

CAL-OSHA ADVISORY
COMMITTEE
MINUTES of MEETING
JULY 1, 2010



Department of Industrial Relations
John Duncan, *Director*

Division of Occupational Safety & Health
Len Welsh, *Chief*

Chris Lee, *Deputy Chief* of Cal/OSHA Enforcement
Edward F. Callanan, *Assistant to the Chief*
(510) 286-7000

Cal/OSHA ADVISORY COMMITTEE
MINUTES OF MEETING – July 1, 2010
Elihu Harris State Building
1515 Clay Street, Suite 1304
OAKLAND, CALIFORNIA

OPENING REMARKS

Chris Lee, Deputy Chief for Enforcement, Division of Occupational Safety and Health (DOSH), called the meeting to order at 10:10 a.m. A copy of the attendance roster is attached to these minutes.

Mr. Lee expressed the regrets of Len Welsh, Chief of DOSH, for not being able to attend this meeting because his presence was required in a series of meeting in Sacramento. Mr. Lee announced that the next meeting of this committee will be held on September 2, 2010 in Los Angeles at the Department of Water and Power, 111 North Hope Street, Auditorium. The meeting will be called to order at 10:00 a.m.

Mr. Lee noted that John Volke, who has represented the power industry as the Northern California representative on this committee for many years will be retiring from the Pacific Gas and Electric company within the next few days. Mr. Lee commended Mr. Volke for his valuable participation on the Advisory Committee. His service and commitment has helped to encourage CAL/OSHA to sustain a vibrant level of activity. Mr. Lee wished Mr. Volke a long, healthy and happy retirement.

ADMINISTRATIVE REPORT/ENFORCEMENT REPORT

- 1) Mr. Lee noted that today (July 1) was the start of the new fiscal year (2010-2011) for the State of California but no budget is yet in place. However, DOSH is no longer dependant on the General fund dollars for our operations, since that funding has been swapped for the OSH fund, which now supplies the funding for our activities; hence we are less hamstrung than other agencies that are dependant on the General Fund dollars. At the present time a budget change proposal is in the process of approval that will allow us to use some \$4.4 million dollars from the Federal government (half of which has already been allotted to the last fiscal year). (In addition, we have received \$483,000 from the same source.) An important fact relating to the \$4.4 million is that it becomes a constant increase to our base grant level in future years.
 - A. However, it must be noted that despite our funding source we will be required to reduce our operating and equipment expense by 15% and our vehicle fleet has been cut by 20%; personnel must be reduced by 5%.
- 2) The Federal OSHA exhaustive review of the CAL/OSHA program took over two months, thus far results are in a preliminary draft report that is expected to go through one or more revisions before it is released.

During the course of their investigation Federal OSHA teams visited five of our offices, reviewed 250 files, and conducted many interviews with District Managers and compliance staff.

It may be noted that the issue of the “serious” classification came up during the audit and this matter will be addressed by both DOSH and the CAL/OSHA Appeals Board. Another issue of concern was citation lapse time, which relates to delays in immediate abatement while employees are still exposed to observed hazards. DOSH averages about 70 days in the issuing of citations while Federal OSHA averages approximately 48 days, thus we take about 50% more time to issue citations and as a result DOSH will analyze the situation and will seek faster ways of instituting corrective action.

- 3) It was announced Federal OSHA would be holding hearings on efforts to issue an Injury and Illness Prevention Program (IIPP) which they refer to as I2P2. California adopted the IIPP in the 1990’s and has been enforcing it since that time. Federal hearings will be held throughout the country, a hearing will be held in Sacramento on August 3, 2010. Interested parties can register online either as an observer or a participant. Limitation: one representative to each organization. It was noted that employees with multi-state locations ought to follow the hearings throughout the country. It was advised that Californians interested in this topic should register since it has been difficult to get these hearings in our state and it is a good opportunity to voice concerns of organizations within our borders.
- 4) It was noted that the Cal/OSHA Standards Board has published some amendments to the Heat Illness Prevention Standard.
- 5) It was stated the Heat Sweep inspections are taking place in view of the high temperatures around the state, particularly in the central valley where it has reached 104 degrees, and the Division has issued two Orders Prohibiting Use (OPU) in the past week. For instance one citation was issued to Manuel Morano, a Farm Labor contractor, in Button Willow, for failure to provide shade in 96 degree heat and no written IIPP. The second OPU was issued this week to Chug and Sons Labor, Inc. in Indio, where a thirty-three year old individual died apparently due to 95 degree heat to which he was exposed; the Division is tracking the circumstances very carefully. DOSH is partnering this week with EEEEC in our efforts to seek compliance with relevant regulations and standards in the agricultural field.
- 6) The Division has commenced to use a relatively new training tool, the webinar, to make certain all compliance officers are familiar with the provisions of the heat illness prevention standard, how to effectively enforce it, be clear on policy and how to properly respond to questions concerning the standards; aim of such training is to be consistent in its applications. In addition, the webinar has been utilized to educate our Heat Illness network partners on our goals. Further, the webinar has been used to communicate with interested community organizations throughout the State.
- 7) The Division has been fortunate in being granted \$1.5 million, a one time funding from the state legislature to promote outreach, education and training as they relate to the heat issue. Some radio spot announcements have already been obtained to advance this goal. In response to a question, Mr. Lee stated that the referenced webinars are archived and

