



*Advancing public policy to
improve the health and safety
of workers and the community.*

CIHC Board:

*President, Chris Laszcz Davis, MS, CIH, REA
The Environmental Quality Organization, LLC
Lafayette, CA
(925) 330-1774*

*Vice President, Howard Spielman, CIH
Health Science Associates
Los Alamitos, CA
(714) 220-3922*

*Treasurer, Eric N. Brown, MPH, CIH
Southern California Edison
Westminster, CA
(714) 895-0419*

*Secretary, Edward Klinenberg, Ph.D., CIH
Northrop Grumman Information Systems
Cyber & SIGINT Systems
McClellan, CA
(916) 570-4032*

Directors:

*Patricia Beach, MS, CIH, REA
Harris & Lee Environmental Services, LLC
San Francisco, CA
(415) 287-0056*

*Richard Bohrer, CIH
NES inc
Folsom, CA
(916) 353-2360*

*Nola J. Kennedy, PhD, CIH
UCLA School of Public Health
Los Angeles, CA
(310) 794-7687*

*Jeff King, MSPH, CIH
SAIC
San Diego, CA 92121
(858) 826-3686*

*Jimi Messelbeck, CIH
Environmental Health and Safety
Management Consultants
San Diego, CA
(650) 996-9080*

*Leo Vortaux, MPH, CIH
Newport Beach, CA
(949) 722-1153*

Alternates:

*Joel Cohen, MPH, CIH
The Cohen Group
San Mateo, CA
(650) 349-9737*

*Ann Graham, CIH
U.S. Navy
San Diego, CA
(858) 527-8925*

*Ronald P. Hutton, CIH, CPEA
Pacific Health and Safety, Inc.
Mission Viejo, CA
(949) 331-2732*

*Jaime Steedman Lytle, CIH
Health Science Associates
Los Alamitos, CA
(714) 220-3922*

Special Advisors:

*Larry Gibbs, MEd, MPH, CIH
Stanford University
Palo Alto, CA
(650) 723-7403*

*Jackie Luca, CIH
Retired, Northrop Grumman
Manhattan Beach, CA
(310) 994-5136*

Sacramento Advocacy:
*Catherine Borankin
CIHC Legislative Office
Sacramento, CA
(916) 447-7341*

March 29, 2011

Assemblymember Bill Monning
State Capitol, Room 6005
Sacramento, CA 95814

RE: AB 553 (Monning) – OPPOSE UNLESS AMENDED

Dear Mr. Monning,

On behalf of the California Industrial Hygiene Council, we regret to inform you that we are **opposed to your AB 553 unless the bill is substantially amended**. While we are entirely supportive of your intent to protect the rights of workers from exposure to hazardous substances and toxic materials in the workplace, we do not believe that your bill, as currently drafted, accomplishes this goal in a manner beneficial to California.

Founded in 1990, the CIHC represents the Industrial Hygiene profession in California and is affiliated with the American Industrial Hygiene Association (AIHA), a 12,000 member national organization. Our Board consists of Certified Industrial Hygienist (CIH) representatives from all five California local sections of the AIHA including Northern California, Orange County, Sacramento, San Diego, and Southern California. Our mission is to bring good science to the legislative and/or regulatory agenda which impacts the health of California workers and the public.

We have had an opportunity to discuss our concerns with your staffer Kathy Smith, and very much appreciate her time and willingness to listen to our concerns. As promised to her, this letter lays out the basis of our opposition, the detail for which is contained in the attached discussion paper. We have also indicated that we are interested in working with your office to amend the bill in order to remove our opposition. We have prepared proposed amendments for your consideration, and they are also included with this letter.

Bases for opposition:

- 1) California already has the most robust process for setting and revising Permissible Exposure Limits (PELs), as well as the most protective occupational exposure limits of any state in the nation.
- 2) AB 553 directly conflicts with Section 147.1 of the California Labor Code, and would replace DOSH as the designated source of PEL recommendations to the Standards Board.

- 3) AB 553 eliminates the consensus process for setting occupational exposure standards in California.
- 4) AB 553 applies an inappropriately higher standard for assurance of employee protection than that used by other standards-setting organizations, and conflicts with the current Labor Code.
- 5) AB 553 uses inappropriate science which is inconsistent with other occupational exposure standards-setting organizations.
- 6) AB 553 would have an unnecessary and extremely serious negative impact on employers and the California business economy.

