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# Wildfire Smoke Rule Coalition Comments on Cal/OSHA's Proposed Permanent Wildfire Smoke Standard

By [Andrew J. Sommer](#) and [Eric J. Conn](#)

On behalf of a diverse coalition of employers, Conn Maciel Carey submitted written comments and presented key comments at the Cal/OSH Standards Board's May 21, 2020 meeting concerning the proposed permanent rule on protection from wildfire smoke. The coalition raised a host of concerns about the rule, from the potentially broad application of the rule to the inflexible respiratory protection and hierarchy of controls requirements.

As background, the Cal/OSH Standards Board adopted an [emergency regulation regarding hazards associated with wildfire smoke](#) last summer at the urging of various interest groups. The regulation took effect on a temporary emergency basis on July 29, 2019.



Recently, the Board published a [request for written comments and notice of a public hearing](#) on its [proposal to revise the emergency standard and make it permanent](#). The Board explained:

**Current regulations are not sufficiently specific as to what employers are required to do during wildfire events. This results in confusion on behalf of both employers and employees, leaving many employees unprotected.... As wildfire seasons worsen, the proposed regulation will avoid a potential increase in debilitating and sometimes life-threatening illnesses faced by workers exposed to wildfire smoke.**

### **The Emergency Standard**

The emergency standard (which is still in effect) requires California employers to take steps to protect employees who may be exposed to wildfire smoke. Importantly, the regulation covers “workplaces” rather than employers of a particular size or scope of service. It applies in workplaces where:

- The current Air Quality Index (AQI) for PM2.5 is 151 or greater, regardless of the AQI for other pollutants, and
- The employer should reasonably anticipate that employees may be exposed to wildfire smoke.

The regulation specifically exempts the following workplaces and operations:

- Enclosed and mechanically ventilated buildings and structures, as long as any windows, doors, bays and other openings are kept closed;
- Enclosed vehicles, when the air is filtered by a cabin air filter and windows, doors, and other openings are kept closed;
- Where the employer demonstrates that the concentration of PM2.5 in the air at the workplace does not correspond to an AQI of 151 or greater;
- Employees exposed to a current AQI for PM2.5 of 151 or greater for a total of one hour or less during a shift; and
- Firefighters engaged in wildland firefighting.

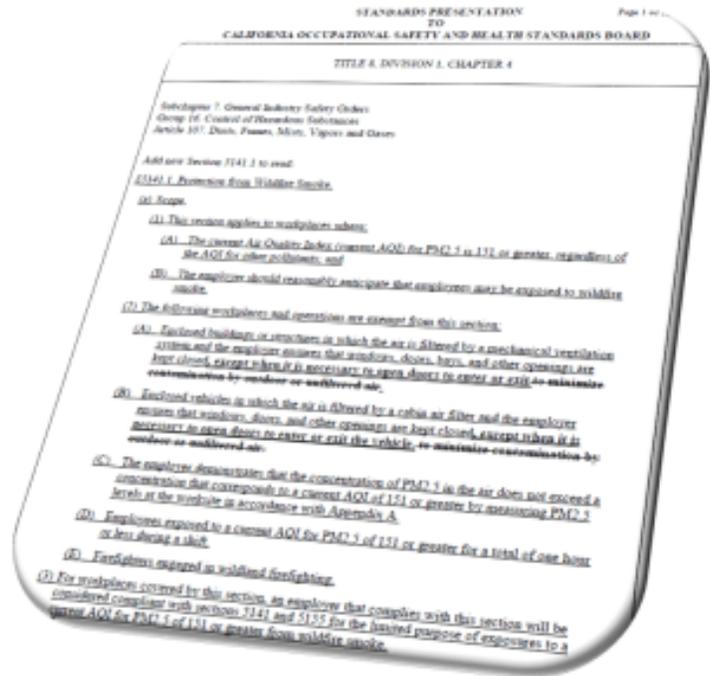
Under the emergency regulation, employers have been required to determine employee exposures to PM2.5 for covered worksites before each shift and periodically thereafter, as needed, to protect the health of employees. This is done by obtaining the current AQI for PM2.5 by checking with specified government agencies or websites, or by measuring the PM2.5 levels at the worksite.

Finally, employers with a covered workplace are required to take the following steps to protect employees who may be exposed to wildfire smoke:

- Establish a system for communicating with employees about wildfire smoke hazards and provide employees with effective training and instruction on the regulation, the health effects of wildfire smoke, and the safe use and maintenance of respirators;
- Reduce harmful exposures to wildfire smoke if feasible, for example, by providing enclosed buildings, structures or vehicles with filtered air, or by relocating work to a location where the AQI for PM2.5 is less than 151; and
- Employers that cannot reduce workers’ harmful exposure to wildfire smoke so that the AQI for PM2.5 is less than 151 must provide respirators such as N95 masks to all employees for voluntary use.

### **Proposed Amended Permanent Standard**

Even at the emergency stage last summer and fall, many employers raised issues and objections to the rule, including the cost of training and the PPE, including N95 masks. This has become even more of an issue due to the ongoing COVID-19 pandemic, which has caused significant global shortages of supply of many types of PPE – N95 masks in particular.



