Cal/OSHA Advisory Committee Meeting
May 5, 2016 – 10:30 a.m.
Oakland, California

Welcome and Opening Remarks by Christine Baker, Director of Industrial Relations

- Thank you for joining our advisory committee meeting. We are delighted to showcase our accomplishments, and our teams are working around the clock on a number of things. I want to commend both Cal/OSHA and DLSE's Retaliation Complaint Investigation Unit (RCI) team for efforts in the last several months.

- Cal/OSHA been working on regulations and policy and procedures. I'm very pleased with the work that has been done under Juliann Sum's leadership. All teams are working at a quick pace to accomplish our goals. We have developed a strategic plan of core values with honesty, integrity, commitment to serve the public with accuracy and transparency.

- Teams have worked together for strategic plans to move goals forward, and Juliann will explain more in depth.

Introductions and Overview of the Agenda by Juliann Sum, Chief of Cal/OSHA

- We have been very busy, which we will detail in the presentations and during the full-length discussion. To give a quick update, we are on track with hiring and training of new staff, with additional resources granted to us last year. We have filled 70 positions.

- We received input during the last meeting on outreach ideas, and we are piloting a project on hazards in tree trimming work. We are trying to reach settings that are not easily reachable through previous efforts, and we have received new ideas on how to reach those areas. There have been a number of tree trimming fatalities in the last ten months, so we are also working on upgrading our programs on internal communications for staff at all levels. We want to keep staff motivated, and our attitude is to not be heavy-handed and put too much pressure. We want to tap into our staff's inherent desire to serve the public.

- After our last advisory committee meeting, we are reconfiguring critical pieces of our P&Ps, which will help Cal/OSHA and employers in the long run.

- Our Division is the busiest in the Department. We handle many Public Records Act requests, and we have the most complicated cases in terms of confidentiality. There is technical training going on all the time, which is under fed OSHA scrutiny, as well as under scrutiny from interested members of the public. We are dealing with all these issues in order to maintain consistent communication internally as well as externally.

- We would like to move the advisory committee meetings from 3 months to 4-5 months from now because we do have quite a few high profile projects that we need to focus on.

Cal/OSHA and DIR Updates

Field Enforcement by Debra Lee, Deputy Chief

- We would also like discuss our hiring, which we continue to do. We have been hiring and promoting senior and associate safety engineers, and as of April, we have filled 12 of the 16 additional senior safety engineer positions and 8 of the 18 associate engineer positions. We have a list of our major changes in our Enforcement report.

- We have new managers now in place:
  - Mr. John Leahy, Principal Safety Engineer, Mining and Tunneling
  - Victor Copelan, District Manager, Los Angeles District Office
  - Eddie Miranda, District Manager, Modesto District Office

- There are other major changes in staff which we mention in our report that was sent earlier.

- On April 21, a representative from DOSH LETF Unit participated in an outreach event for the Korean Restaurant Association regarding safety at work.

- There is an event coming up on May 11 with the Landscape Contractors Association. In June 16, this will take place in Torrance, and we will be working with other agencies.

  - **Question/Comment:** Do the new hires have bilingual capability?
    - **Answer:** Yes.

  - **Follow-up question:** Do you have an exact number?
    - **Answer:** We don't have that number on hand right now, but we can get that for you later.

  - **Question/Comment:** It's great to hear that new positions are being filled. What is the total number and not just newly funded?
    - **Answer:** We can send out the most recent report on vacancies, which we have as of April. We don't have it on hand right now, but the rate has been good, and we've sped up hiring by streamlining the process.

Enforcement Administration by Cora Gherga, Assistant Chief

- Good morning and we thank everyone for being here. Most of our reports were sent out in advance, but the second page did not make it in the package. We will pass that out so that you have a complete record.

- We will give an update on what happens with the fed OSHA state plans. We try to attend as many of the meetings as we can, and we do have a short outline for you in the report from the latest meeting that took place in Arizona.

- IMIS will be gone forever, and that was a little sudden for OSHA and other state plans. All existing cases that have been entered in IMIS by July 1st will still be accessible on the OSHA website. Afterwards, there will be a limited number of updates. If there is something under appeal, it will have to be updated through some backdoor method that we are still not sure of. We want to make sure that the transitions are seamless, and we will update everyone with more information once we have it.

