

Cal/OSHA Advisory Committee Meeting
February 7, 2013
Oakland, California

Department of Industrial Relations (DIR) Report by Christine Baker, Director of DIR

- DIR's strategic goal for 2013 is "prevention" for each of DIR's Divisions, including prevention of illness and injuries, prevention of wage theft, and other similar prevention efforts.
- Last year, a prime focus of the Department was to review and renew internal infrastructure to function more effectively and efficiently, and this will continue this year.
- Cal/OSHA is also looking at its staffing priorities as there are vacancies due to retirements and separations. The Department is hoping to fill positions as quickly as possible and appropriately distributed around the state where DOSH's workload demands are highest.
- The Labor Enforcement Task Force (LETF) has completed its first year. A report of activities will be provided soon. Cal/OSHA was incredibly productive in this collaborative effort with DIR and other state agencies. As a multi-agency effort, businesses may be covered by several agencies and may have multiple violations.
 - Statewide in the last year, 73% of inspected businesses were in violation with regulations of at least one of the agencies, and 40% of inspected businesses were out of compliance with three or more of the agencies.
 - Major focus in 2013 will be to develop methods to further enhance effective targeting to better focus on non-compliant employers in the targeted industries in the underground economy.
- DIR has made tremendous efforts in the last year to reform the workers compensation insurance system to increase payments to injured workers and save \$1 billion in costs to employers.

Cal/OSHA Report by Chief Ellen Widess:

- Highlights of the some accomplishments of the Division in 2012 lay the basis for our 2013 priorities:
 - Cal/OSHA had two special emphasis programs (SEP) last year: Heat Illness Prevention Program and Confined Space Hazards.
 - The heat illness SEP registered a high number of heat illness prevention inspections, which were well organized and better targeted. The Division also

conducted increased outreach to both employers and workers for heat, including through media buys on radio and highway billboards. Overall, we saw an increase in compliance among employers with regard to the heat standard.

- In confined spaces, we continue to see deaths and injuries despite the increased outreach efforts of the Consultation Service and other organizations to highlight the hazards of confined space entries.
- In Enforcement, there are three areas to note:
 - Cal/OSHA has adapted to the changing California economy, which now includes extensive sub-contracting, contingent worker and multi-employer worksites, with inspections that cover all the employers on site. In 2012, there were a number of inspections of warehouses in the Inland Empire, where many warehouse operators utilize temporary help agencies. Last year, citations were issued to both warehouse operators and staffing agencies, and this will continue into 2013.
 - Cal/OSHA is reaching more of the vulnerable population of workers in the “underground economy” with the increased efforts of the LETF.
 - Cal/OSHA is working closely with district attorneys throughout the state, and there has been excellent progress made last year in getting maximum deterrent effect from criminal prosecutions of egregious cases. The Division is waiting for the decision by the Los Angeles District Attorney in the case against a UCLA professor for the death of a lab worker. The Division is working closely with County District Attorneys on a number of cases. Several recent cases that went to criminal prosecution include unguarded bailers and printing presses that resulted in fatalities, and asbestos exposure cases in Monterey and Santa Cruz.
- In Research & Standards, Cal/OSHA has been leading the nation in several areas. Please see the Research & Standards section below.
- The Consultation Service has had an important impact by providing pro-active outreach for the special emphasis programs, especially to small, high hazard employers. An innovative Injury and Illness Prevention Program (IIPP) outreach and education project for small employers was launched in collaboration with DIR. LOHP has proven to be very useful.
- Internally, Cal/OSHA has worked hard to lower our administrative costs by becoming more efficient, including the closing of several offices, which has saved money. We have new leadership throughout the organization – including in headquarters, regional, and district offices – which has worked hard to develop a consistency of policy implementation, and to increase two-way communication between Headquarters and field offices.
- In 2013, our major priorities will include the following:

