

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (DRAFT)
POLICY AND PROCEDURES MANUAL**

**ACCIDENT
INVESTIGATION**

P&P C-170 & 170A
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AUTHORITY: California Labor Code Sections 6302, 6313, 6313.5, 6314, 6315 and 6317.

POLICY: It is the policy of the Division to conduct a thorough investigation of the cause of every industrial accident which results in any of the following: (1) a fatal injury to one or more employees; (2) a serious injury or illness; (3) a serious exposure; or (4) the inpatient hospitalization, regardless of duration, of three (3) or more employees. In the course of every accident investigation the Division will determine whether any violation(s) of Title 8 Safety Orders caused the accident, issue citations when appropriate, use the information gained from investigating the accident to prevent accidents of a similar nature in the future, and transmit copies of investigation reports, and final Orders of the Occupational Safety and Health Appeals Board, to the Registrar of Contractors at the Contractor's State Licensing Board, when an accident investigation involves a licensed or unlicensed contractor.

PROCEDURES:

A. GENERAL ISSUES

1. The Cal/OSHA 170A sets forth procedures for obtaining relevant evidence about the occurrence of an accident and the preparation of the Investigation Summary (OSHA 170) and the Narrative Summary (Cal/OSHA 170A).

2. An OSHA 170 and Cal/OSHA 170A shall be completed for:

a. All fatalities, serious injuries, serious exposures, or catastrophes (as defined in subsection B. below) which are investigated as accidents;

NOTE ONE: An OSHA 170 shall be completed and data-entered into IMIS as FINAL for all fatalities and catastrophes resulting in an inspection within five (5) days of the opening conference. OSHA 170's can be later modified to reflect any new information.

EXCEPTION: If it is determined prior to conducting an investigation that the accident involved a fatality, serious injury, serious exposure or catastrophe which was not caused by a workplace condition, e.g., a heart attack, stroke or other medical disorder not related to working conditions, it is not necessary to conduct an inspection nor to complete an OSHA 170 or Cal/OSHA 170A.

NOTE TWO: If it is determined after an investigation is initiated that the accident involved a fatality or catastrophe that was not caused by a workplace condition, then compliance personnel must complete an OSHA 170 to comply with OSHA/OMDS instructions. (See Forms Completion and Data Entry Instructions)

NOTE THREE: If it is determined after an investigation is initiated that the accident involved a serious injury or serious exposure that was not caused by a workplace condition, then compliance personnel are not required to complete the OSHA 170 or Cal/OSHA 170A. Compliance personnel shall complete the Cal/OSHA 1 and include in Optional Information, Item 42, S 16 NO 170. (See Forms Completion and Data Entry Instructions)

b. All events which generate significant print or electronic media attention, but which did not involve a fatality, serious injury or serious exposure, e.g., explosion at a site where no employee was working at the time of the explosion, a crane collapse where no employees were injured, or a toxic release where no employees were exposed.

3. Only one Investigation Summary (OSHA 170) shall be completed per accident regardless of how many different inspections resulted from the accident. Photocopies of the Investigation Summary shall be placed in each accident-related case file.

4. Accident investigations are more complex and require a greater degree of technical and investigative skill to conduct than other types of non-programmed or programmed inspections. As a result, the procedures found in this P&P represent minimum guidelines for the conduct of accident investigations and additional procedures may be needed to conduct a particular accident investigation.

5. Accident investigations often require coordination between the Division and other federal, state and local investigative agencies. In addition, compliance personnel must often interact during the course of an accident investigation with many different entities including employers, employer representatives, accident victims and their families, employees and employee representatives, the general public, and representatives of the electronic and print media.

B. TYPES OF ACCIDENT INVESTIGATIONS

1. Mandatory

The Division shall conduct an investigation into the cause of the following types of industrial accidents:

EXCEPTION: Investigation of an accident as specified in this section need not be conducted if the District Manager determines, according to guidelines found in P&P C-36, that an accident investigation is unnecessary. If a determination is made that an investigation is unnecessary, the reason(s) for the determination shall be summarized and recorded on the Cal/OSHA 36(S).

a. Fatality ("FAT")

An employee death resulting from an employment injury, illness, or exposure related to a workplace hazard or condition.

b. Serious Injury

Any injury or illness to one or more employees which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement, but does not include any injury or illness or death caused by a commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or an accident on a public street or highway. See Labor Code Section 6302(h).

c. Serious Exposure

Any exposure of one or more employees to a hazardous substance when the exposure occurs as a result of an incident, accident, emergency or exposure over time and is of a degree or amount sufficient to create a substantial probability that death or serious physical harm in the future could result from the exposure. See Labor Code Section 6302(i).

d. Catastrophe ("CAT")

The inpatient hospitalization, regardless of duration, of three (3) or more employees resulting from an employment injury, illness or exposure caused by a workplace hazard or condition.

NOTE ONE: It is not necessary that the injury, illness or exposure be of a serious nature if three (3) or more employees are hospitalized as a result of the injury, illness or exposure.

NOTE TWO: Even though the investigation of a catastrophe is not required by Labor Code Section 6313, the Division has determined that in order to be "as effective as" federal OSHA, the investigation of a catastrophe is mandatory.

2. Discretionary

At the discretion of the Chief, the Division may investigate the causes of any other type of industrial accident, or occupational illness, which occurs within the state in any employment or place of employment, or which directly or indirectly arises from or is connected with the maintenance or operation of the employment, or the place of employment, and shall issue any orders necessary to eliminate the causes and to prevent reoccurrence of the accident. Labor Code Section 6313(b).

C. INITIAL INVESTIGATIVE PROCEDURES

1. Initial Information

Upon notification of an accident, the District shall gather as much information as possible prior to scheduling an inspection. Information required by Cal/OSHA 36(S) shall be collected from the person or entity reporting the accident.

NOTE: If knowledge of the accident is received from the print or electronic news media, or from sources other than an employer or an employer's representative, the employer may be contacted to obtain additional information whenever the District Manager believes that such informational contact will result in a more effective inspection. Such contact shall be considered to be advance notice and procedures pertaining to advance notice in P&P C-1A shall be followed.