- Federal OSHA gave an interesting report of the injury reporting program. There were more than 10,000 incidents, and the report gives a breakdown of hospitalizations, amputations, and responses. In California, we've already collected these kinds of reports and investigations, and the nation is just now coming into step with us.

- For the first time since 1990s, the changes in penalties and increases in maximum amounts of penalties will occur sometime in August 2016 for fed OSHA. They are fully aware that in many states like California, it's not only a policy change, but statutory and regulatory changes must occur in order for the maximum amounts to go into effect. These increases are not forever but are based on the consumer price index, so every year we can have changes that go up or down.

- Fed OSHA has revised the benchmarks to revise compliance staffing numbers, and there will be a work group that will look at these. Fed counterparts and state plans hope to have something to say about that.

- Our state achievement reports that we tried to broadcast every December for the fiscal year ends in September, and the latest is now posted on the website. I'm impressed with our team's efforts. FAME will also be published by fed OSHA, and we did much better than in previous years.

- We have written a proposal for additional resources, and we worked hard to provide quantifiable workload information in order to justify positions.

- There aren't many regulatory updates. Abatement credit became effective in March 2016, and the emergency regulation has been effective for more than a year.

Consultation Services by Eugene Glendenning, Acting Program Manager

- I would like to give updates on the second quarter which occurs between January and March of the federal fiscal year. Winter is the lowest for heat, so we've only conducted 33 outreach efforts. Those numbers will go up in the spring.

- In the same period, there were 23 formal training outreach events for construction, 27 for agriculture, and 30 events specifically for outdoor heat (mostly for agriculture and some for construction).

- Consultation has conducted 394 onsite visits, and we had 40 new Golden Gate Partnership Program awards. There has not been new SHARP sites at this time, but there are several in

the works. We've had one new VPP and 5 VPP renewals. Companies have good programs above the minimum, but are not yet at VPP level, so allocated staff will work with those extensively. Other VPP companies mentor those individuals and will be building a program to have an evaluation for VPP. Also for VPP construction, we have 11 applications in various stages. 2 have been granted at this time.

- For special emphasis programs, we've done 340 onsite visitations. We did 96 heat evaluation outreach events with employers that were in construction, but had situations that would be affected by heat.

- There were 89 outreach visits for construction for falls and 146 on lock out tag out.

- We have a publications unit within consultation so we've been working diligently to prioritize publications. Fall protection is first on that list, and we were able to get that through our review process. We've also updated the safety health protection poster in both English and Spanish.

- At the last advisory committee meeting, the point was raised about reporting workplace injuries and illnesses from employers and first responders. I took it upon myself to come up with a fact sheet, and we are going through the first step of review. The fact sheet will be on reporting serious injuries, and one is targeted towards the employer community, and another version is for first responders. That has not yet gone through the review process, but we hope that these will be helpful.

- We also have other publications in process. The safety and health in agricultural field applications is almost ready to be released. It has gone through multiple reviews. We've also updated the Consultation Services overview, which is near completion as well. We are making the final edits to the California Hazard communication program.

Research and Standards by Eric Berg, Deputy Chief

- Workplace Violence in Healthcare began in October 2015, and we received many comments. We are currently working on responses to those, and hopefully this will be ready for the 15-day notice soon, which will include some changes to the regulation.

- Sexually Transmitted Infections and Bloodborne Pathogens were not adopted by the Board in the February meeting, but a new petition was filed, so we will prepare an evaluation. The Board recommended that we reconvene the advisory committee to revisit this issue.

- Lead in Construction completed the advisory committee process, and we are working on putting together the rulemaking documents.

- Permissible Exposure Limits have been submitted to the Board for wood dust and red cedar wood dust, for formal rulemaking. We are working on other PELs, and we will also be hiring a toxicologist. That should be done by the end of the month.

- Hotel Housekeeping final rulemaking documents are being prepared, and that should be ready for formal rulemaking soon.

- Antineoplastic drugs has gone through and finished the advisory committee process, and we are also preparing documents for formal rulemaking.

- The economic impact for First Aid Kits is currently being revised for formal rulemaking.

Occupational Safety and Health Appeals Board by Art Carter, Chair

- We would like to welcome back Han Ha, from maternity leave.

- We have a new ALJ on loan from DIR, Chris Merrill, from West Covina.