information may be obtained from Erika Monterroza, Public Information Officer in the Office of the Director of the Department of Industrial Relations (DIR) at (415) 703-5279 or on DIR website.

Mr. Lee introduced Alan Traenkner, Special Assistant to the Chief of DOSH, who reported the following:

- 1) The Division has been actively involved in training both our compliance officers and managers with the aim of providing up to the minute training to everyone within the next six months or so. For instance, last week a health standards training class was held in Oakland. Classes relating to accidental investigations have been scheduled for late July in Los Angeles and Oakland. High on our priorities is the training on investigation interviewing techniques, to aid our staff in obtaining more relevant information from those individuals who are familiar with the operations at the site.
 - A) DOSH is also planning classes to provide information that will lead to better understanding of inspection techniques and legal aspects of investigations. The development of this course has been delayed do to the heavy schedules of our chief attorney and her staff, however, Federal OSHA has agreed to furnish assistance to our legal people. The result of such classes will enable us to provide better evidence for Appeals Board and court hearings.
 - B) Webinars is a potent tool for training but in the past there have been several technical glitches that had to be overcome as Federal OSHA encountered in its early efforts with this option, such as screens going blank, passwords that didn't work etc. but these setback have, for the most part, have been overcome. The advantage of so many people having the opportunity to hear the Division Chief and his headquarters staff at the same time is worth the effort
- 2) The Division has the opportunity to acquire additional Federal funding, some of which requires matching funds and/or Legislative approval to spend the money. In the case of funds from the America Recovery Act, stimulus money, we have formerly requested legislative approval to use the money.
 - A) Another opportunity for CAL/OSHA to obtain funds from the Federal OSHA occurs when other State Plan States are not able to spend all of their allotted funds. Federal OSHA then will ask other states if they are in a position to properly spend such an allotment. California has responded positively with the aim of setting up an office in Bakersfield, to purchase new computers, (since the last such purchase was in 2003), etc.

Mr. Lee introduced Jon Wroten, Staff Services Manager III, who reported the following:

- 1) Heat related sweeps have become more focused this year and have occurred up and down the state.
 - A) DOSH has been partnering with EEEEC, specifically in sweeps that have occurred within the past two weeks

- B) Both DOSH and EEEEC normally conduct sweeps independently, but on these joint inspections, we were able to conserve some resources. EEEEC has taken the lead role in such operations for six weeks on a trial basis.
- 2) In the past two weeks we have conducted 118 inspections and issued as noted earlier, two OPU's. Twenty three worksites have been identified with violations of section 3395. Two potential heat related fatalities have occurred this season with the temperature rising to 104-105 degrees around Sacramento and Northern California and up to 110-115 degrees in Coachella Valley.
- 3) DOSH has been working on a year long process of examining fee structures for elevators, amusement rides and tramways, since many of these fees have not increased for as many as seventeen years while operating costs for these units have accelerated significantly over the years.
- A) Each unit is being examined on operating efficiencies, cost basis, and the current charges for inspections and permits.
- B) Two regulatory rulemaking packages have been developed related to issue of costs versus fee. The elevator unit received approval for a new fee structure on an emergency basis, two weeks ago and is now implementing the new provisions. In preparing the proposed rulemaking, DOSH held meetings with stakeholders in each of the concerned industries, and the Amusement park rides package has gone through the full rulemaking process including public hearing, received comments and we are now reviewing and responding to the comments after which the package will either go to the Office of Administrative Law for review and enactment or be sent out for a new 15 day comment period allowing response to new changes.
- C) Presently the proposed rulemaking package for the Tramway industry is under DOSH management review and we feel that we have full industry support for a new fee structure, and should move forward within the next week.