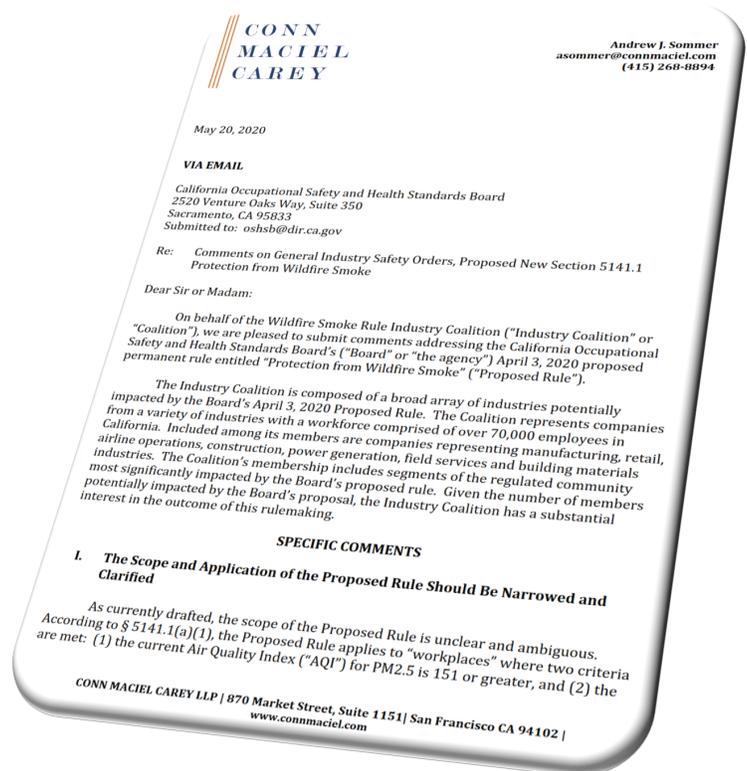
The Board has now [proposed to make permanent the emergency standard with a few meaningful revisions](#). The most prominent revision is the addition of an emergency exception from the requirement to identify harmful exposures, for employers who assume an AQI for PM 2.5 of 151 or greater, and who provide a sufficient number of respirators to employees. But despite ongoing worldwide PPE shortages, Cal/OSHA’s proposed permanent wildfire smoke standard provides no relief to the requirement for employers to maintain an ample supply of NIOSH-approved N95 respirator masks to comply with the rule, even as the California wildfire season comes into view during the height of the pandemic.

**Comments from the Wildfire Smoke Rule Employer Coalition**

To ensure Industry’s concerns are presented and heard, Conn Maciel Carey’s Workplace Safety Practice coordinated a coalition of employers to prepare [a set of comments](#) to submit to the Standards Board.

The Coalition represented companies from a variety of industries with a workforce comprised of over 70,000 employees in California. Included among the employers providing input for the comments were companies representing manufacturing, retail,

airline operations, construction, power generation, field services and building materials industries.



These are some of the key concerns raised on behalf of our employer coalition:

- The Proposed Rule applies to "workplaces" where two criteria are met: (1) the current Air Quality Index ("AQI") for PM2.5 is 151 or greater, and (2) the employer "should reasonably anticipate that employees may be exposed to wildfire smoke." The criteria should be clarified and narrowed to ensure greater certainty in determining whether the Proposed Rule applies to any given workplace and to eliminate application of this Proposed Rule where it is unnecessary. For example, the first prong of the application criteria (when the current AQI for

## PM2.5 is 151 or greater) should clarify that it applies only to *outdoor* workplaces, as there are specific exemptions for indoor workplaces.

- The Proposed Rule properly exempts from its scope enclosed buildings where windows, doors, bays, and other openings are kept closed except when it is necessary to open doors to enter or exit. The purpose and meaning of the building exemption would be made clearer through the addition of language that recognizes doors and other openings may normally be opened for a limited duration for reasons other than individuals entering and exiting. For example, loading bays may be kept closed throughout the working day by rolling doors preventing entry of outdoor air except when trucks need to pull up and connect to the bay for purposes of loading or unloading.
- The existing language requiring that the employer determine exposure “at the start of each shift” is ambiguous, particularly where an employer has employees with overlapping or staggered work shifts. In workplaces where employees start work at different times throughout the day, this language could be read as placing the employer in the untenable position of having to determine exposure continuously throughout the day, as each employee arrives to work, even though the conditions involving wildfire smoke have not materially changed.
- The Proposed Rule requires employers to provide “a sufficient number of” NIOSH-approved respirators such as N95 respirators any time the AQI for PM2.5 is 151 or more. As the current COVID-19 pandemic has demonstrated, this blanket requirement is not practical or feasible during a pandemic or at other times when the available supply is limited, such as during past wildfire seasons.
- This controls hierarchy should not be rigidly mandated in this fairly unique situation of protecting against wildfire smoke. In fact, the Board provides no indication that engineering controls can tangibly or more effectively than other types of controls eliminate wildfire smoke risk for employees whose regular job duties require that they work outdoors, such as construction workers and airport ramp agents. Thus, employers should have flexibility to employ an array of various types of controls to most effectively and efficiently protect against this potential hazard. For example, easily administered administrative controls such as relocating work to another location not impacted by wildfire smoke may be more effective and desirable than implementing time- and labor-intensive engineering controls at the current work location, which may delay the start of work for days.