- One major emphasis will be dealing with the high rates of fatalities and injuries in the construction industry. Cal/OSHA will join with Fed/OSHA in focusing on fall hazards and other safety issues, and suggestions from the Advisory Committee are encouraged and welcomed.
 - We will also continue the Special Emphasis Programs on heat illness prevention and confined spaces this year.
 - Follow-up to the August 2012 fire at the Chevron refinery will be a priority. The Division issued the largest penalty (nearly \$1 million) in Cal/OSHA history to Chevron in relation to last year's incident. Fortunately, there were no fatalities or serious injuries, but 15,000 people were sent to hospitals, and the hazards found at Chevron could have led to deaths and serious injuries to refinery workers and surrounding communities. The Division is participating in the Governor's Interagency Task Force on Refinery Safety with sister agencies to determine how to prevent refinery accidents in the future, and ensure effective emergency preparedness and response should refinery incidents occur.
 - There will be a continued emphasis in all of Cal/OSHA's work on vulnerable populations, particularly with LETF. This will involve media outreach campaign to prevent heat illness; translation of key publications for workers; and expanded outreach and training with community organizations so that workers will be better informed about the hazards they may face on the job and their rights under California law.
- Cal/OSHA has responsibilities in the area of public safety with elevators, amusement rides and tramways. Standards are being updated in each of these areas, and we are working with DIR's Information Technology unit to make forms more efficient and accessible by allowing them to be filled electronically from our website.
 - Cal/OSHA would like to invite you to a symposium to celebrate our 40th year. The date will be confirmed later, but it will be held in the fall. We will have an afternoon series of panels and an evening reception to reflect on the past 40 years, where we are now, and how we can meet the challenges of the future.

Cal/OSHA Enforcement Report by Cora Gherga, Acting Deputy Chief for Enforcement

- The inspection statistics are detailed in the handouts.
- All District Manager vacancies have been filled, and the new District Managers in Concord and Santa Ana both come from Enforcement. All contact information has been updated on the DOSH website.
- Enforcement managers are currently evaluating and assessing the workload in each of the district offices throughout the state. Because of vacancies in some offices, compliance officers from other district offices are going to conduct inspections in the short-handed

offices. District Offices that are paired to handle selected inspections are Torrance-Los Angeles and West Covina-San Bernardino.

- Enforcement's Regional Managers recently had a day-long planning session on how to better carry out our mission. The regional managers are working on ways to ensure uniformity among the various offices.
- A report on the 2012 heat season is among the materials sent out before the Advisory Committee meeting. In general, response time to complaints and accident reports was excellent last year, with most inspections initiated within 24 hours and all less than three days. Due to the record heat, inspections were conducted late in the year through September. The current data for heat-related fatalities in 2012 is two fatalities in construction and one in wildland fire fighting.
- In 2012 and the first weeks of 2013, there were three confined space fatalities and four reported injuries. None of these were due to atmospheric hazards, but rather to mechanical hazards. These include the collapse of structures in the interior of a pressure vessel, entrapment or lack of ready exit from inside a vessel, and hardened cement falling on an employee working inside a cement mixer.
- Chief Widess and I were able to participate at the OSHA State Plan Association this year in New Mexico. There was great interest in establishing greater collaboration between State Plans on refinery safety. Chief Widess made a presentation about the fire at the Chevron Richmond refinery last August, and the need to share knowledge and experiences between state plans and with Fed/OSHA.
- Federal OSHA will be conducting two site visits of District Offices this year as part of their annual audit (FAME) process.

Cal/OSHA Consultation Service Report by Vicky Heza, Program Manager

- In the handout provided, there is a brief report that addresses policy revisions. Policies were last revised in 2002, so our goal is to ensure consistency among all the policies and to update all of them this year. VPP-Construction policies have been updated, and the SHARP-Construction will be updated to be consistent with VPP-Construction.
 - Under the new VPP-Construction, general contractors are limited to three sites; SHARP-Construction does not have a similar limitation, but it will soon.
- We are improving our letters to employers to ensure our letters can be understood while still fulfilling all legal requirements.
- Consultation is working closely with the DIR Small Business IIPP initiative to assist employers with their IIPPs. One class was held in December with about 8 to 10 participants in Oakland and a second class is scheduled for March 2013 in Stockton.