The purpose of all these proposed changes is an attempt to align the cost of the programs with a more adequate fee structure, at the present time the programs are running on a multi million dollar deficit in the special fund that is maintained for the operations of these various programs (due to the seventeen year period with virtually no increase in fees). It is expected that over the next few months we will move forward with analysis of the current situation, and continue to annually monitor the situation so that fees may be adjusted up or down, depending on changing circumstances.

CONSULTATION SERVICE REPORT

Vicky Heza, Program Manager, Cal/OSHA Consultation Service, reported the following:

- 1) The Service is currently planning for our next quarterly meeting with Federal OSHA by reviewing our annual performance plan goals. The results thus far in the Federal fiscal year from October 1, 2009 to the present shows approximately 1600 on-site visits in the private sector, the anticipated number for the full fiscal year was established at 2400, therefore there is some doubt that such a goal will be fully realized. The doubt arises from the effect

- 2) Emphasis of the Consultation Service remains focused on on-site visits.
 - A) The goal in the construction industry, shared with enforcement unit, was to complete 900 onsite visits and/or intervention, this goal has already been surpassed (1000).
 - B) A goal had been set to visit 300 sub-contractors and thus far 260 visits have been completed, thus it is expected that we will reach that goal. Much credit should be given to the former program manager, Dave Bare and Mike Alvarez for developing the recognition and exemption program known as SHARPC for contractors, while the subs are encouraged to seek admission to the Services' Golden Gate recognition program. This program has resulted in requests for more on-site visits by sub-contractors.
- 3) It was a goal for the Service to conduct 1325 on-site/Interventions on companies on the High Hazard list (high X MOD) provided to us by the WCIRB and at the present time we have conducted 625 visits.
- 4) We have devoted, in the past year, much of our resources on the construction industry and will have to review all of statistics when we prepare material for our coming grant year and determine our priorities for the future.
- 5) Consultation had established a goal of conducting 200 on-site visits to agricultural employers but we have surpassed that goal by having conducted 290 such visits.
 - A) Credit was again given to Dave Bare and Mike Alvarez for their efforts in working with large agricultural employers as a means of reaching farm labor contractors; as a result we are starting to enroll them in the Golden Gate program when they can show us that they have effective IIPP. Our goal has been to award Golden Gate recognition to 20 such agricultural employers but we have already reached 34.
- 6) Consultation has conducted 97 seminars in outdoor industries, where heat is an issue, the goal for this category was 60.
- 7) Consultation is in the process of creating an E-Tool relating to the Heat Illness Prevention program that will enable employers to produce a program specific to their facility. As the heat illness regulations are revised, so the E-Tool will be updated.

An ATD E-Tool is in the process of being drafted by Mario Feletto. The effective roll-out date is uncertain at this time.

RESEARCH & STANDARDS SAFETY REPORT

Joel Foss, Acting Principal Safety Engineer, reported on the Research and Standards Safety Unit Activity.

1. Rope Grabs- June 15, 2010 complaint inspection at a residential jobsite in Aliso Viejo- roofers observed wearing fall protection harnesses, using rope grabs, tied off to secure

2. High Visibility Apparel- There has been lots of rulemaking activity, and one variance request, regarding the use of high-visibility vests:
 - New 1598 and 1599 went into effect in August 2009, requiring all high-visibility apparel to be manufactured in accordance with the ANSI/ISEA 107-2004 standard.
 - There have been multiple questions regarding amended standards, especially about WHEN vests were required.
 - New 1599 in June 2010 to clarify that the requirement for ‘flaggers’ could include just one flagger under named conditions.
 - July 2, 2010 amendment to 1590, extending HVA requirement to off-road construction and private roadways.
 - Currently, the Division is evaluating a variance request from two gas utilities, who are concerned about ESD (electrostatic discharge) with vests used by their employees who regularly work in manholes, where there is the danger of a gassy environment; and also are exposed to traffic going to and from their trucks. Cotton vests used in the past no longer meet the requirements of the new ANSI/ISEA 107-2004, because cotton will not pass the colorfast tests required to ensure that the vests maintain their high-visibility background color after many washings. The new materials used, mainly modacrylic, is colorfast but has poor ESD characteristics. This variance will have wide ramifications, as there are many employers who have the same concerns.