2. High Profile Accidents

Some workplace accidents attract significant, and often immediate, interest from the news media or from the public. If the District receives an inquiry from the print or electronic media about a particular accident, the District Manager shall notify the Deputy Chief for Cal/OSHA Enforcement, through the Regional Manager, of the source and nature of each media inquiry. The Deputy Chief will notify the DIR Deputy Director for Communications about the source and nature of the inquiry and will coordinate an appropriate response to the inquiry with the District Manager.

NOTE: High profile cases that require Chief/Deputy Chief review must be submitted to Cora Gherga, Regional Manager, Region 1, for initial review no later than the 3rd month anniversary date from the opening conference or accident notification, whichever event triggers the 6-month clock. High profile cases may include, but are not limited to: cases with proposed willful violations, high media interest, multiple fatality/catastrophic injuries, cases with proposed penalties in excess of \$50,000, and on a case-by-case basis as notified by either the Chief or the Deputy Chief. Information necessary for this review include an abbreviated copy of the file (Forms 1, 1A, 1B, 10, 170's, relevant photographs, documents acquired during the investigation, etc.) and a conference between the Headquarters reviewer (Cora Gherga) and the district office staff could be necessary.

Depending upon the outcome of the initial review, the citations may be approved for issuance (perhaps with minor modifications) or the CSHO may be asked to obtain additional information, documentation, statements, etc. If the latter, a final review date will be established to ensure the citations are approved for issuance in a timely manner.

3. Investigator Selection, Fatality/Catastrophe Investigation Initiation and Notification of BOI and Local/Circuit Prosecutor

a. Investigator Selection

The District Manager shall select a safety engineer and/or an industrial hygienist to investigate an accident and shall base the selection on the investigator's experience with the particular industry or operation involved in the accident.

b. On-Site Presence of Cal/OSHA Civil Investigators

Any investigation of a fatality/catastrophe ("FAT/CAT") accident report shall be initiated immediately, or within eight (8) hours if an immediate response is not feasible, but in no case shall a FAT/CAT investigation be initiated more than twenty-four (24) hours, following receipt of the FAT/CAT accident report.

c. Immediate Initial Notification

At the time that a FAT/CAT accident investigation is begun, the District Office, Regional Office or Rapid Response Regional Team Coordinator shall notify by fax or by telephone, or by electronic mail ("email"), the Bureau of Investigations (BOI) and the local or circuit prosecutor of the occurrence of the FAT/CAT, and the initiation of the Cal/OSHA civil investigation. The District may use the Cal/OSHA 36(S) as a format to satisfy the immediate initial notification requirement. For catastrophes only, notify Federal OSHA Region IX of the occurrence of the catastrophe.

Note: Also notify Federal OSHA, Region IX, of the occurrence of a catastrophe, or the occurrence of a single fatality of high media interest, by fax or by telephone.

d. 72-Hour Notification Report

When requested by the local or circuit prosecutor, the District Office, Regional Office or Rapid Response Regional Team Coordinator shall prepare and transmit to the local or circuit prosecutor a report within 72 hours of initiation of a FAT/CAT accident investigation which shall contain pertinent inspection information, victim and witness information, accident circumstances, and possible Title 8 violative conditions. If a 72-Hour Notification Report is sent to a local or circuit prosecutor, then the Report shall also be sent to the BOI. All 72-Hour Notification Reports shall also be sent via fax or e-mail to the DOSH CFOI Unit. See P&P C-36, Attachment B for 72-Hour Notification Report.

e. Expedited Civil Fatality/Catastrophe Investigation in Selected Cases

When the local or circuit prosecutor requests that Cal/OSHA expedite a FAT/CAT investigation, the District Manager, Regional Manager or Rapid Response Regional Team Coordinator, shall ensure that the particular civil investigation is completed (i.e., Closing Conference is conducted, and citations, if any, are issued) within 90 days from the date of the Opening Conference which initiated the FAT/CAT investigation.

4. Investigative Team Approach

If the District Manager determines that an investigative team, composed of experts in specific safety or health disciplines, e.g., pressure vessels, elevators, cranes, process

safety management, electrical, or medicine, is required to effectively conduct a particular accident investigation, the District Manager shall so advise the Regional Manager, who will in turn advise the Deputy Chief for Cal/OSHA Enforcement of the need for an investigative team approach.

5. Equipment

Prior to leaving the District Office for the accident site, the District Manager shall ensure that compliance personnel assigned to conduct the investigation have selected personal protective equipment and other investigative equipment, such as sampling devices, which are appropriate to conduct the investigation. As in all inspections, under no circumstances should OSHA personnel conducting fatality/catastrophe investigations be unprotected against a hazard encountered during the course of an investigation. OSHA personnel must use appropriate personal protective equipment and take all necessary precautions to avoid and/or prevent occupational exposure to potential hazards that may be encountered.

6. Other Governmental Agency Involvement

a. Federal, State or Local Governmental Agency -- In General

(1) When the District learns of the involvement of a federal, state or local governmental agency in the investigation of an accident in which the Division is involved, notice of the involvement shall be immediately communicated through the Regional Manager to the Deputy Chief for Cal/OSHA Enforcement.

(2) When one or more federal, state or local governmental agencies are involved in an accident investigation in which the Division is also involved, the District Manager shall ensure that compliance personnel conducting the Division's investigation work cooperatively with personnel from the other agencies.

b. Contractors State Licensing Board

(1) When a fatality or serious accident investigation involves a licensed or unlicensed contractor and the accident results in issuance of a serious, willful or repeat citation to a construction employer, the District Manager shall ensure that copies of the Cal/OSHA 1, 1A, 1B, OSHA 170, Cal/OSHA 170A, and related citations (after they become final order of the board) are sent to the Regional Manager. After review, the Regional Manager is responsible for mailing a copy of all Cal/ OSHA 1s, 1As, 1Bs, OSHA 170s, Cal/OSHA 170As, and related citations (after they become final order of the board) to the CSLB, along with a with a cover memorandum itemizing the investigations attached thereto and corresponding District Office contact information in case the CSLB has any questions about the case or requires copies of any other investigation reports. Regional Managers should forward referral packages to Amber Ostrander, Enforcement Division, Contractors State Licensing Board (CSLB), 9821 Business Park Drive, Sacramento, CA 95827; telephone (916) 255-3981; email aostrander@cslb.ca.gov. See Section H.4.b.