Thank you in advance for your consideration of our position. We look forward to our ongoing dialog with your office, and would be honored to support this bill if it is amended to address the forgoing concerns.

Sincerely,

Catherine Barankin
Legislative Advocate

Chris Laszcz-Davis, MS, CIH, REA
President, CIHC

Howard Spielman, PE, CIH, CSP, REHS
Vice President, CIHC - AB 553 Project
Manager

CIHC Comments on AB 553

California already has the most robust process for setting and revising Permissible Exposure Limits (PELs), as well as the most protective occupational exposure limits of any state in the nation. As such, AB 553 is not needed.

In response to a request from the Cal/OSHA Standards Board, in 2006 DOSH convened an Advisory Committee and has now published and implemented its Policy and Procedure for the Advisory Committee Process for Permissible Exposure Limit (PEL) Updates to Title 8, Section 5155, Airborne Contaminants. The purpose of this PEL process document is to ensure a transparent consensus process for development of enforceable standards. This final document, as presented to the Cal/OSHA Standards Board on March 15, 2007 established the Health Expert Advisory Committee (HEAC) and Feasibility Advisory Committee (FAC). The role of the HEAC is to consider the need and scientific basis for recommending to the Division new or revised health-based exposure levels for airborne contaminants. The HEAC, with the assistance of DOSH staff, is tasked to research current scientific literature and sources that include government agencies such as National Institute of Occupational Safety and Health (NIOSH), Office of Environmental Health Hazard Assessment (OEHHA), United States Environmental Protection Agency (USEPA) and the National Toxicology Program (NTP). Recommendations and studies of private industries, the military and international organizations may also be used as reference sources. The role of the FAC is to provide an opportunity for interested parties to comment on technical and economic feasibility and reasonableness of HEAC-recommended PELs. Provisions in AB 553 would eliminate this consensus process.

AB 553 directly conflicts with Section 147.1 of the California Labor Code, and would replace DOSH as the designated source of PEL recommendations to the Standards Board

AB 553 requires that the Standards Board set the PEL at the same level as the “Health-based Occupational Exposure Limit” established by use of a quantitative risk assessment determined by either California EPA, Federal EPA, NIOSH or the National Toxicology Program. This is a direct conflict with Section 147.1 of the California Labor Code which specifically gives this authority to the Division of Occupational Safety and Health (DOSH) within the Department of Industrial Relations. In fact, the labor code explicitly states that it is DOSH’s specific duty to “maintain surveillance, determine the necessity for standards, develop and present proposed standards to the board”. The process proposed by AB 553 effectively eliminates any role that DOSH would play in developing and recommending standards for hazardous chemicals, and would instead allow California EPA (OEHHA) to usurp this statutory authority.

AB 553 eliminates the consensus process for setting occupational exposure standards in California

AB 553 requires that any PEL adopted by the Cal/OSHA Standards Board be the same as the risk-based occupational exposure level determined for that substance by OEHHA or other listed agency, effectively establishing that agency as the HEAC and eliminating the scientific consensus process currently in place. Because of its requirement that the PEL be developed using “the lowest quantitative risk assessment”, AB 553 would essentially default to use of OEHHA’s risk assessment values, since they are routinely the most conservative values developed. While they are a valuable source of information, OEHHA risk assessments are not, and should not be, the only scientific resource considered in the occupational exposure standards development process. As indicated in the DOSH PEL process document, OEHHA is an important resource, but still only one of several resources that the HEAC uses in determining its health-based recommendations for PELs. Eliminating the ability to consider other valuable resources in setting the most appropriate occupational exposure limit would eliminate any consensus which is embedded in the current process.

AB 553 applies an inappropriately higher standard for assurance of employee protection than that used by other standards-setting organizations, and conflicts with the current Labor Code.

In paragraph (b)(2), AB 553 states that the board “shall comply with [Labor Code] Section 144.6 and place primary emphasis on attainment of the highest degree of health and safety protection. For carcinogens, the PEL shall ensure that there is no significant risk to employee health, in accordance with

paragraph (5). For toxicants that cause or contribute to reproductive, developmental, or serious physical harm, the PEL shall be at a level at which no harm occurs”.

