken.

Chairman Anderson asked for approval of the May 10, 2005 minutes. Ms. Skiba made a motion, seconded by Ms. Wade, to approve the minutes. The motion passed unanimously.

Chairman Anderson stated there was one (1) old business item to bring before the Board and asked Mr. Dave Stumbo, Health Standards Specialist, Office of Standards Interpretation and Development, to brief the Board.

Mr. Stumbo stated that the item was brought to correct an error of omission which occurred at the May 10, 2005 Board meeting under Agenda Item XIV, consideration of proposed amendments to 803 Kentucky Administrative Regulation (KAR) 2:320. The Board adopted changes to fifteen (15) different regulations, all regarding employee notification. The changes appeared in the January 5, 2005 Federal Register.

Mr. Stumbo stated that the Office of Occupational Safety and Health requested that the Board correct the error by considering the adoption of changes to 29 CFR 1910.1047, Ethylene oxide, as published in the January 5, 2005 Federal Register.

Chairman Anderson sought a motion to approve the adoption of changes to 29 CFR 1910.1047. Mr. Dowell made a motion, seconded by Ms. Skiba. The motion passed unanimously.

Chairman Anderson moved on to new business. He provided a briefing of how the next regulation for Board consideration, 803 KAR 2:412, would be presented. He stated that Mr. Chuck Stribling, Safety Standards Specialist, Office of Standards Interpretation and Development, will review the regulation. Next, two (2) representations of the Kentucky Occupational Safety and Health (OSH) Program, Mr. Steve Morrison, Executive Director, Office Occupational Safety and Health, and Mr. Steve Sparrow, Director, Division of Compliance, would explain why the Kentucky OSH Program proposed the amendment for Board consideration. Next, Ms. Marilyn Schuster, from the Oregon Occupational Safety and Health Program and an expert witness, would provide testimony. After Ms. Schuster's testimony, public testimony would be taken from individuals who have signed in to testify. Those comments would be taken in the order they signed in. When the public comments have concluded, Chairman Anderson advised the Board can ask questions as follow-up to any individuals who presented testimony.

Chairman Anderson asked Mr. Chuck Stribling to review the regulation being considered. Mr. Stribling thanked Chairman Anderson and briefed the Board on the consideration of proposed amendment and the proposed "Non-Mandatory Sample Fall Protection Plan for Residential Construction." Mr. Stribling provided the Board with a review of the Occupational Safety and Health Administration (OSHA) residential construction fall protection regulation, a history of the standard, discussed STD 3.1 and 3-0.1A and the proposed amendment for Board consideration.

Chairman Anderson asked the Board if they had any questions. In response to a question from Ms. Wade, Mr. Stribling stated that KRS Chapter 13A prohibits any administrative body from changing a regulation by memo, policy, or internal memo. STD 3.1 and STD 3-0.1A unarguably changed the requirements of 29 CFR 1926.501(b)(13). KRS 13A prohibits the program from doing that by policy.

Next, Chairman Anderson swore in Mr. Morrison before presenting his testimony. Mr. Morrison advocated the advantages of the proposed amendment to 803 KAR 2:412.

Chairman Anderson swore in Mr. Sparrow to present his testimony. Mr. Sparrow advocated the proposed amendment.

Chairman Anderson swore in Ms. Schuster, Manager of Policy and Acting Manager of Consultation and Outreach with Oregon OSH. Ms. Schuster explained Oregon's regulation, which is similar to the proposed amendment before the Board. Ms. Schuster stated in Oregon, the regulation has a favorable, proven, track record.

Chairman Anderson swore in Marvin Miller, Safety Director, Drees Homes. Mr. Miller stated he was in favor of the proposed regulation

Chairman Anderson swore in Mr. Russell Wethington, Safety Director, Ball Homes. Mr. Wethington was in favor with the proposed regulation. Mr. Wethington requested Kentucky OSH consider expanding the alternative measure floor system joist width from eighteen (18) inches to twenty-four (24) inches when constructing with manufactured joist system.

Chairman Anderson stated that Kentucky OSH could consider the issue when the Construction Advisory Committee is formed.

Chairman Anderson swore in Robert Weiss, Executive Vice-President, Home Builders Association of Kentucky. Mr. Weiss was in favor of the proposed regulation.

Chairman Anderson swore in Mr. Stanley Pearman, Jr., Business Manager, S & P Framing, Louisville, Kentucky. Mr. Pearman was in favor of the proposed regulation and discussed partnerships to improve the program.

Chairman Anderson swore in Mr. Mark Dunn, Dunn Roofing, Georgetown, Kentucky. Mr. Dunn stated he was in favor of improving safety for workers, but there is a need to close the gap for legitimate businesses against employers who are not following the regulations and implementation of the standard and how it is enforced.