NOTE: Labor Code Section 6313.5 provides that "[T]he Division shall transmit to the Registrar of Contractors copies of any reports made in any investigation

conducted pursuant to subdivision (a) of section 6313, and may, upon its own motion or at the request of the Registrar of Contractors, transmit copies of any other reports made in any investigation conducted pursuant to subdivision (b) of Section 6313, involving a contractor licensed pursuant to Contractors' License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code).".

(2) Should DOSH determine in connection with any investigation of a construction industry employer that the employer has acted willfully or with gross negligence to violate an occupational safety or health standard and the same act has also constituted an obvious violation of standards to which CSLB requires licensed contractors to adhere, DOSH will make an early referral to CSLB.

Examples of circumstances or conditions under which DOSH will make an early referral include refusal of entry where there is a basis to suspect the existence of a serious or imminent hazard likely to cause death or serious physical harm, a history of serious, willful or accident-related citations within the past four (4) years, and where DOSH has issued an Order to Prohibit Use (OPU).

Specific examples of serious or imminent hazards and/or reasons that DOSH would issue an OPU may include, but is not limited to: unshored trenches over 5 feet in depth, non-compliant scaffolding, lack of fall protection, unguarded equipment, dry cutting or grinding of concrete, improper removal of asbestos-containing or lead-containing building materials.

Early referral will be accomplished by DOSH contacting Amber Ostrander, CSLB Enforcement Division, at (916) 255-3981 or via e-mail at aostrander@cslb.ca.gov either the day of or the following work day after encountering conditions that would warrant an early referral. See Section C.6.b.1.

D. INSPECTION PROCEDURES

NOTE: Inspection procedures contained in P&P C-1A are generally applicable to the conduct of all accident investigations. The following inspection procedures pertain only to accident investigations and are designed to supplement or modify the procedures found in C-1A.

1. Purpose

Even though the primary purpose of the accident investigation is to determine the cause of the accident, compliance personnel are also responsible for determining whether a violation(s) of any Title 8 Safety Orders caused the accident and whether citations should be issued pursuant to Labor Code Section 6317.

2. Scope

Every accident investigation shall include a comprehensive evaluation of the circumstances and cause(s) of the accident itself. The scope of the inspection may be expanded to include the investigation of non-accident conditions under the following conditions:

- a. Compliance personnel have obtained information indicating the likelihood of serious hazards in non-accident areas of the accident site place of employment;
- b. Examination of the employer's Cal/OSHA Log of Injuries and Illnesses (Log 300) demonstrates that a significant number, or type, of injuries or illnesses have occurred over a particular time period or in a particular department or operation.
- c. An employee complaint alleging an unsafe or unhealthy condition at the accident site place of employment is received by the District while conducting the accident investigation;
- d. The accident site place of employment is in a high hazard industry; or
- e. A determination by the District Manager based on the accident site employer's history of previous violations.

3. Abbreviated Opening Conference

When an accident investigation involves a place of employment where an imminent hazard may exist, compliance personnel shall conduct an abbreviated opening conference consisting of the following items: (1) identification of compliance personnel; (2) explanation of the purpose of the inspection; (3) request for permission to enter the place of employment where the accident site is located; and (4) request for an employer and/or an employee representative to accompany compliance personnel during the inspection.

NOTE: A more extensive discussion of other opening conference topics can be conducted either at the exit conference after the initial inspection is completed, or at the closing conference.

4. Coordination with Bureau of Investigations

- a. Whenever there is a single fatality, or serious injury to three (3) or more employees, the Bureau of Investigations (BOI) is mandated pursuant to Labor Code Section 6315 to conduct an accident investigation in order to determine whether any criminal violations have occurred.
- b. When responding to the accident site, the BOI Special Investigator assigned to the investigation will contact compliance personnel on site to coordinate the BOI investigative activities with those of compliance personnel.

NOTE: See P&P C-42 for further information about BOI activities.

5. Notice of Accident-Related Violation

When an accident investigation is concluded, compliance personnel shall prepare and submit to the District Manager a Notice of No Accident-Related Violation (Cal/OSHA 170B) or a Notice of Accident-Related Violation (Cal/OSHA 170C), as appropriate.

NOTE: See P&Ps C-170B and C-170C for information on completion of Cal/OSHA 170B and 170C.

6. Family Contact

NOTE: Procedures relating to Family Contact apply to fatalities only and do not apply to accidents involving serious injury or exposure, regardless of how many employees are injured or exposed or the severity of the employees' injuries or exposure, with the exception of the situations when injured employees are in a coma or have other medical conditions which prevent them from discussing the circumstances of the injury or illness with DOSH investigative staff.

a. After initiating an accident investigation, compliance personnel shall compile a list of the names of all deceased accident victims, their current addresses, and the names of individual(s) listed in the employer's personnel records as next-of-kin, family members, and person(s) to contact in the event of an emergency.

b. Contacting Family Members.

When an accident investigation is initiated, the deceased employee's next-of-kin, family member, or other person designated by the employee to be notified in case of emergency shall be contacted early in the investigation and given an opportunity to discuss the circumstances of the accident. Such individuals shall be notified that they can receive, upon request, timely and accurate information about the progress and findings of the accident investigation when it is ultimately completed. DOSH staff contacting family members must exercise tact and good judgment in their discussions.

c. Information Letter (Family Contact Letter).

The District Office shall send to the deceased's emergency contact and/or next-of-kin, the standard information letter (Family Contact Letter, see Attachment A for [English](#) version and Attachment B for [Spanish](#) version), within 5 working days of determining the victim's identity and verifying the proper address where communications should be sent.

NOTE: In some circumstances, it may not be appropriate to follow these exact procedures; i.e., in the case of a small business, the owner or supervisor may be a relative of the victim. Modify the form letter to take any special circumstances into account, including the situations when injured employees are in a coma or have other medical conditions which prevent them from discussing with DOSH investigative staff, or do not send the letter, as appropriate.

d. In addition to the standard information letter sent by the District Manager or designee, the District Manager will also send a letter to the victim's emergency contact or otherwise verifiable next of kin.

e. Interviewing the Family.

(1) When taking a statement from families of the victim(s), explain that the interview will be handled following the same procedures as those in effect for witness interviews. Sensitivity and professionalism are required during these interviews. Carefully evaluate the information received and attempt to corroborate it during the investigation.