However, Section 144.6 of the Labor Code actually states “In promulgating standards dealing with toxic materials or harmful physical agents, the board shall adopt that standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life”. In its requirement that “no significant risk” and “no harm” will occur, the language used in AB 553 sets a different and much higher standard for assurance of employee protection than that articulated in Section 144.6 of the Labor Code. In fact, this paragraph of the labor code goes on to state “In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws”. These “other considerations” are not included as appropriate possible modifiers in the language used in AB 553.

AB 553 uses inappropriate science which is inconsistent with other occupational exposure standards-setting organizations

As proposed, AB 553 requires use of the lowest quantitative risk level to determine the “health-based” Occupational Exposure Level. In most cases, this would default to the existing OEHHA quantitative risk levels established under Proposition 65. For substances classed as carcinogens, these levels are set by OEHHA using a “no threshold dose” model, and require that the levels be determined using no more than one excess case of cancer per 100,000 persons in the “exposed population” as the acceptable risk level. This is the same level of “acceptable risk” identified in AB 553. The concept of “no threshold dose” flies in the face of science currently used to establish occupational exposure limits which are based on the concept that there IS a defined level of exposure below which there is no significant risk of adverse health effects. This is in fact the derivation of the term “Threshold Limit Value” coined decades ago by the American Conference of Governmental Industrial Hygienists (ACGIH), the organization which has established occupational exposure limits for hundreds of chemical agents and whose TLVs are used as benchmarks for occupational exposure limits around the world. In addition, the risk model of 1:100,000 as the sole criterion for establishing occupational exposure limits has no scientific basis as an appropriate model, and will, in combination with the “no threshold” approach, result in establishing exposure limits unreasonably low and far below those which would be set using models currently utilized by all other standard setting organizations.

AB 553 would have an unnecessary and extremely serious negative financial impact on employers and the California business economy

Where Permissible Exposure Limits have been developed using a reasoned consensus process utilizing sound science, the costs of regulation to the business community are warranted to assure protection of employee health. However, the exposure limits which would be established under provisions of AB 553 would be so low that compliance, if even feasible, will be extremely difficult and extraordinarily costly. It is very likely that setting such low limits for chemicals which, in many cases are not even regulated in other jurisdictions, would essentially result in *de facto* “banning” of these substances in the California workplace. In fact, one of the major provisions proposed in AB 553 is the requirement for determining availability of “safer alternatives” as part of the feasibility determination. This is, in effect, an apparent attempt to force elimination of the use of such substances where arbitrarily low PELs have been determined through use of the lowest risk assessment available. In other cases, California employers will be forced to comply with costly regulations, based on inappropriate “science”, establishing workplace exposure limits not experienced in other jurisdictions and therefore inimical to the interests of California employers as well as to their employees.

An act to amend Section 144.6 and add Sections 144.8 and 145.2 to the Labor Code, relating to employment.

legislative counsel's digest

AB 553, as introduced, Monning, Employment safety: hazardous materials.

Existing law authorizes the Division of Occupational Safety and Health (the Division) within the Department of Industrial Relations to recommend and enforce occupational safety and health standards, including evaluating, investigating, and monitoring environmental or health conditions that may be harmful to the health of employees. In so doing, it enforces the standards promulgated by the Occupational Safety and Health Standards Board within the department dealing with toxic materials and harmful physical agents and bloodborne pathogens

This bill would declare the findings of the Legislature regarding procedures to be used to develop, recommend and promulgate standards related to chemical hazards in the workplace and the rights of workers to be protected from exposure to hazardous substances and toxic materials in the workplace .

This bill would require the division to periodically recommend to the board updates to the list of permissible exposure limits, and would require that the board, in promulgating standards recommended by the Division ~~dealing with certain toxic materials in the workplace,~~ establish permissible exposure limits that meet specified criteria, with an emphasis on obtaining the highest degree of health and safety protection in consideration of the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws. In addition, this bill would require the division to develop and maintain a prioritized list of substances for review and to appoint a health expert advisory committee, made up of health and toxicology experts, as specified, to advise the division in developing or revising exposure limits for toxic contaminants. The division would also be required to appoint a feasibility advisory panel, made up of industry and interested parties, as specified, to provide an opportunity for interested parties to comment to the division and the health expert advisory committee on the exposure limits and technical issues associated with implementing them. The recommendations from the division would then be forwarded to the board for use in developing and revising permissible exposure limits.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