- Consultation has conducted 36 outreach sessions on confined space hazards and the Title 8 requirements, including employers in agriculture and water districts around the state.
- Consultation has conducted 50 outreach sessions on heat illness prevention with 3,600 attendees, including employers, supervisors and employees. Presentations were also given in Spanish as 1,500 of the participants were Spanish speakers. We hope to maintain the momentum from this effort, and more outreach sessions have already been scheduled.

Cal/OSHA Research & Standards Report, by Deborah Gold, Deputy Chief for Health

[Chief Widess presented the report for Research & Standards]

- Research & Standards – Health:
 - The Permissible Exposure Limit proposal for ethyl benzene was heard by the Board. The Division has been requested to report to the Board on how feasibility is determined during the PEL process. The federal adoption of the Globally Harmonized System (GHS) affects a variety of OSHA standards . We are attempting to adopt as much of the federal proposal as possible while not weakening current California current hazard communication (workers’ “right to know”) regulation. There have been ongoing discussions with Federal OSHA, and we are working closely with the Standards Board on the process of adopting the majority of the federal changes. There will be a regular rulemaking, including public hearings, to adopt the remainder of the proposals.
 - The Safe Patient Handling Act (AB 1136) went into effect in January 2012. Given the legislative mandate, the Division has been enforcing it under the Injury and Illness Prevention Program (Title 8, Section 3203) regulation which is referenced in the new law. The Division has had two well-attended advisory committee meetings regarding this issue, has received additional comments, and is working with Board staff to get a proposal ready to notice.
 - In terms of work hazards and injuries to hotel housekeepers, one advisory committee meeting was held in Oakland regarding injuries that have occurred in the hotel housekeeping industry, and valuable feedback and comments were received. A second advisory committee meeting will be held on March 19th in Los Angeles to receive further testimony from employers and labor on the injury rate, cost of injuries to workers and families, and best practices in the industry to minimize worker injuries.
 - Progress on Permissible Exposure Levels (PELs) and standards related to lead exposures will be discussed in further detail later in this meeting.

- Research and Standards – Safety:
 - Responding to a number of farm worker injuries and fatalities during night agricultural work, the Division initially submitted a Form 9 to the Standards Board. This is a common practice when the Division notes a safety hazard. In this case the Division asked the Board to consider the adequacy of the current illumination regulation for night agricultural work. The Division withdrew the Form 9 based on new information, and we plan to resubmit a revised Form 9 to the Board for their consideration. The Standards Board has primary responsibility to prepare proposals for changes to any safety regulation.
 - Rulemaking was terminated on adoption of federal OSHA’s payment for PPE standard. California has a longstanding California Supreme Court provision on PPE, requiring employers to provide and pay for any required PPE. We are currently putting together a website with relevant information and references.
 - There was an Elevator Unit advisory committee meeting last December, and elevator safety codes are currently being updated. New, updated tramway and ski-lift codes are also being developed.

Appeals Board Report by Art Carter, Board Chair

- The Labor Code provides that any employer who has an employee who suffers a serious injury or death must report it within 8 hours, or within 24 hours if exigent circumstances exist. Since 2002, the Board has issued a variety of opinions as to how this requirement, and the monetary penalty for failing to report, should be determined. The Appeals Board has just issued three Decisions After Reconsideration (DAR) which clearly spell out the Board’s policy from this point forward.
- The Board has just closed the comment period for its rule-making package that has drawn comments from a wide spectrum from the Chamber of Commerce to WorkSafe, and others. The Board will take up the rule changes at its next meeting in March.
- There was a Board meeting yesterday, which included a brief discussion of the Board’s trainings done in late 2009, with the presiding law judges explaining the common mistakes made by parties in their presentation or cases. These trainings were open to the public and were well received. The Board is considering conducting another series in 2013, if the resources are available.
- There is a position open for Executive Officer of the Appeals Board. February 11, 2013 is the final filing date. Applicants do not have to come from within the civil service system.