- We were informed by OAL that our regulations are not yet ready. Most changes they are seeking are editorial, so when we have concluded meeting with their staff as to what those changes are, we will adopt them, and there will be a new 15-day comment period. We will notify everyone as we have done previously with respect to regulations.

- Regarding our OASIS project, I will ask Neil Robinson to give an update on that. One comment is that when we do complete this, we will identify an ALJ in the West Covina and Sacramento offices for implementation to address comments and questions that we anticipate.
    - **Neil Robinson:** At the last advisory committee meeting, we were just beginning the process of outreach to external parties, one in northern and southern California. We implemented changes from the feedback we received from the preliminary training. We are still in the testing phase, and we will be testing internally and externally. Then we will start the training phrase before rolling out. We anticipate a slight 2-3 week delay in our eventual roll out, so we are looking at July. It will give us extra time to test and verify processes before we go live.

Occupational Safety and Health Standards Board by Marley Hart, Executive Officer

- The written materials that we provided outline our various projects.

- We received the PSM standard from the Division, so that is now in review. We are very busy as we have 4 federal projects as well. We should have more information on the residential construction trigger heights, which will be moving to rulemaking.

- We are working on diving operations to make sure they're at least as effective as federal OSHA's.

- We plan to Horcher the silica standard that just came out, which means that we would just adopt the federal language verbatim. The goal is to make the six-month deadline, and we will see how close we can do that.

- We had many advisory committee meetings on firefighter PPE, the last of which was held earlier this week. We are now moving to fiscal and economic impact, and we've recruited people to help us with that.

- There will be an advisory committee meeting next week with painters regarding painting of bridges and certification. This was vetoed last year, and the Board was asked to look at it again as another petition was sent in. We will see if rulemaking is needed.

- We anticipate receiving the Workplace Violence Prevention in Health Care and Hotel Housekeeping standards, and the PSM standard has also just arrived, so we will be looking at those.

    - **Juliann Sum:** The Elevator Safety Orders will also be coming, too.

Division of Labor Standards Enforcement (DLSE) by Joan Healy, Senior Deputy Labor Commissioner

- This year, we've been involved in training staff within the Retaliation Unit. We've hired five new people in February, and we've put them through a 3-day orientation on retaliation. We are also cross-training with other units on retaliation, wage, and field enforcement.

- There was an OTI 1420 training here in Oakland, and there were some complications on scheduling those trainings. The RCI video is being prepared. We finally have a script and we are hoping for production in August.

- We have a new Salesforce database which will allow us to share information with the Wage Unit, and we are finalizing the business requirements document for that.

- We currently have 4 vacancies in Retaliation.

- We are waiting for final legislative proposal for 19.5 positions for the Retaliation Unit and 3 new investigators for the OSHA component. We've asked for a series of positions and we are also asking for exams to be changed to "continuous" on the CalHR website. 8-10 positions may be coming, which would include upgrades or current staff. We are also interested in recruiting for those with multilingual skills, so if anyone knows of any potential candidates, we are happy to help with the process. It can be laborious, but we want it to be accessible to everyone.

Questions and Comments on Reports

- **Question/Comment:** Some of us use IMIS for historical review. Will IMIS still be available for that?
    - **Answer:** According to what the feds have told us, anything that can be seen now on the public OSHA website will still be available, and you'll be able to access that as a public user. We don't know what will happen to cases that won't be completed by July 1st. We would like to update the cases that are still open in IMIS or still in appeal. Unlike public

users, we have access to various reports, so a question of access for us has not yet been answered.

- **Follow-up:** The data that currently exists will still be on the website?
  - **Answer:** Yes.

- **Question/Comment:** The Enforcement Administration report mentions a severe injury reporting program with numbers (amputation), and I wanted clarification if those are California specific or nationwide?
  - **Answer:** The numbers are federal numbers.

- **Follow-up:** In the 3rd bullet where it mentions changes to the penalty structure, can we expect in the near future legislation or Horcher?
  - **Answer:** Because these are in the Labor Code, legislative changes would be needed. Rulemaking will follow for the sections of Title 8 that address penalties. The bigger questions are how soon that will change, how often, and how much? We would like to be aware of any situation that might not make us as effective as the federal program.