(2) Maintain follow-up contacts with key family members or other contact persons so that these parties can be kept up-to-date on the status of the investigation. Provide family members or their legal representatives with a copy of all citations, subsequent settlement agreements or Appeals Board decisions as these are issued, or as soon thereafter as possible. However, such information will only be provided to family members after it has been provided to the employer.

(3) Copies of the accident investigation file shall be provided free of charge to the surviving family members of a deceased employee, employees disabled by the accident, or to family members representing workers who were disabled by the accident.

f. Completion of Investigation Letter to Family/Next of Kin.

When communicating the results of an accident investigation to family members/next of kin, the District Manager shall send the standard information letter (Next of Kin Letter – Completion of Investigation, see Attachment H for accident investigations resulting in violations being issued to the employer in English or I for Spanish and Attachment J for investigations resulting in no violations being issued to the employer in English or K for Spanish) 30 days after issuance of the citations upon the employer.

g. Post Appeal Letter to Family/Next of Kin.

After all appeals have been settled the District Manager shall send the standard information letter (Next of Kin Letter - Post Appeal, see Attachment L for English or M for Spanish) upon receipt of the Decision from the Occupational Safety and Health Appeals Board informing the family of the outcome of the appeal to Occupational Safety and Health Appeals Board. A copy of the Decision shall be included with the letter to the family/next of kin.

E. SPECIAL SITUATIONS

1. Jurisdiction

a. If, at any time during the course of an accident investigation, challenges or questions arise regarding the jurisdiction of the Division to conduct an accident investigation, compliance personnel shall immediately notify the District Manager.

b. If the District Manager cannot resolve the jurisdictional issue by reference to P&P C-11, the District Manager shall contact the Regional Manager to determine if the inspection should commence or continue pending resolution of the jurisdictional issue(s). The Regional Manager shall notify the Deputy Chief for Cal/OSHA Enforcement and the Legal Unit of the jurisdictional issue(s) and a determination shall be made by the Deputy Chief as soon as possible to commence or continue the investigation.

c. If more than one government agency has jurisdiction over an accident investigation, accident site, or a portion of an accident site, the District will inform the Regional Manager of the scope of activities of the other agency and conduct a coordinated investigation with the other government agency.

2. Rescue Operations

NOTE: See P&P C-37 and C-37A for further information about emergency response.

a. When rescue operations are being performed at an accident investigation site by a public safety agency, compliance personnel shall make immediate contact with a representative of the public safety agency directing the rescue operations and consult with the representative about safety aspects of the rescue. If the agency representative intends to use rescue procedures that are in violation of a Title 8 Safety Order(s), and less hazardous procedures are feasible, which are not a violation of Title 8 Safety Order(s), compliance personnel shall so advise the agency representative of this fact.

b. When rescue operations are being performed at an accident investigation site by a non-public safety agency employer, compliance personnel shall inform the employer what Title 8 Safety Order(s) are applicable to the rescue operation. Where appropriate, the Division shall direct non-public safety agency employers to rely on public safety agencies to perform rescue operations.

3. Refusal of Entry, Withdrawal of Consent To Inspect, and Imposition of Conditions on the Inspection

a. If the employer refuses entry to compliance personnel to the accident site or withdraws consent to inspect the accident site during the course of an investigation, compliance personnel shall contact the District Manager to obtain an inspection warrant pursuant to the procedures found in P&P C-25.

b. If the employer initially consents to the accident investigation, but during the course of the investigation imposes conditions upon the performance of the investigation which render an effective investigation difficult or impossible to conduct, compliance personnel shall contact the District Manager to determine whether an inspection warrant should be obtained. The District Manager will discuss the conditions and their effect on the conduct of the investigation with the Regional Manager and the Legal Unit.

4. Order to Preserve

An Order to Preserve (Cal/OSHA 25A) and the Cal/OSHA 250 Placard can be issued or served by the District only under the following conditions:

a. Employer has refused permission to enter the accident site;

b. Employer has withdrawn consent to enter the accident investigation;

c. Employer has placed conditions on the performance of the accident investigation which render an effective investigation difficult or impossible to conduct; or

d. In the opinion of the District Manager, it is necessary to preserve the accident site or any physical or documentary evidence contained at the accident site.

5. Collection of Evidence

a. As early as possible during the course of the accident investigation, compliance personnel shall determine what, if any, physical evidence must be secured for subsequent inspection and/or analysis. For instance, it may be necessary to conduct analytical tests on piping systems, machinery, equipment, or other items in order to determine the cause of the accident. To facilitate the required testing and analysis, it may be necessary to take physical custody of these items.

b. Prior to taking custody of any physical evidence, approval to do so shall be obtained from the District Manager and the Regional Manager in consultation with the Legal Unit. Any evidence acquired must be secured and the chain of custody maintained.

NOTE: Whenever evidence is acquired, compliance personnel shall complete a Cal/OSHA 170Y and comply with the instruction contained in the 170Y. See Attachment G.

c. For larger components that are difficult to handle or to transport, the Division, through the Legal Unit, may arrange for the joint custody of the item(s) with the employer.

6. Return or Release of Evidence

When the owner, or an owner's representative, of any evidence seized by the Division requests the return of the evidence, or the Division elects to return the evidence to the owner or the owner's representative, the District Manager shall, before releasing the evidence, first:

a. Advise the Legal Unit and the BOI that a request for return of the evidence has been received, or that the evidence is no longer needed by the District, and that the District is planning to release the evidence;

b. Determine if any litigation involving the Division is pending, or is anticipated, which would necessitate the Division retaining custody of the evidence;

(1) If any litigation involving the Division is pending, the evidence shall not be released;

(2) If litigation is pending, but it does not involve the Division, advise all known litigants in writing that:

(a) It is the Division's intent to release and return the evidence to the owner or the owner's representative; and

(b) Allow all interested parties 10 days to request that the evidence not be released, but be retained by the Division.

(3) If it cannot be determined that litigation is pending, the Division shall secure from the owner or the owner's representative a written statement that the owner is unaware of any pending or intended litigation.

c. Document the release of any evidence as follows:

(1) A signed receipt for the evidence shall be obtained by the Division and the receiver shall be given a signed receipt by the Division; and

(2) If any evidence has been destroyed, e.g. during destructive testing, or discarded while in the custody of the Division, a written statement describing the reason(s) why the evidence was destroyed or discarded shall be signed by the District Manager and the compliance personnel who originally took custody of the evidence.