99

The people of the State of California do enact as follows:

123456789

SECTION 1. The Legislature finds and declares all of the following:

(a) Hazardous substances and toxic materials in the workplace can cause cancer and reproductive, developmental, and other serious physical harm to workers ~~and their children.~~

(b) Workers have a right to be adequately protected from hazardous substances and toxic materials that cause cancer and reproductive, developmental, and other serious physical harm, especially since ~~these~~ health effects which may occur may not develop for years after exposure and can permanently impact workers' ability to produce and raise healthy children.

(c) In order to best protect workers, it is the intent of the Legislature that the Division of Occupational Safety and Health and the Occupational Safety and Health Standards Board, in the process of regulating hazardous substances and toxic materials, act expeditiously and efficiently, avoiding duplication of efforts, by utilizing actions taken by other California and national

regulatory and research agencies, to protect workers against the effects of those substances that may cause cancer and reproductive, developmental, or other serious physical harm.

SECTION 2. Section 144.6 of the Labor Code is amended to read:

144.6. (a) In promulgating standards dealing with toxic materials or harmful physical agents, the board shall adopt that standard which most adequately assures, the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his or her working life. Development of standards under this section shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(b) The Division of Occupational Safety and Health shall periodically recommend to the board updates to the list of established permissible exposure limits for inclusion in the California Code of Regulations.

SEC. 23. Section 144.8 is added to the Labor Code, to read:

144.8. (a) For the purposes of this section, the following definitions apply:

(1) “Health-based occupational exposure limit” and “health-based OEL” mean the level of an airborne contaminant in the workplace that is not anticipated to cause or contribute to reproductive, developmental, or other serious physical harm as defined in Section 6432, or pose a significant risk of cancer to any employee who has regular exposure to the contaminant for the period of his or her working life, and is based on evaluation of a quantitative risk assessments prepared or published by any of the following agencies:

(A) The California Environmental Protection Agency.

(B) The National Institute for Occupational Safety and Health.

(C) The United States Environmental Protection Agency.

(D) The National Toxicology Program Center for the Evaluation of Risks to Human Reproduction.

(E) The American Conference of Governmental Industrial Hygienists

(F) Other recognized national and international occupational exposure standards-setting organizations

(2) “Permissible exposure limit” and “PEL” have the same meaning as defined in Section 5155 of Title 8 of the California Code of Regulations.

(b) (1) In promulgating standards dealing with toxic materials for which a quantitative risk assessment exists as prepared by any of the agencies set forth in paragraph (1) of subdivision (a), and for which a PEL is proposed to be adopted in accordance with Section 145.2, the board shall set the PEL at a level, as recommended by DOSH, that corresponds with a health-based OEL to the extent feasible as set forth in paragraph (5). ~~The health-based OEL shall be calculated, as set forth in paragraph (3), from the lowest quantitative risk assessment that addresses cancer or reproductive, developmental, or other serious physical harm.~~ There is a rebuttable presumption that any PEL adopted pursuant to this subdivision and in accordance with the provisions of Section 145.2 shall be the same as the calculated health-based OEL unless it is not feasible, as set forth in paragraph (5).

(2) In setting the level of the PEL, the board shall comply with Section 144.6 and place primary emphasis on attainment of the highest degree of health and safety protection, with consideration given to the latest available scientific data in the field, the reasonableness of the standard, and experience gained under this and other health and safety laws. For carcinogens, and reproductive or developmental toxicants, the PEL shall ensure that there is no significant risk to employee health, in accordance with paragraph (5). For toxicants that cause or contribute to other reproductive, developmental, or serious physical harm, the PEL shall be at a level at which no ~~harm occurs~~ employee is expected to suffer material impairment of health or functional capacity if such employee has regular exposure for the period of his or her working life.

(3) When calculating the health-based OEL for any hazardous substance or toxic material pursuant to paragraph (1), adjustments shall be made to reflect a standard work week over a working life period of 40 years.

(4) For a hazardous substance or toxic material that is a carcinogen, a level that does not pose any significant risk to employee health shall not be less protective than the level that would result in cancer in one employee per ~~100,000~~ 1000 employees exposed to the carcinogen over a working lifetime. For other hazardous substances or toxic materials, adjustments shall be made, utilizing appropriate safety factors, to establish a level that does not cause or contribute to reproductive, developmental, or other serious physical harm.