Chairman Anderson swore in Clarence Pickett, Co-Owner of Pickett and Dunn Roofing, Georgetown, Kentucky. Mr. Pickett stated that he agreed that safety was important and expressed concerns of employers who are not following regulations. Mr. Pickett felt that the city government, such as city home inspectors, electrical inspectors, and building inspectors should be involved with Kentucky OSH.

Chairman Anderson swore in Mr. Ronnie Perkins, Safety Professional, Lawrenceburg, Kentucky. Mr. Perkins stated that his current title is Construction Program Administrator for the Kentucky Department of Labor. Mr. Perkins voiced one (1) point of opposition to the proposed regulation - the use of slideguards on structures with a eave to ground height up to twenty-five (25) feet. Mr Perkins stated there have been three (3) fatalities from falls that were less than twenty-five (25) feet this year.

Chairman Anderson swore in Ms. Bonnie Gaines, owner of Gaines Roofing and Plumbing Service, Frankfort, Kentucky. Ms. Gaines stated that her company was cited a couple of times and was concerned about Workers' Compensation rates and she felt the fines that are imposed are too high.

Chairman Anderson stated that concluded testimony from individuals who asked to speak.

Chairman Anderson entertained a motion to approve the regulation. Mr. Goodman made a motion to approve, seconded by Ms. Chappell.

Chairman Anderson asked if there were any questions or comments by any members of the Board.

Ms. Jamison stated she read the correspondence from the Western Kentucky Construction Association that was enclosed in the packet and asked if there are comments to their questions. Specifically, they were pointing out there was an increased problems for injuries when people working under the ten (10) foot level, and that Western Kentucky Construction Association did not recommend the amendment. Ms. Jamison also asked if there was any data on whether it would expose those people to more injury.

Chairman Anderson called on Mr. Sparrow to answer the questions. Mr. Sparrow stated that fatalities occur with falls less than ten (10) feet, and even less than six (6) feet. There was a fatality this year from a ladder fall of less than three (3) feet.

Ms. Jamison asked if there are a lot more fatalities from six (6) feet to ten (10) feet?

Mr. Sparrow stated that in looking at the data for the last ten (10) years, there was one (1) fatality at ten (10) feet, one (1) fatality at eight (8) feet, one (1) fatality at seven (7) feet and two (2) fatalities at six (6) feet. Ms. Jamison thanked Mr. Sparrow.

Chairman Anderson asked if there were any questions and recognized Ms. Schuster.

Ms. Schuster stated that she could not say specifically about whether falls occurred at greater than ten (10)

feet or less than ten (10) feet; but, she stated that before 2000, Oregon found that eighteen (18) percent of the falls were from roofs. After Oregon put the standard into place, which provided an option that was very feasible for employers, more employers were using it rather than ignoring it. Oregon experienced fewer falls from roofs and the percent of falls went down to 10.5. Ms. Schuster did not know if any of those were between ten (10) foot and six (6) foot. Ms. Jamison thanked Ms. Schuster.

Mr. Stribling stated the six (6) foot requirement still remains for holes, mezzanines, and balconies. If an employee was exposed to a stairway opening and the fall hazard was six (6) feet or greater, fall protection must be used. This also holds true for a fall hazard near dangerous equipment. In that situation, there is not a specific fall protection trigger height.

Ms. Skiba stated that addressed the fatality that was mentioned. Ms. Skiba inquired if that is still in place, was the OSH Program going to change the requirement.

Chairman Anderson stated if there are fall hazards through floor openings, stairwells, mezzanines, the six (6) foot trigger height is still in place.

Chairman Anderson commented that this is a change in direction from what has traditionally been done. It is the beginning of what he hoped would be a number of partnership arrangements between the Kentucky Department of Labor and business in various industries. Hopefully in the future, The OSH Program can work closely together to develop standards and regulations that not only make sense, but save lives and allow businesses to stay in business and be regulated.

Chairman Anderson stated that he thoroughly respected the comments of Mr. Perkins, who is a valued employee who works very hard and knows his business. Chairman Anderson encouraged all to move positively on this regulation to give the opportunity to explore this new area of partnership which can create more accountability and a safer workplace. Because we will have the participation of the regulated community, hopefully we can write not only better regulations, but common sense regulations, which they are more likely to comply with it.

Commissioner Anderson stated that there is a motion and second to approve the proposed regulation. Commissioner Anderson asked those who were in favor. All answered affirmatively and being no opposition, the regulation was approved.

Commissioner Anderson thanked the Board and thanked all of those who presented testimony. There being no further business, the meeting was adjourned.