F. INVESTIGATIVE TECHNIQUES

Accident investigation involves the gathering of oral and written statements from witnesses to the accident, documenting the conditions at the accident site through photographs, diagrams, maps or sketches, and collecting physical evidence including samples, documents and records.

1. Interviewing Witnesses

a. General Issues

(1) Familiarity with Accident Circumstances

Before interviewing a witness in an accident investigation, compliance personnel shall be familiar with the general circumstances of the accident in order to conduct an effective witness interview. However, the sooner a witness is interviewed, the more accurate and candid the witness statement will be. As information accumulates during the course of an accident investigation, it may be necessary to re-interview certain witnesses.

(2) Language Barriers

(a) Use of a Certified DIR Translator or Contract Translator

All Cal/OSHA accident investigator(s) shall make use of appropriate language translators when interviewing non-English-speaking injured worker(s) or employee witnesses. Appropriate language translators are Department of Industrial Relations employees who have been certified by the Department as bilingual translators in the language spoken by the witness, or individuals available in person or by telephone through contractual arrangements between a language translation vendor and the Division.

(b) Prohibition Against Use of Employer or Employer Representatives as Translators

Under no circumstances shall compliance personnel investigating a fatal or nonfatal accident make use of the services of the employer, or the employer's representative, to interview non-English-speaking injured worker(s) or employee witnesses.

b. Interview

(1) Types of Witnesses

Identify and interview all persons with firsthand knowledge of the incident, including first responders, police officers, medical responders, and management, as early as possible in the investigation. If an employee representative is actively involved in the inspection, he or she can serve as a valuable resource by assisting in identifying employees who might have information relevant to the investigation.

(a) Percipient Witness -- is any person who saw or heard the accident, or observed the conditions prior to and/or at the time of the accident.

NOTE: The most important percipient witnesses in any investigation are the employees who were injured in the accident, other employees closely associated with the work activity at the time of the accident, and those employees responsible for supervising the work activity at the time of the accident.

(b) Witness -- is any person who possesses information relating to, or explaining, the circumstances leading up to, and including, the accident.

NOTE: It may be necessary to contact other persons who were not percipient witnesses in order to obtain an understanding of what occurred before or during the accident, e.g., other employees, experts or managers. This is particularly true where the percipient witnesses have suffered fatal injuries or are hospitalized and cannot be contacted immediately.

(2) Preparing for, and Conducting, the Interview

(a) Initial Contact with Witness

Effective communication between the compliance interviewer and the witness is essential to the conduct of a successful interview. The initial contact with the witness by the compliance interviewer more often than not determines the success or failure of the interview and should be perceived by the potential witness as non-threatening.

(b) Scheduling the Interview

Compliance interviewers shall schedule the interview at a time which is most conducive to obtaining a complete and accurate statement from the witness. Even though compliance interviewers should try to schedule the interview at the convenience of the witness, it is important to conduct interviews of

percipient witnesses as soon as possible after occurrence of the accident. Timely interviews are important in that the witness will normally not have had an opportunity to discuss the accident with others and "rethink" what occurred.

(c) Location of the Interview

When feasible, interviews at the accident site often result in the best witness statements. The benefits of holding the interview at the accident site include better recall of accident details by the witness and a more accurate positioning of relevant items and people involved to ensure a more factual account of the accident. If interviewing at the accident site is not feasible given the conditions at the site and/or the reluctance of the witness, another mutually agreeable location should be selected. Compliance interviewers should select a location at which the witness is comfortable and which will facilitate a thorough interview and an accurate witness statement. Conduct employee interviews privately, outside the presence of the employer. Employees are not required to inform their employer that they provided a statement to the Division.

(d) Interviewing Process

Properly document the contact information of all parties because follow-up interviews with a witness are sometimes necessary.

i. Discuss the purpose of the investigation and emphasize that the purpose of the interview is fact-finding and not fault-finding. Attempt to answer any questions the witness may have about the interview process before the actual interview begins.

ii. Use a tape recorder, Employee/Witness Statement Form (see Attachment D) or statement summary to record all witness statements during the course of the interview. See Section F.1.b.(4)(a) through (c).

When appropriate, reduce interviews to writing and have the witness sign the document. Transcribe video- and audio-taped interviews and have the witness sign the transcription.

Read the statement to the witness and attempt to obtain agreement. Note any witnesses' refusal to sign or initial his/her statement.

Ask the interviewee to initial any changes or corrections made to his/her statement.

iii. Compliance interviewers should ask the witness to relate in their own words what they know about the accident.

iv. The witness should be allowed to relate what they know about the accident with minimum of interruptions from the compliance interviewer.

v. If the witness is an employee injured in the accident and/or another employee, the compliance interviewer should ask the employee to explain the following:

I. Their work experience;

II. How long they have worked for their present employer;

III. How long they had been working in the job when they were injured in the accident;

IV. What type of training had been given to them prior to the accident and who trained them;

V. Where they were physically located at the accident site and what they were doing at the time of the accident;

VI. What they feel caused the accident; and

VII. If practical, have the injured employee and/or other employee witness explain the sequence of events which occurred at the time of the accident.

vi. Follow-up questions should be asked by the compliance interviewer to clarify facts or fill in any gaps in the witnesses' account of the accident.

vii. After the witness has completed his or her own account of the accident, the compliance interviewer should then relate back to the witness the interviewer's own understanding of the witness' account of the accident. At this time there will be an opportunity to correct any misunderstandings that may have occurred and to clarify, if necessary, any of the details of the accident.

(e) Sample Interview Questions Applicable to Most Accident Investigations

i. How long has the employee been employed by the employer?

ii. What was the employee doing at the time of the accident?

iii. Was the employee assigned to do the job (s)he was doing at the time of the accident, and who did the assigning?

iv. Who was the employee's immediate supervisor, or other supervisor, for the job the employee was doing at the time of the accident?

v. Was the employee trained in the specific job and the hazards of that job? Who provided the training? Is there documentation of the training?

vi. Were there any written procedures for the job that was being performed and was the employee following those procedures?