Standards Board Report by Marley Hart, Executive Officer

- Effective December 13, 2013, John McLeod, Chairman of the Standards Board and Public Member, resigned. There is no public member at present. The Governor is expected to nominate a replacement soon.
- The 2013 Rulemaking Calendar has been established and was presented to the Board at the January meeting.
- During the February meeting in Sacramento, there will be a year-end review of 2012 which will analyze the Board's work. The amount of work being done has remained consistent. There was an increase in the number of variances sought, primarily for elevators.
- Standards are now approved quarterly. In the past, the Office of Administrative Law (OAL) took 30 days to approve those standards, and then they were sent to the Secretary of State's office. This is no longer the practice as approved standards will become effective at the start of the following quarter. An earlier date can be requested with cause.
- There is a tentative February adoption date for approval (via the Horcher process) of the Federal "Globally Harmonized System" (GHS) changes to the Hazard Communication standard, but that decision will be made tomorrow.

Report on the status of Lead Standards by Barbara Materna, Chief, CDPH Occupational Health Branch (OHB)

- The California Department of Public Health (CDPH)'s previous recommendations for the lead standard from June 2010 and 2011 are on our website. Those changes were discussed with Cal/OSHA in February 2011 and January 2012. CDPH's recommendations did not include Permissible Exposure Limits (PELs) for lead because they were awaiting an additional report on airborne lead and lead in the blood from Office of Environmental Health Hazard Assessment (OEHHA), the agency mandated to provide this toxicological review. This report is necessary to better determine protective levels for airborne lead and lead in the bloodstream. Currently existing research data on airborne lead and lead in blood is inadequate to determine a recommended level for the PEL, AL and MRP.
- OEHHA was asked to evaluate all existing mathematical models, select the best one, apply adaptations to develop and create a new model from that data, and determine original and scientific work that still needs to be done. Models that were used in the 1970s when Fed/OSHA created the standards proved not to be adequate for this purpose.
- CDPH had to determine medical removal protections and how long someone needs to be removed from those levels in order to be safe again. This complex process is progressing and will provide a basis for the new PEL recommendations.

- Five peer reviewers were selected, and reviews of the first and second versions of the document have been completed. The second version review was completed in the fall, and that version has been sent out for peer review again. The final version, however, must then go through both CDPH's and OEHHA's approval process. At that point, CDPH's recommendations for PELs for lead in air and lead in blood can be made.
- More information on lead has come out recently, and that information supports the approach we have taken and shows that California is consistent with efforts by the federal government.
- CDPH plans to hold a scientific meeting where OEHHA can be available to respond to questions, and this will be open to the public. The goal is to make this understandable for everyone.

General Discussion and Q&A

- **What are the plans for heat illness prevention enforcement in 2013, especially in the construction industry?**

Plans for the 2013 heat season are being developed now. Last year, high heat began in April in some areas of the state, and the Division will need to prepare for that this year again. The Consultation Service will work with partners to ensure outreach sessions will be held throughout the state to disseminate heat illness prevention information. There will also be enforcement with a focus on agriculture, construction and landscaping from April through the end of September by both the District Offices and the DOSH inspectors with the Labor Enforcement Task Force (LETF). Feedback and suggestions on how we can further leverage our resources will be appreciated.

- **Will the year-end review from the Standards Board be available?**

It will be published, along with the agenda of our next meeting, on the website.

