Chapter 8

REFUSAL OF ENTRY & ORDER TO PRESERVE

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Chapter 8-A

REFUSAL OF ENTRY

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as the Division or Cal/OSHA, to secure an inspection warrant when permission to inspect a place of employment is refused, or when circumstances reasonably justify the Division not seeking permission to inspect a place of employment.

Purpose: This policy is intended to set forth procedures for DOSH team members to conduct workplace inspections in accordance with applicable laws and regulations, ensuring that employers maintain safe and healthy work environments for employees.

Authority: DOSH will administer this policy in compliance with all applicable laws, rules, and guidance:

- California Labor Code, Sections 6307 and 6314
- California Code of Civil Procedure, Sections 1822.50 through 1822.57

Procedures:

I. Consent to Inspection

A. Initial Contact

After initial contact with the employer, Compliance Safety and Health Officers (CSHOs) shall present to the employer their State of California Identification.

B. Opening Conference and Inspection Request

1. After presenting appropriate credentials, CSHOs shall conduct an Opening Conference with the employer and, at the conclusion of the Opening Conference, request permission from the employer to conduct a physical inspection of the worksite.

2. If the employer refuses to grant permission to the Division to conduct an inspection, CSHOs shall inform the employer that the Division has the authority to seek an inspection warrant.

NOTE: CSHOs may cite an employer for a violative condition which is clearly visible from a public location even if the employer denies permission to conduct an inspection.

C. **Refusal to Grant (or Withdrawal of) Permission**

CSHOs shall interrupt their inspection and leave the worksite when any of the following conditions occur:

1. At the time CSHOs make initial contact, the employer refuses to give permission to enter the workplace;

2. After CSHOs conduct an Opening Conference, the employer refuses to permit CSHOs to conduct the walkaround portion of the inspection; or

3. At any time during the course of the inspection, the employer withdraws to continue any part of the inspection.

   NOTE: If a subcontractor who is to be inspected at an multi-employer construction worksite refuses to grant permission for an inspection, and the general contractor does not overrule the subcontractor, CSHOs shall inform the general and subcontractor that the Division has the authority to seek an inspection warrant and leave the worksite.

D. **Division Management Notification**

1. When an employer refuses or withdraws permission to inspect a worksite, or continue an inspection, CSHOs shall promptly notify the District Manager (DM), Senior Industrial Hygienist – Supervisor (SIHS), and/or an authorized designee, which is herein referred to as DM/SIHS/Designee of the employer's refusal or withdrawal to inspect a worksite.

2. The DM/SIHS/Designee shall in turn promptly notify the Regional Manager (RM) of an employer's refusal, or withdrawal, of permission to inspect a worksite.

II. Inspection Warrant Process

A. **Legal Unit Notification**

1. When CSHOs notify the DM/SIHS/Designee of an employer's refusal, or withdrawal, of permission to inspect a worksite, the DM/SIHS/Designee shall notify the appropriate Legal Unit Office (North or South) and request

that the Legal Unit prepare a Declaration in support of an Inspection Warrant and an Inspection Warrant.

2. The DM/SIHS/Designee shall fax a completed Warrant Request Form (Cal/OSHA Form 25) to the appropriate Legal Unit Office (North or South). See Attachment A.

B. **Legal Unit Evaluation**

1. After receipt of an Warrant Request Form, the Legal Unit shall determine if the facts support issuance of an Inspection Warrant by evaluating the information contained on the Warrant Request Form and consulting with the DM/SIHS/Designee and CSHOs about the factual basis relating to the employer's refusal to permit an inspection.

2. The Legal Unit shall prepare an Inspection Warrant based on the information contained in the Cal/OSHA Form 25 and any other available information demonstrating that a comprehensive inspection of the worksite is needed.

3. After preparation of the Inspection Warrant has been completed, the Legal Unit shall send the Declaration in support of an Inspection Warrant and the Inspection Warrant to the DM/SIHS/Designee.