- vii. Was the employee working alone? If not, who were the other employees and what were they doing at the time of the accident?
- viii. Was the proper equipment, including personal protective equipment, being used for the job?
- ix. Is the process, operation or job new to the worksite?
- x. Was the injured employee being supervised? What was the proximity and adequacy of supervision?
- xi. Did the employee receive hazard recognition training prior to the accident?
- xii. What was the location of the accident? What was the physical condition of the area where the accident occurred?
- xiii. What immediate or temporary action(s) could have prevented the accident or minimized its effect?
- xiv. What long-term or permanent action(s) could have prevented the accident or minimized its effect?
- xv. Had corrective action been recommended in the past, but no corrective action been taken?
- xvi. Advise interviewee of OSHA whistleblower protections.

(3) Special Interview Issues

(a) Confidentiality

- i. Employees injured during an accident and other witnesses can be particularly difficult to interview. They may be fearful and reluctant to provide the compliance interviewer with accurate facts about the accident. The injured employee or other employees may feel embarrassed, may be fearful of disciplinary action, or be hesitant to talk for any number of reasons. A witness may not want to provide information that might place blame on a friend, other fellow workers, the foreman or supervisor or possibly even themselves.
- ii. If a witness inquires if his or her statement will be held confidential, or refuses to give a statement unless the compliance interviewer promises that it will be kept confidential, the compliance interviewer shall advise the witness that the law provides the name of a person who makes a complaint to Cal/OSHA about an unsafe or unhealthy workplace condition can be kept confidential. The name of an employee who is interviewed during the course of an accident investigation can be kept confidential if the employee complains about an existing unsafe or unhealthy workplace condition. In addition, the Division may receive information in confidence; however, such information may be ordered disclosed by a court or tribunal under

circumstances where a party seeks disclosure of the information over the Division's objection.

iii. Compliance interviewers shall not offer or grant confidentiality as an inducement to obtain a statement from a witness.

iv. However, once confidentiality is granted by a compliance interviewer, it must be respected. This can create problems in that if the witness is crucial to the Division's case, the Division may not be able to proceed to prosecute the case against the employer without breaching the grant of confidentiality.

v. Therefore, if a witness will not provide a statement without a grant of confidentiality, an attempt should be made to conduct an interview at some other time or at some other location, e.g, at the employee's home. If the witness still seeks a grant of confidentiality, confidentiality may be conferred after explaining to the witness the limitation described in Section F.1.b.(3)(a)ii. immediately above or consideration can be given by compliance personnel to the issuance of an administrative subpoena pursuant to P&P C-24.

Informer's Privilege.

a. The informer's privilege allows the government to withhold the identity of individuals who provide information about the violation of laws, including OSHA rules and regulations. The identity of witnesses will remain confidential to the extent possible. However, inform each witness that disclosure of his/her identity may be necessary in connection with enforcement or court actions.

b. The informer's privilege also protects the contents of statements to the extent that disclosure would reveal the witness' identity. When the contents of a statement will not disclose the identity of the informant (i.e., statements that do not reveal the witness' job title, work area, job duties, or other information that would tend to reveal the individual's identity), the privilege does not apply and such statements may be released.

c. Inform each witness that his/her interview statements may be released if he or she authorizes such a release or if he or she voluntarily discloses the statement to others, resulting in a waiver of the privilege.

d. Inform witnesses in a tactful and nonthreatening manner that making a false statement to a CSHO during the course of an investigation could be a criminal offense. Making a false statement, upon conviction, is punishable by up to \$10,000 or six months in jail, or both.

(b) Employer Attorney Participation

Sometimes an attorney(s) for the employer, usually large corporate employer(s), will attempt to be present during a witness interview.

Compliance personnel should make a determination if the attorney who seeks to be present during the interview actually represents the witness being interviewed. If not, the attorney does not have the right to be present unless the witness requests specifically that the attorney remain. If the witness is a supervisor or other management representative of the employer, the employer's corporate counsel normally will be present during the interview.

(c) Refusal To Be Interviewed

- i. Even though the Division has the authority in Labor Code Section 6314 to interview all witnesses to an accident, some witnesses who the Division would like to interview may refuse to give a statement.
- ii. If a potential witness refuses to give a statement, the compliance interviewer shall immediately notify the District Manager.
- iii. The District Manager, through the Regional Manager, shall consult with the Legal Unit about the appropriateness of issuing an administrative subpoena to compel the witness to provide a statement.

NOTE: Even after being served with an administrative subpoena, supervisors or other management personnel may legitimately invoke their Fifth Amendment privilege against self-incrimination in refusing to provide the Division a statement.

(4) Methods for Recording Witness Statements

(a) Tape Recording

Tape recording is the preferred method for recording a witness statement. If a tape recorder is used, it is important to record on the tape prior to the interview the following information:

- i. The time, location and who is present at the interview;
- ii. The acknowledgement of all present that a tape recorder is being used;
- iii. Consent to tape record the statement; and
- iv. Indication by time when breaks are taken during the course of the interview.

(b) Written Statement (See Cal/OSHA 170AX, Attachment D)

A statement written by the witness or by the compliance interviewer, and then signed by the witness is the next preferred method for recording a witness statement. A more complete statement may be obtained if it is written by the compliance interviewer and then reviewed and signed by the witness.

(c) Statement Summary

If the witness refuses to have his or her statement tape recorded, or refuses to give a written statement, then a written summary of the interview must be prepared by the compliance interviewer. The statement summary should contain the date, time, location of the interview, and a summary of the interview in as much detail as possible to ensure that if, at a later time, the witness makes other statements which are inconsistent with his or her original statement, the statement prepared by the compliance interviewer will be credible.

(d) Post-Interview

During the course of the accident investigation, additional facts may come to the attention of compliance personnel which will require re-interviewing witnesses or require that newly identified witnesses be interviewed.

2. Photographs, Diagrams, Maps and Sketches

a. General

Documentation of the accident by means of photographs, diagrams, maps and sketches of the accident site and work activities is as important in an accident investigation as obtaining complete and accurate witness statements.

b. Photographs

(1) Photographs of the accident site, and the equipment, machinery or other items associated with the accident shall be taken to provide a permanent record of the accident conditions.

(2) The following types of photographs shall be taken:

(a) Photographs showing an overview of the accident site in general; and

(b) Photographs showing a detailed or close-up view of the accident site, equipment damaged during the accident, or other instrumentalities involved in the accident.