- **Question/Comment:** Regarding the publications that are coming from Consultation, there is often confusion between dual employers and multiple-employer sites. Do your documents address that issue? Often times, people gather information needed, but they run out of time and end up being late for reporting. Do the documents address this? Also, when you have to report something, but the incident turns out not to be serious, what are you supposed to do? Is there anything in your publications that will address this?
  - **Answer:** The publications we've mentioned are still in drafts, so we encourage you to email your ideas or concerns so that we can include those into our editing process and future drafts.

- **Follow-up:** It is important to give guidance on these issues, so we appreciate any time that will be taken to do that.

- **Question/Comment:** I would like to commend the presentation given by Neil Robinson in West Covina on the new system. It was well done, and we would like to know when beta testing will happen with external users? I would be interested in taking part in that.
  - **Answer:** We expect it will happen sometime in June for external testing. We will send an email blast to our mailing list when we schedule it, and it will include instructions on how to sign up and participate.

- **Question/Comment:** What training will there be for the OASIS system for the participants who file an appeal online? An injured worker may not have computer access, but for those who do want to go online to do this, will there be a help module or training guide on how to follow through with the process?
  - **Answer:** For languages other than English, initially no. We will want translations in the future, but the out of the box system will be in English. In the paper world, we will have access to translators. We have gone through great lengths to establish FAQs for the filing of appeals, and we have another set of FAQs for how to file online. The online appeal

process is optional, so we are not mandating that people use it. Paper can still be sent, and I will check to make sure our FAQs address the language issue. There will be a contact person who will answer questions via phone, as well.

- **Follow-up question:** For clarification, there will be an FAQ with instructions?
  - **Answer:** Yes, and there will also be graphic information as well on how-to-file information using paper or using the online system.

- **Question/Comment:** This is a question for Consultation Services. Is there a Spanish version of the construction handbook, and can you give us a little more feedback on the status of that?
  - **Answer:** It is currently not being translated. A couple of days ago, we added new information to it, but translation is a major undertaking because of the size. We are in the process of securing a translation contract right now.

- **Question/Comment:** How can we reduce the time frames for updates on VPP construction agreements? It takes a long time for members to get their approval. Some construction members have finished projects by the time approval comes in, and it makes it difficult to retain VPP construction standards.
  - **Answer:** We had an entire rewrite last week for a smoother and more effective process. It is almost ready to roll out of the door, but needs to go through our review process first.

- **Question/Comment:** This is a question for the Standards Board. Can you clarify what the trigger height is going to be for fall protection, since we are being pushed to change from 7 feet to 6 feet for the height?
  - **Answer:** All we are talking about at this point is the residential trigger height, so this is not going to cover all other areas. Anything else will be in the future.

- **Question/Comment:** In regards to the Enforcement summary for the January – March citations, there is missing information on whether or not penalties were assessed and for how much, if any. We are curious to know if there were any financial penalties.
  - **Answer:** Those were not recorded in the table, but we can provide that information later as we don't have it on hand right now.
  - **Answer:** We passed out two to three different types of tables, and some are broken down by type of industry and type of inspection. We would be happy to stay after the meeting to explain this.

- **Follow-up question:** Where does food processing fall under this?
  - **Answer:** Depending on what you want to know, we can look into this. Penalties have to be assessed first before any changes are made.

Presentation and Discussion Regarding High Hazard Targeting Methods

Enforcement High Hazard Targeting by Cora Gherga, Assistant Chief, Enforcement Administration (refer to Power Point Presentation)

- Some slides may overlap with the Consultation presentation, so we will not cover information that could be covered twice. The presentation describes methods that we've used and the evaluation of those methods with help from DIR.

- The program started after the Cal/OSHA 1992 federal audit. Cal/OSHA was found to be lacking as federal OSHA found the number of program inspections to be insufficient. We've improved in this area, as well as on the number of total site evaluations that are classified as serious.

- The main trigger for the High Hazard employer program in both Enforcement and Consultation was the 1993 workers' compensation reform legislation. By 1994, High Hazard was conducting inspections. The Labor code states what Cal/OSHA is supposed to do, and establishes program targeting industries with the highest incidents of preventable occupational injuries, illnesses, and workers' compensation losses.

- We established procedures and methods, which included sending letters and asking employers to improve performance. If employers met that, then they would be placed on a secondary priority list. In 1994, we targeted inspections of employers identified with the highest incident rates in high hazard industries. We also inspected employers on a random basis.