(5) For the purposes of determining feasibility as set forth in Section 144.6 and paragraph (1) of this section, including the ability to measure workplace exposures at the proposed PEL and whether there is a way to achieve compliance with that PEL, the board shall consider the most cost-effective available approach. Feasibility shall include initially evaluating whether an employer may achieve compliance through the substitution of an identified safer alternative, including whether or not that identified safer substitute can be used in the production process. If no safer alternative exists, the board may consider a reasonable phase-in period to achieve the PEL. If no safer alternative exists or is likely to exist within a reasonable period of time, the board shall determine feasibility for the industries affected by the PEL by evaluating whether a change in administrative practices or engineering controls, as defined in Title 8 of the California Code of Regulations, including developing technology, is technologically feasible and, if necessary, whether supplemental respiratory protection may achieve the PEL.

(6) Calculations and recommendations made pursuant to this subdivision are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) If the board, based on feasibility, adopts a PEL pursuant to subdivision (b) that is less protective than the health-based OEL, the board shall do both of the following:

(1) Make findings of fact regarding feasibility as set forth in paragraph (5) of subdivision (b), citing the evidence for its findings. The board shall give more weight to ~~of~~ evidence based on independently verified ~~to~~ quantitative exposure monitoring data when developed by or under the direction of a Certified Industrial Hygienist as defined in Section 20700 of the California Business and Professions Code, as well as to independently verified; analysis of safer substitutes, and availability of engineering controls that can reduce exposures than to evidence that is not independently verified.

(2) Identify the degree of excess cancer risk and risk of reproductive, developmental, or serious physical harm for the PEL compared to the health-based OEL.

SECTION. 4. Section 145.2 is added to the Labor Code, to read:

145.2. (a) In order to meet the requirements of Section 144.8, the Division of Occupational Safety and Health shall appoint a health expert advisory committee to consider the need and scientific basis for recommending new or revised health-based exposure levels for airborne contaminants. For membership on the committee, the Division of Occupational Safety and Health shall seek experts from other state agencies, academic institutions, the California Industrial Hygiene Council, and other professional associations and groups. The health expert advisory committee shall include members from the disciplines of toxicology, epidemiology, occupational medicine, and industrial hygiene.

(b) With assistance of the health expert advisory committee, the Division of Occupational Safety and Health shall develop a summary document for each toxic substance or harmful agent under consideration in accordance with the provisions of Section 144.8, which shall include brief summaries of disease risk level estimates of relevant acute and chronic health effects, such as carcinogenicity and reproductive harm, available occupational exposure limits from other agencies, and risk-based estimates for occupational exposure limits if appropriate. In developing these summary documents, the Division of Occupational Safety and Health, with the assistance of the health expert advisory committee, shall research current scientific literature and secondary sources that include federal government agencies, such as the National Institute for Occupational Safety and Health, the Office of Environmental Health Hazard Assessment, the United States Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Toxicology Program, and other sources, including the American Conference of Governmental Industrial Hygienists and the American Industrial Hygiene Association.

(c) The Division of Occupational Safety and Health shall develop and maintain a prioritized list of substances for review. The health expert advisory committee may be used for this purpose.

(d) The Division of Occupational Safety and Health shall also appoint a feasibility advisory committee to provide an opportunity for interested parties to comment on the technical and economic feasibility of the recommended, health-based permissible exposure limits recommended by the health expert advisory committee, including technical issues associated with making measurements to identify compliance, technical issues associated with means and methods of control of exposures for compliance, costs associated with achieving and maintaining compliance, and the reasonableness of those costs. Members of the feasibility advisory committee may include affected industry and labor groups, individuals with expertise in relevant technical areas such as ventilation engineering, industrial hygiene chemistry, engineering economics, and health expert advisory committee members who choose to participate.

(e) For each substance considered by the health expert advisory committee and feasibility advisory committee, the Division of Occupational Safety and Health shall recommend to the board its best informed decision for a permissible exposure limit.

(f) The Division of Occupational Safety and Health shall develop and maintain a written policy and procedures for the health expert advisory committee and feasibility advisory panel contained in this section.