(3) Compliance personnel shall identify on the back of each photograph taken and developed the date and time the photograph was taken and what the photograph depicts with sufficient detail to prevent any confusion.

NOTE: Identification of photographs is especially important when "close-up" photographs are taken as the photograph does not provide its own frame of reference. When appropriate, utilize ruler or other items in the photograph to provide an internal frame of reference within the photograph itself.

(4) Compliance personnel shall ascertain whether other government agencies involved in the investigation of the accident, or print or electronic media, have taken and developed photographs or film of the accident and shall request copies of those photographs or films.

(5) Photographs taken by the Division shall be deemed confidential as required pursuant to Labor Code Section 6314 and shall not be released to the public unless the employer consents to their release.

c. Diagrams, Maps and Sketches

(1) Diagrams, maps and sketches are an effective way to describe the accident site and work operations involved in the accident. Diagrams, maps and sketches are especially effective in depicting the location of employees involved in work operations and their relationship to the accident instrumentalities, such as machinery, equipment and other items.

(2) As with photographs, it is important to present an overall perspective of the accident site. For instance, if the accident involves high voltage contact by a crane, the diagram, map or sketch should depict an overview of the accident site, noting the location of the wires, the employees and equipment with measurements, as well as a profile view depicting the height of the wires in relation to the crane and the adjacent work area.

(3) Diagrams, maps and sketches do not have to be drafted to scale. However, it is important to clearly identify critical items depicted in the diagram, map or sketch, as well as reference items, including the following:

- (a) The identity of the employees;
- (b) Name of the machinery or equipment;
- (c) Measurements of distance; and
- (d) Reference to compass directions or to adjacent streets or buildings.

NOTE: Where possible, review the diagram, map or sketch with the accident witnesses and have them sign the diagram, map or sketch to attest to its accuracy.

(4) Where it is necessary to depict numerous items, the long-hand description of items may clutter the diagram, map or sketch making it unreadable. In such instances, use a legend at the bottom of the diagram, map or sketch, i.e., a letter or number designation given to the items depicted in the diagram, map or sketch with the long-hand description then provided in the legend.

(5) The graph side of the OSHA 94 (Note Taking Sheets) may be used for any diagrams, maps or sketches.

3. Collection of Documents, Records and Other Items

Investigation Documentation.

Document all fatality and catastrophe investigations thoroughly.

1. Personal Data– Victim.

Potential items to be documented include: Name; Address; Email address; Telephone; Age; Sex; Nationality; Job Title; Date of Employment; Time in Position; Job being done at the time of the incident; Training for job being performed at time of the incident; Employee deceased/injured; Nature of injury – fracture, amputation, etc.; and Prognosis of injured employee.

2. Incident Data.

Potential items to be documented include: How and why did the incident occur; the physical layout of the worksite; sketches/ drawings; measurements; video/audio/photos to identify sources, and whether the accident was work-related.

3. Equipment or Process Involved.

Potential items to be documented include: Equipment type; Manufacturer; Model; Manufacturer's instructions; Kind of process; Condition; Misuse; Maintenance program; Equipment inspection (logs, reports); Warning devices (detectors); Tasks performed; How often equipment is used; Energy sources and disconnecting means identified; and Supervision or instruction provided to employees involved in the accident.

4. Witness Statements.

Potential witnesses include: the Public; Fellow employees; Management; Emergency responders (e.g., police department, fire department); and Medical personnel (e.g., medical examiner).

5. Safety and Health Program.

Potential questions include: Does the employer have a safety and/or health program? Does the program address the type of hazard that resulted in the fatality/catastrophe? How are the elements of the program specifically implemented at the worksite?

6. Multi-Employer Worksite

Describe the contractual and in practice relationships of the employer with the other employers involved with the work being performed at the worksite.

7. Records Request.

Potential records include: Disciplinary Records; Training Records; and Next of Kin information.

NOTE: Next of kin information should be gathered as soon as possible to ensure that condolence letters can be sent in a timely manner.

a. Documents, records and other papers constitute an important element of every accident investigation. Often documentary evidence is the only type of evidence that will reveal the cause(s) of the accident. Papers lead to a thorough examination of the policies, standards and specifications that created the environment or shaped the attitudes and

actions of people involved in the accident. They often show irrefutable evidence that generally does not come out in witness interviews.

b. Documents, records and other items need to be collected at the time of the accident and preserved until they can be examined and considered in the analysis. When used in an appeals case, it is particularly important to be able to prove that the documents were secured and unchanged from the time of the accident until made a matter of record. Accident investigation pre planning should include procedures for the identification of documents and records to be collected and designation of who will be responsible for their collection.

c. The Division has the authority to review and obtain custody of all documents and records relevant to the investigation and may do so by means of a subpoena duces tecum. If compliance personnel are refused their legitimate request to examine or copy relevant documents or records, they shall notify the District Manager who will in turn consult with Legal Unit regarding obtaining a subpoena or issuing an Order To Preserve (Cal/OSHA 25A).

NOTE ONE: When an employer declines to provide documents, records or other items to the Division unless they are held confidential, the District Manager will consult with the Legal Unit to determine if and how the documents, records or other items can be held confidential.

NOTE TWO: See P&P C-24 for procedures to obtain a subpoena duces tecum.

d. Recommended Documents for Collection

(1) Injury and Illness Prevention Program;

(2) Records that establish management policies governing the activity involved in the accident, e.g., Code of Safe Work Practices;

(3) Condition reports, hazard reports and analysis records that reflect decisions regarding the accident environment;

(4) Facility specifications and descriptions that construct the work environment;

(5) Purchasing specifications and directives that reflect decisions regarding equipment and work materials;

(6) Equipment installation, repair, maintenance and critical parts inspection records that reflect priorities and control of work;

(7) Equipment manufacturers' and company's operator manuals, work instructions, operator training criteria and skill certification requirements that reflect program standards;

(8) Employee selection, placement, and training records that relate to operators, repair and maintenance workers and supervisors;

(9) Work records that relate to the job and individual employee with respect to task assignment, classification, hazard exposure or health exposure; and

(10) Log of Injuries and Illnesses (CAL/OSHA 300) for current and subsequent years along with Employer's Report of Injuries and Illnesses (5020) for accident and any other identified injuries or illnesses of interest.