- In comparison, federal OSHA had their own program for targeting employers in high hazard industries, and they have used some of our research between site specific targeting (SST) and implementation of national and local emphasis programs. These are chosen based on objective data to identify high hazard industries. SST has proven effectiveness.

- Following high hazard inspections conducted by Cal/OSHA, companies realized a 9.4% reduction in the number of injuries and a 26% reduction in the medical expenses and wage replacement paid from those claims. There was a reduction in both injuries and monies that were paid through workers' compensation. Cal/OSHA has a multi-phased approach to targeting with a combination of methods. It was an evolving process.

- We identify businesses for inspections that have DART rates of more than 200% of the California private sector average DART rate. We also prioritize business based on our experiences.

- The groups identified for 2015-2016 are listed on this presentation as well as on our website. We are getting ready to release more verifications and corrections.

- We have four methods of identifying establishments:
  - The first method is where we identify fixed sites within each of the selected industry groups using a database of California employers. These establishments have more than 10 employees, and we randomize our selection of the first 100 within each industry group. We distribute that target list to our district offices, and they start doing inspections.

- Method B was used in the 1990s, and establishments are identified based on worker's compensation rates and losses. This was not always the most desirable method.

- Method C was used to identify establishments through specific injury types that could result in serious physical harm and were likely to be caused by Cal/OSHA standards violations. Injuries were identified in WCIS in selected industries.

- We are using Method D this year which is the workers' compensation claims data method. Establishments are identified using WCIS and IMIS/OIS where the claim rate was greater than 6.5 claims per 100 employees, more than 3 claims filed in the previous years, and no Cal/OSHA inspections were conducted within the last three years.

- This is method developed after evaluation previous approaches. Effectiveness was defined by a decrease in injuries and illnesses and a decrease in workers' compensation costs. We observed improvements in direct inspection results, such as a higher number of violations or higher amount of penalty assessments. We evaluated the 5 years prior to an inspection and the 5 years after an inspection, and we used workers' compensation and IMIS in order to better understand where our inspections would make a difference for what type of establishments. The interesting aspect to this is that effectiveness decreased within 3 years.

  - **Question/Comment:** Was there a control group to make comparisons with (inspection versus no inspections, etc.)?
    - **Answer:** A control group must have the same criteria as a group that is being evaluated. We inspected targeted employers, so we had criteria, but the criteria were not necessarily as effective with a control group.

- Our findings showed that high claim rate groups did not necessarily result in high violations. It is still a work in progress to evaluate methods and determine the relationships between the types of violations.

- Appendix 1 shows our current high hazard list.

- Appendix 2 is a quick summary of prior federal fiscal year activity measures for high hazard targeted inspections. These did not include non-programmed inspections, but shows those that we went to because they were on the target list. We had good results, and there is a little breakdown of the number of inspections and percentage by injury group. All of this is still a work in progress.

Consultation Services High Hazard Targeting by Eugene Glendenning, Acting Program Manager, Consultation Services (refer to PowerPoint presentation)

- For some background information, Consultation Services High Hazard Targeting program was also established in 1993, and I was the one who put that program together.

- We look at workers' compensation because it was complementary to what was being assessed, and we developed our plans around that.

- To identify hazardous industries and emphasis industries, Consultation developed annual plans, and we used multiple sources as listed on the slide. To identify employers, we looked at workers' compensation codes and class code definitions used by insurance companies, which looks at losses and converts that to payroll loss. So for example, they look at welders, regardless of what company they may be part of, so we also look at the type of work that is being done by an employee. Once we identify those class codes, we go through the list of employers that have those class codes, and who have experienced high experience modification rates.

- High Hazard Unit is about 80% of what Consultation does in terms of our work. The other 20% include programs like VPP, and it is our policy that when a request comes in, we pull the history of that business' class codes and business losses. This helps us figure out where there might be problems.

- NAICS codes have replaced the standard industrial classification (SIC) codes, and we look at compensation class codes based on employer activities, which can have multiple class codes, as well as the business' treatment of work.

- We like to consider it more as a dollar severity rate as opposed to an injury rate. The workers' compensation system penalizes by frequency.