RESEARCH & STANDARDS HEALTH REPORT

[Steve Smith](#), Principal Safety Engineer, Research & Standards Health Unit, provided the following report:

1. A 15-day notice of proposed modifications to the [section 3395 heat illness prevention proposal](#) is currently open for comment until July 6th. The original proposal went to public hearing in October, 2009 and a follow up advisory meeting on the proposal was also held on November 16th in Oakland. Staff are currently reviewing the comments received during the 15-day notice and the two previous meetings to will develop a final proposal for the board to consider next month. In 2010, a new schedule of heat training classes and related training material we posted on the Department's [heat website](#). [Amalia Neidhardt](#) is the contact person for heat related information at 916-574-2993.
2. The section [5155](#) HEAC met June 23rd in Oakland to discuss arsine, benzyl chloride, wood dust, gallium arsenide, tetrabromoethane and updating the priority list of

substances. December 8th the Feasibility Advisory Committee (FAC) held its 2nd meeting to discuss ethyl benzene, NMP, hydrogen chloride, and naphthalene. Regarding the remaining substances that went through the PEL AC process in 2001 to 2005, a [section 5155 proposal](#) was adopted by the Standards Board last year and will go into effect on August 3rd. The next scheduled HEAC and/or FAC meeting will be held in Oakland on September 22nd. The contact person for the PEL update process is [Bob Barish](#) at 510-286-7001.

3. In response to a petition (# 513) granted by the standards board this year, an advisory committee was held in Los Angeles on June 29th to consider [amending Section 5193](#) regarding bloodborne pathogens to specifically address health hazards in the adult film industry. A second advisory meeting will be scheduled this fall in northern California. The contact person for this advisory committee is [Deborah Gold](#) at 510-286-7006.
4. In November 2009 the Standards held a public hearing for a new [Section 5197](#), Diacetyl. The proposal was developed with the assistance of the 2007 advisory meetings on [Diacetyl](#) and the findings of an ongoing targeted inspection program focused on the flavorings industry. [Mike Horowitz](#) at 510-286-7009 is the contact person for this proposal and related activities the Division is conducting in the flavorings industry.

LEGAL UNIT REPORT

[Amy](#) Martin, Acting Chief Counsel for the Division, reported the following:

- 1) The Division intends to revisit some rulemaking packages, as reported in Fresno, including controlling employer liability and possible affirmative defenses. No stakeholders meeting have yet been called on this topic, however, it is anticipated such a meeting will occur before the end of the summer.
 - A) A stakeholders meeting relating to regulations of the adult film industry was held in Los Angeles but no consensus was reached, there was evidence that some compromise might be discussed in the future concerning meeting requirements of the Blood borne Pathogen regulations. However the parties are still far apart.
- 2) SB 2774-dealing with possible changes relating to serious classification, lives on in the form of discussion in Sacramento and it appears that such discussions will continue into the future.
- 3) As to current lawsuits: the Harris case was appealed to the courts by the Cal/OSHA Appeals Board and we will create a brief appropriately and accordingly.
 - A) In the Patient Zero matter in which the Division sought personal information on adults in the porn industry who had tested positive. However, after seeking an employment history after the testing and screening process failed to work and the adult film industry continues with its present policies. We expected the case to be dismissed after DOSH had withdrawn its subpoena, but the ACLU and Patients Zero decided not to allow the matter to be dismissed. Thus, we will soon decide whether to

proceed to trial with the matter or seek a dismissal on our own motion. We believe that the Superior court was in error and feel that the Division's position will be vindicated.

- B) In the case of *United Airlines v The Machinist Union*, appeal time has been lapsed. The issue here was what deference was to be afforded to the Appeals Board judgment in their review of the administrative law judge's decision. Briefly the court decided that the hearing officer who heard the appeal had broad judgment in arriving at his decision in applying the application of the law to the facts presented to him. Thus with the time lapse, and the failure of any party to pursue the matter in a timely fashion and the matter remains as it stands.
- C) The *Bautista* case involves a suit against the State of California and specifically against DOSH by the United Farm Workers and the American Civil Liberties Union. The UFW and the ACLU allege that the Division failed to meet a constitutional mandate to enforce regulations, particularly the heat standards in agriculture. In our opinion we feel that Cal/OSHA is doing more in this field than anywhere else in the country. The Division sought a demurrer on the matter and the Superior court agreed that the parties had no basis for bringing a broad based constitutional challenge alleging that DOSH was deficient in its approach to heat in agriculture, so that is no longer an issue and no particular cause of action was directed against the Standards Board, they are no longer involved in the lawsuit.