NOTE: This list is not exhaustive and is intended to provide guidance as to the types of documents and records that may be relevant to the investigation. The guiding principle for compliance personnel is to collect all records relating to the accident until knowledge of factors or examination of individual records determines that certain records are not relevant to the accident investigation.

G. OFFICE PROCEDURES

For all fatality/catastrophe accident events, the completed OSHA 170, together with the Cal/OSHA 170A and the 170B or 170C, shall be submitted to the District and Regional Manager for review and signature prior to the Closing Conference, whether or not any citations are proposed to be issued. For all other accident events, the completed OSHA 170, together with the Cal/OSHA 170A, and the 170B or 170C, shall be submitted to the District Manager for review and signature.

H. FORMS DISTRIBUTION

1. The District Office is responsible for filing the OSHA 170 and a copy of the Cal/OSHA 170A, and 170B or 170C, with the inspection report after being signed by the compliance personnel, the District Manager and the Regional Manager, in the case of a fatality or catastrophe (see Section G.1. above). If more than one inspection results from the event, e.g., multi-employer worksites, file a copy of the OSHA 170 in all resulting case files.

2. The District Office is responsible for data entry of the OSHA 170 into IMIS and for faxing a photocopy of the OSHA 170 and 170A to the Bureau of Investigations (BOI). District Offices in Regions I, II, V (North) and VI (North) shall submit to the BOI office in Oakland, and District Offices in Regions III, IV, V (South) and VI (South) shall submit to the BOI office in Los Angeles.

3. The District Office is responsible for mailing a photocopy of the OSHA 170 and Cal/OSHA 170A to the Regional Manager, together with the Cal/OSHA 1 (which has the employer address), 1A and 1B. When the investigation is of a licensed or unlicensed contractor, a copy of the related citations, after they become final orders of the board, shall be included.

4. The Regional Office is responsible for mailing a copy of all Cal/OSHA 1s, 1As, 1Bs, OSHA 170s, Cal/OSHA 170As, and related citations, after they become final orders of the board, related to investigations of licensed or unlicensed contractors to:

The Contractors State Licensing Board (CSLB) -- Amber Ostrander, Enforcement Division, Contractor's State Licensing Board, 9821 Business Park Drive, Sacramento, CA 95827,

telephone (916) 255-3981, together with a cover memorandum itemizing the investigations attached thereto and corresponding District Office contact information.

NOTE: The Regional Office will maintain a record of the referral by recording same onto a CSLB referral log.

5. The District Office is responsible for faxing a copy of the Cal/OSHA 170A for all fatalities, including any subsequent modifications, to the DOSH CFOI Unit.

6. The District Office is responsible for mailing a copy of the Cal/OSHA 170B or 170C to the employer by certified mail, return receipt requested, when instructed by the District Manager.

I. IMIS DATA ENTRY FOR THE OSHA 170

See [IMIS Data Entry for the OSHA 170](#)

J. NARRATIVE SUMMARY OF INVESTIGATION (Cal/OSHA 170A)

NOTE: Compliance personnel shall complete all items on the Cal/OSHA 170A and shall not merely rewrite or abstract the information already entered on the OSHA 170.

1. Purpose

Cal/OSHA 170A is designed to provide a concise summary of the accident investigation in narrative form.

2. Content

The Narrative Summary of the Investigation shall, at a minimum, include the following elements:

a. Description of the accident:

- (1) Date, time and location of accident;
- (2) How Division learned of the accident and date and time of compliance personnel's arrival at the accident site;
- (3) Employees and nonemployees killed, injured or exposed, and how they were killed, injured or exposed. Do not use employees' names in the narrative summary. Rather, assign a number to the employees or nonemployee listed in "Information on Injured," and refer to that employee or nonemployee by that number.
- (4) Where injured employees were medically treated or hospitalized.

b. Description of the employer(s) at whose worksite(s) the accident occurred:

- (1) Type of establishment; and
- (2) General industrial activity in which the employer engages and the specific activity taking place at the accident site.

c. Responses to the following questions:

- (1) What were the workers doing, or what process was in progress, at the time of the accident?
- (2) Who was the employee's immediate supervisor, or other supervisor, for the job the employee was doing at the time of the accident?
- (3) Where were the killed, injured or exposed employees when the accident occurred?
- (4) What kind of equipment was involved, if any? Include manufacturer's name, name of equipment, model number or serial number, and any significant measurements, such as depth of trench or height of scaffold.
- (5) What type of injuries were sustained?
- (6) What factors caused the accident?

NOTE: Indicate what factors caused the accident based only on facts discovered during the course of the accident investigation. Compliance personnel shall not include statements which are not based on a factual foundation, e.g., statements that "employee negligence" or "inattention to the job" should not be included in the narrative summary unless substantiated by facts.

d. List of witnesses or persons interviewed, including telephone numbers and addresses.

NOTE: Include the identity of the employer, officer, management officials, or supervisor who had direction, management, control or custody of the accident site. Such information is important to the accident investigation performed by personnel from the Bureau of Investigations.

e. List the accident-related violation(s), if any, and their severity. Indicate whether no violations were found and the reason(s) for this.

3. Use photographs, diagrams, maps or sketches if they would help you in describing the accident and the reader in understanding the accident. Attach the reports from other investigating agencies, if available.

[IMIS Data Entry for the OSHA 170](#)

Attachments:

- A. [Sample Family Contact Letter](#)
- B. [Sample Family Contact Letter \(Spanish\)](#)
- C. [OSHA 170](#)
- D. [Cal/OSHA 170A](#)
- E. [Cal/OSHA 170AX - Front](#)
[Cal/OSHA 170AX - Back](#)

F. Investigation Summary and Hazardous Substance Codes [EXAMPLE NOT AVAILABLE]

G. [Cal/OSHA 170Y](#)

H. [Sample Next of Kin Letter – Completion of Investigation](#)

I. [Sample Next of Kin Letter – Completion of Investigation – Spanish](#)

J. [Sample Next of Kin Letter – Completion of Investigation – No Violations](#)

K. [Sample Next of Kin Letter – Completion of Investigation – No Violations – Spanish](#)

L. [Sample Next of Kin Letter – Post appeal](#)

M. [Sample Next of Kin Letter – Post appeal - Spanish](#)