- We also plan according to region. This allows for the offices to focus on high hazard areas that are prominent within their areas. For example, high-rises are lower in Fresno than in San Francisco, so we plan accordingly.

- We provided a list of special emphasis industries that we focused on in 2015-16 on our slides. The list includes industries such as agriculture, construction, wineries, breweries, etc.

- We also provide statistics from 1994 to the present on the comparisons between the year before we did consultations with employers, the date we conducted consultations, and then results two years after consultations were conducted. We are driven by workers' compensation data. Gathering data is a three-year cycle for us, so it takes time to analyze results.

    - **Question/Comment:** Which is most cost-effective?
        - **Answer:** Fed OSHA does not have consultation at all, but they have other ways of assisting. We do not know if there is a study that compares Cal/OSHA with fed OSHA in terms of enforcement, but it would be difficult because targeting methods differ from state to state and with fed OSHA. Data depends on the time frame, so for a report, you would have to analyze a snapshot of a certain time frame, and then look at the data retrospectively.
        - The use of data, such as lowering DART rates, has grown in industry. Construction should be lauded for their work in this respect. With partnership plans, we check their

enforcement history, workers' compensation history, and DART rates. The industry as a whole is driving the rate down, which helps us.

- **Question/Comment:** What influences your targeting? Is it complaint-based or random?
  - **Answer:** We have three types of inspections: complaint-based, accident-based, and programmed (or planned). High hazard focuses on the programmed inspections.

- **Question/Comment:** One of the slides said that that inclusion of employers into a high hazard program was based on their having had a Cal/OSHA inspection in the last three years. Is that any inspection or in any particular part of the state?
  - **Answer:** That is any inspection. When we eliminate from the targeting list, we look at the frequency and rate.

- **Follow-up question:** So for an employer that gets added to a high hazard program, and an inspection happens, does that try to focus on worker's compensation claims or the nature of those claims?
  - **Answer:** The nature of those inspections are comprehensive, so all processes are relevant, regardless of the reason for the claims. That is also a difference between Consultation and Enforcement. Consultation works with a company as a whole with their different sites throughout California.

- **Question/Comment:** Speaking of employers with high ex-mod or DART rates, is there a benefit to include public employers whose DART or ex-mod rates are much higher?
  - **Answer:** Industries that are targeted are determined by the DART rate, so municipal water districts would be included. We don't look at individual employers when we identify the industry list, so there would need to be criteria for public employers. Consultation does cover the public sector.

- **Question/Comment:** Thank you for the presentations. They've provided a great overview, and it was interesting to see the whole picture. In terms of injuries and acute injuries, this is useful, but for chronic or under-reported diseases, that is where some industries are not getting attention, and there needs to be more.
  - **Answer:** Thank you for your comment.

- **Question/Comment:** There is some confusion in regards to the breakdown of the Ag industry on slide 21, which talks of the DART measure. Within the definition of Ag, it was focused on fixed locations or fixed site operations, but slide 23 didn't necessarily break it down that way. Is high hazard capturing non-fixed sites on inspections? Is it being captured with Consultation?
  - **Answer:** Subsectors are mostly fixed establishments so we looked at fixed sites.

- **Follow-up question:** So you are not doing general field inspections? Are non-fixed sites reachable or non-applicable?
  - **Answer:** This applies to everything.

- **Question/Comment:** There should be different methods for looking at agriculture, much like how heat illness is being looked at differently.
  - **Answer:** We do have special emphasis programs, like the heat illness prevention. One way to determine those is to go through this process of improving our targeting so that we use our resources in a way that has an effect. Your input on that also helps, and we also try to zero in on the statistics that we gather.

Open Discussion by Juliann Sum, Chief of Cal/OSHA

- We are very grateful for your participation, and we will share these presentations on our website. Please feel free to email or contact us regarding any of the discussions from today, and we will look forward to your feedback.

  - **Question/Comment:** Are you changing the dates and times for when the advisory committee will meet?
    - **Answer:** Yes. We will not be meeting in August as was originally scheduled, but will look to meeting further along in the fall.

  - **Question/Comment:** Is there any chance of starting meetings earlier, especially for those of us who fly in. The preference is to attend in person, and starting earlier would help.
    - **Answer:** Is 10 a.m. – 12:30 p.m. preferable?
    - **Follow-up comment:** Yes.