- **Can you please provide details on heat-related fatalities and illnesses in the construction industry? Which areas of construction would need more focus than others, i.e. highway or residential, etc.?**

It is difficult to distinguish this. One fatality was during a residential remodel. Another fatality was on a public project. Geographical area plays a big factor in heat-related fatalities. Lack of supervisor knowledge to recognize the onset of heat illness, a lack of a written program, and other missing elements of the heat standard, played important roles in the fatalities. Some of the 2012 inspections are not yet finalized. Once the final 2012 statistics are compiled, they will be provided.

- **Why does California have a lower percentage of serious violations than Federal OSHA? If the High Hazard Unit issues a higher rate of serious violations in**

manufacturing hazards, maybe there should be more focus on that throughout the Division.

The Federal OSHA and Cal/OSHA models for issuing Serious citations and the penalties associated with them are very different. Cal/OSHA is required to follow California law in prioritizing complaints for inspection over planned/programmed inspections. A significant number of Cal/OSHA inspections are triggered by complaints, and the likelihood of finding serious violations is not as great with complaints as in accident investigations, or planned inspections that the High Hazard Unit conducts. As part of our workload assessments, we review our rate of serious violations and are in discussion with Federal OSHA about this issue.

- **In multi-employer workplaces, will the \$5,000 penalty for failure to report an employee injury or illness be applied to both employers?**

The failure to report penalty applies to primary employer of the worker, not to the secondary employer.

- **Why can't Cal/OSHA inspectors be sent to OSHA Training Institute training (vetted by Fed/OSHA) that is received by the regulated public?**

External training and travel would be more costly to the Division than internal trainings. In many cases, our internal training program is better suited for our compliance and consultation field personnel.

- **What is the status on the report on prosecution required to be sent to the Legislature?**

A report was done last year and submitted to agency for calendar year 2011. The next report is due in March 2013 for calendar year 2012. It will be posted on the website. These reports contain information on the number of referrals for county District Attorney criminal prosecution that occurred during the preceding year.

- **With the restriction to three work sites for the VPP-Construction, is there an implied lack of trust on DOSH's part toward VPP participants?**

No. Cal/OSHA Consultation met with numerous stakeholders to discuss this change which reflects a resource issue for the Division, which cannot verify all sites of a VPP construction company throughout the state. This change is consistent with Fed OSHA's requirements for our VPP program.

Questions and Comments on the status of Lead Standards:

- **The Cal/OSHA Advisory Committee meeting on this was held a year ago, and there was agreement on the need for immediate action on medical removal protection (MRP). Why can't an interim rule be issued, based on what's already known for**

the action level without the OEHHA report until that recommendation can be made by the advisory committee?

The lead standards contain a number of measures that are inter-related. For example, requirements for blood lead testing are triggered by exposure above the action level (AL). If an employee has a high blood lead and is required to be medically removed, the employee must be assigned to work that is not above the AL. If the blood lead triggers are reduced, but the AL remains unchanged, temporary removal may not be effective in reducing the employee's blood lead level. There is considerable agreement that the permissible exposure limit, action level, and level for medical removal protection need to be lowered to protect the health of employees, but we need the science-based recommendations to determine what the levels and actions need to be. An interim standard would still have to be scientifically justified, and an equal amount of effort would be needed in order to put an interim in place. We know now that blood levels down in the teens are not healthy, and we are trying to disseminate this information until we can recommend new limits. . This will require a massive outreach effort as many workers are not being protected by the current lead standard. The goal is to draw attention to the fact that what was previously accepted as "safe," is no longer acceptable.

- **What controls will be required in the standards?**

Substitutes for lead are the key control as more employers will look for a viable alternative instead of adopting more costly means of keeping airborne and blood lead levels low. All controls will need to be industry and process specific. CDPH and Cal/OSHA will collaborate on that, and we will be soliciting input from all stakeholders.

Any further comments and suggestions regarding lead or anything discussed today are greatly appreciated. Please let us know if there are any other topics that you would like covered for the next meeting or if there are other questions and issues that we should give more focus on.

Meeting adjourned at 12:35 p.m.