C. **Judicial Approval and Signature**

1. After receipt of the Declaration and Inspection Warrant, CSHOs shall take the original of the Declaration and the original and two copies of the Inspection Warrant to the Superior Court in the county in which the place of employment to be inspected is located to obtain judicial approval and signature of the Inspection Warrant.

2. CSHOs shall present the Declaration and Inspection Warrant to the Superior Court and request that the court:

   a. Grant an Inspection Warrant which permits the Division to conduct a comprehensive inspection of the worksite;

   b. Make the Inspection Warrant valid for the full fourteen (14) days provided by statute;

   c. Waive the twenty-four (24) notice requirement of the Code of Civil Procedure Section 1822.56, based on the statutory prohibition against advance notice in Labor Code Section 6321 and the need for immediate execution; and

NOTE: If the court refuses to waive the notice requirement, CSHOs shall: (a) notify the DM/SIHS/Designee, who shall in turn notify the Regional Manager (RM), the Deputy Chief for Field Operations and the Legal Unit that advance notice will be given as so directed by the court; and (b) indicate that advance notice was given in Item 19 on the Cal/OSHA Form 1.

d. Approve and sign the Inspection Warrant.

3. If the judge raises any legal issues pertaining to the Declaration or Inspection Warrant, or refuses to approve and sign the Inspection Warrant, CSHOs shall immediately contact the Legal Unit for assistance.

D. **Employer Service**

1. After obtaining the signed Inspection Warrant, CSHOs shall return to the worksite as soon as possible and within the period of time specified on the Inspection Warrant, and show the original Inspection Warrant to the employer and leave a copy with the employer.

   NOTE: Some Superior Court Clerks will retain the original Inspection Warrant and certify a copy for service on the employer.

2. If an employer, when presented with an Inspection Warrant, wishes to grant permission for the inspection and not have issuance of an Inspection Warrant "on their record," compliance personnel shall explain that the Inspection Warrant is a court order and that the Division has no discretion but to serve the Warrant.

3. After serving the employer with a copy of the Inspection Warrant, compliance personnel shall conduct an inspection of the worksite, complete the inspection within the time specified on the Inspection Warrant, complete the Warrant Follow-up Form (Cal/OSHA Form 25X) and return the Form 25X to the Legal Unit. See Attachment B.

E. **Return to Inspection Warrant Forms**

1. After completing the inspection, and prior to expiration of the Inspection Warrant, CSHOs shall complete one of the Return to Inspection Warrant Forms, whichever is appropriate, and file the original Inspection Warrant and the original Return Form with the Superior Court Clerk. See Attachments C and D.

2. CSHOs shall also send a copy of the Inspection Warrant and a copy of the Return to Warrant Form which was filed with the Superior Court Clerk to

the Legal Unit, and place copies of the Warrant and Return Form in the inspection file.

III. Refusal to Allow Inspection Pursuant to an Inspection Warrant

A. If an employer refuses to allow CSHOs to conduct an inspection of the employer's worksite pursuant to a lawful Inspection Warrant, CSHOs shall leave the worksite and immediately notify the DM/SIHS/Designee of the employer's refusal. The DM/SIHS/Designee shall in turn notify the Legal Unit of the employer's refusal.

B. The Legal Unit shall determine an appropriate course of action which may include one of the following:

   1. Seeking an Order to Assist from the same court which granted the Inspection Warrant to enforce the Inspection Warrant for the Division; or

   2. Other necessary legal process to obtain enforcement of the Inspection Warrant.

IV. Office Procedures and Form Distribution

A. If an Inspection Warrant is required, CSHOs shall complete the Cal/OSHA Form 25 and submit the Form 25 to the DM/SIHS/Designee for review and approval.

B. Office Support Staff shall fax the Cal/OSHA Form 25 to the Legal Unit and notify, if approved, the Legal Unit by telephone that the District if requesting an Inspection Warrant.

C. After service of the Inspection Warrant, CSHOs shall complete the Cal/OSHA Form 25X and one or more of the Returns to Inspection Warrant Forms and file the original Inspection Warrant and the original Return Form with the Superior Court Clerk, place copies in the inspection file and route copies to the Legal Unit.