The court has allowed the case to continue against DOSH based on issues relating to mandates of law on specific facts such as the failure of DOSH to respond to a confidential complaint, or has not conducted inspections without prior notices. DOSH is now involved in a very broad and lengthy discovery process, since the inception of the heat standard. Since this is the broadest request possible. DOSH responded to the plaintiffs that we would furnish them the heat standard files (approximately 3000 inspection files). Even though we are not the most technically advanced organization we were able to quickly provide these 2009 files, despite the fact that the files were furnished from thirty-eight offices throughout the state. We feel that these files will show that our responses gave competent and responsible record of achievement, but we are aware that the remaining allegations will represent a long haul in litigation since no one is expected to settle the matter anytime soon, but we are confident in our positions.

APPEALS BOARD REPORT

There was no representative from the Cal/OSHA appeals to present a report.

STANDARDS BOARD REPORT

Marley Hart, Executive Officer of the Cal/OSHA Standards Board, presented the following report:

- 1) Governor Schwarzenegger recently appointed two new members to the Standards Board:
Hank McDermott has been appointed as the Health representative. Hank replaces Dr. Jonathan Frisch who has served on the Board since 2006. Mr. McDermott is a licensed professional safety engineer with 30 years' experience in Occupational Safety and Health. Since 2002, he has been President of H.J. McDermott, after working for Chevron Corporation for over 20 years.

The second appointee is David Thomas, who has been appointed as a Labor representative. Mr. Thomas has over 20 years' experience in occupational safety. He has been a business representative for the northern California District Council of Laborers since 2009, and he is currently a member of the San Joaquin Building Trades Council.
- 2) A 15-day Notice of Proposed Modifications has been issued for Section 3395, Heat Illness. Written comments are due by 5:00 p.m. July 6. It is anticipated that this proposal will be scheduled for adoption at the August 19 Board meeting in Sacramento.
- 3) The next Standards Board meeting is set for July 15 in Burbank. Information about the meeting is posted on our website
- 4) Additional OSHB Info:
Rulemaking proposals recently approved by OAL:
Section 3308, Hot Pipes and Hot Surfaces-effective June 4, 2010
Section 1599, Traffic Control – Number of Flaggers – Effective June 24, 2010
Section 1590, Use of High Visibility Apparel – Private Roads and Off-Highway Situations – Effective July 2, 2010
- 5) The Board has terminated further rulemaking action on a couple subjects, as a result of not being able to reach consensus during advisory committee proceedings:
Section 4906 (c), Rubber-tired Gantry Cranes Broadband technology for Back-up alarms, Various Construction and General Industry Safety Orders.
- 6) A copy of the Boards' calendar of activities for July is enclosed with these minutes.

OPEN DISCUSSION

- 1) Erika Monterroza, Public Information Officer for the Department of Industrial Relations, discussed information relating to the placement of billboards and signs throughout the State which serves as part of a campaign to compliment heat related outreach efforts to employers and community partners stressing the theme of preventing heat illness, trying to inform both employers and employees of their individual rights and responsibilities, Handout materials are available in five languages: English, Misteco, Punjabe, Monk and Spanish.

Information has been posted on the DIR website for Heat Illness Prevention under training sub-heading; DIR contracted with the University of California to roll out this

campaign and three UC campuses are coordinating with us on a “Train the Trainer” course for community groups and advise them on how to get information relating to issues such as rapid response to complaints filed with Cal/OSHA.

The theme of this program is: Water, Rest, and Shade. This theme resulted from focus groups of employer and employee groups and the clear message that came across was a desire to see pictures of employees understanding the importance of the theme’s three elements. The feedback on the campaign has been universally favorable. Radio announcements, particularly on talk radio stations, have been running in the Palm Desert area at the times when commuters are most likely to hear them. Posters may be obtained at Heat@dir.ca.gov or call Ms. Monterroza at (415) 703-5279.

- 2) In response to a question, it was stated that the Federal OSHA audit of Cal/OSHA will be available as soon as possible to the advisory committee and we will look to the committee to provide input to a corrective action plan.
- 3) Comments were made to call Cal/OSHA’s attention to the chemical hazards to farmworker in the strawberry fields.

ADDITIONAL HANDOUTS:

- 1) DOSH Inspections and Violations cited by Quarter, from January 1992 through December 2009 (Blue Sheet).
- 2) DOSH On-Site Inspections and Violations cited by Reason, from October through December 2009 (Purple Sheet).
- 3) DOSH On-Site Inspections and Violations cited for Major Industrial Groups, from October through December 2009 (Tan Sheet).

ADJOURNMENT AND NEXT MEETING:

The meeting adjourned at 11:58 a.m. The next meeting of the Committee will be as follows:

DATE: September **2**, 2010

TIME: 10:00 a.m.

PLACE: Department of Water and Power
111 North Hope Street, **Auditorium**
Los Angeles, California