V. Forms Completion

CSHOs shall complete Cal/OSHA Form 25, Cal/OSHA Form 25X and appropriate Returns to Inspection Warrant as appropriate.

Chapter 8-B

ORDER TO PRESERVE

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as the Division or Cal/OSHA, to ensure that the integrity of an accident site or physical evidence contained at an accident site shall not be compromised until the Division can complete its investigation of the cause(s) of an accident or occupational illness.

Purpose: This policy is intended to set forth procedures for DOSH team members to conduct workplace inspections in accordance with applicable laws and regulations, ensuring that employers maintain safe and healthy work environments for employees.

Authority: DOSH will administer this policy in compliance with all applicable laws, rules, and guidance:

- California Labor Code, Section 6314

Procedures:

I. Issuance

A. Cal/OSHA Form 25A: *Order to Preserve*

1. Whenever it is necessary to determine the cause of an accident or an occupational illness, and the accident site or physical evidence at the site is in potential danger of being removed, altered or tampered with, compliance personnel shall immediately issue to the employer who controls the site or the evidence an Order to Preserve in a manner that avoids, to the extent possible, any interference with the normal business operations.

2. When issuing an Order to Preserve, Compliance Safety and Health Officers (CSHOs) shall ensure that the Order be limited to the immediate area and the machines, devices, apparatus, or equipment directly associated with the accident or illness.

B. Cal/OSHA Form 250: *Notice – Do Not Enter/Disturb*

CSHOs shall affix a Cal/OSHA Form 250: *Notice – Do Not Enter/Disturb*, also known as Notice.

1. To preserve an accident site and any machine, device, apparatus, or equipment associated with the accident or occupational illness from being removed, altered or tampered with until the investigation is concluded; and

2. To warn that any use or disturbance of the accident site, machine, device, apparatus, or equipment constitutes a violation of law punishable by a maximum fine of $5,000.

II. Refusal of Entry

A. **Inspection Warrant**

If the Division is refused entry to a place of employment subject to an accident or occupational illness investigation, CSHOs shall immediately notify the District Manager (DM) or Senior Industrial Hygienist – Supervisor (SIHS). The DM/SIHS shall contact the Legal Unit through the Regional Manager (RM) to obtain an Inspection Warrant. See Chapter 8-A.

B. **Order to Preserve and Notice**

1. When entry has been refused but before an Inspection Warrant can be served, CSHOs shall determine the necessity to preserve the site, or physical evidence contained at the site, from being removed, altered or tampered with. If it is determined that the site and/or evidence contained therein is in danger of being removed, altered or tampered with before an inspection warrant can be issued, CSHOs shall immediately issue to the employer who controls the site or the evidence an Order to Preserve and a Notice.

2. When issuing an Order to Preserve and a Notice when entry has been refused, CSHOs shall instruct the employer that the employer is required to affix the Notice(s) to the accident site and any machine, device, apparatus, or equipment

III. Withdrawal of an Order to Preserve and Removal of a Notice

An Order to Preserve and the Notices shall remain valid until the Division determines that the preservation of the accident site or physical evidence at the site is no longer necessary. When such a determination has been made, CSHOs

shall withdraw the Order to Preserve and shall remove all Notices from the investigation site and from any physical evidence.

NOTE: After removal, all Notices shall be kept in the District Office's inspection file.

IV. Violation of an Order to Preserve or Notice

Any person who knowingly violates an Order to Preserve issued by the Division is subject to prosecution and a fine of not more than $5,000.

When the Division learns that an Order to Preserve has been violated, CSHOs shall immediately notify the DM/SIHS. The DM/SIHS shall notify the Legal Unit, or the Bureau of Investigations (BOI), through the Regional Manager, of the violation.

V. Form 25A Distribution

Any employer whose place of employment is subject to an Order Prohibiting Use (OPU) has the right to request a hearing by the Division to review the validity of the OPU.