

CAL-OSHA ADVISORY  
COMMITTEE  
February 9, 2012



Department of Industrial Relations  
Christine Baker, Director

Division of Occupational Safety & Health

Ellen Widess, Chief

Chris Lee, Deputy Chief for Enforcement

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## Cal/OSHA ADVISORY COMMITTEE

**February 9, 2012, 10:00 am**

Oakland, California

Ellen Widess, Chief for the Division of Occupational Safety and Health (DOSH) welcomed Advisory Committee members and other attendees, and introduced David Shiraishi, DOSH's new Federal OSHA Regional Director, and Christine Baker, Director of the Department of Industrial Relations (DIR)..

Director Christine Baker's report:

- The Department is faced with difficult economic times. As Director, she and her team are finding ways to improve the delivery of services to the public. She commended Chief Widess for her approach to reorganization and consolidating of facilities and staffing.
- DIR is faced with ongoing retirements, which the Department is quickly trying to backfill. This presents an opportunity to reassign and retrain existing staff, as well as bring fresh new staff to the department.
- The first six month involved quite a bit of strategic planning, which guided DIR to do more outreach and education and more internal training to achieve more consistency. This will be an ongoing effort as new staff is brought in.
- Both DOSH and the Director's office are working on new targeting methodologies to better utilize resources. Some examples include:
  - DOSH is utilizing Division of Workers Compensation (DWC) data to improve targeting of high hazard industries.
  - Under Director Baker's leadership, the newly formed Labor Enforcement Task Force (LETF) (previously EEEEC) has brought together heads of the Division of Labor Standards Enforcement (DLSE), DOSH, Employment Development Department (EDD), Contractors State License Board (CSLB), Bureau of Automotive Repair, Alcohol Beverage Control, and the Board of Equalization to share information and data-bases, and plan for more coordinated enforcement and outreach efforts to address the underground economy. LETF is also partnering with the Department of Insurance and the Attorney General to increase the potential for criminal action in appropriate cases of labor law violations..
  - LETF will increase its effectiveness through cross-referrals and information sharing. The over 60 MOU's between various agencies are being reviewed, updated and consolidated to improve effectiveness of efforts.

- LETF's goal is to level the playing field for good employers by eliminating unfair business competition by employers in the underground economy who violate labor laws, avoid workers' compensation and taxes owed. Both Federal and State resources will be utilized to carry out this mission.
- Results of the coordinated LETF investigations will be shared at a later meeting.
- Most of DIRs current manual payments are going online.
- DIR is consolidating some functions for greater efficiency, including moving the injury and illness program from Division of Labor Statistics and Research (DLSR) to DOSH or DWC and moving prevailing wage determinations under an umbrella under Public Works of DLSE.
- DIR and the Division of Apprenticeship Standards (DAS) are forging partnerships with other agencies, such as Public Utilities Commissions (PUC), community colleges, to expand apprenticeship opportunities.
- DIR and DWC will soon be holding five town hall meetings across the state to hear from the public on workers' compensation reform. Details will follow.

## **DOSH REPORTS**

Chief Ellen Widess' report (includes report for Deborah Gold, Deputy Chief for Health, who was unable to attend:

Many positive developments since the last meeting, including:

- Filling the 68 positions DOSH was authorized to fill when the hiring freeze was lifted. Focus on filling the most critical vacancies first.
- Some long time vacancies now filled are Patrick Bell, Principal Safety Engineer for Research and Standards, and Patrick Corcoran, Coordinator of the Professional Development & Training Unit.
- New promotions at the regional and district manager level have occurred:
  - William Estakhri, Regional Manager for Region II;
  - Debra Lee, Acting Regional Manager for Region IV;
  - Efren Gomez, District Manager for new Bakersfield District Office;
  - Jon Weiss, District Manager for Sacramento District Office;
  - Ayman Shiblak, District Manager for San Bernardino District Office;
  - Abigail Fabricante, District Manager for Oakland District Office;
  - Compliance inspector positions have been filled in offices where they were most needed, including opening new office in Bakersfield that will serve Kern and San Luis Obispo Counties.
- Hiring experienced tower crane inspectors from the private sector

- Hiring within the Asbestos Unit.
  - Consultation Service has promoted Jim Lopes to Regional Manager, increased VPP staffing, and promoted new Area Managers to improve effectiveness.
  - DOSH will be filling positions in both Research and Standards Safety and Health Units to assist Headquarters with policy and rulemaking and provide technical expertise to field staff.
  - DOSH is hoping to augment the Medical Unit by hiring an additional doctor and nurse.
  - DOSH Legal Unit is filling attorney vacancies to meet the increased number of hearings resulting from new Administrative Law Judges hired by the Appeals Board.
  - The Public Safety Units (including Elevators, Pressure Vessel, and Rides and Tramways) are all modernizing with new computers and data systems to improve responsiveness of service.
  - Headquarters has reconstituted its Program Office for better data analysis and evaluation of the effectiveness of our programs.
- DOSH is seeing some revival in mining and tunneling projects statewide.
    - Successful collaboration between DOSH and the San Francisco Public Utilities Commission (PUC) to ensure worker protection in all phases of the multi-billion dollar Hetch Hetchy project, which involves tunneling through naturally occurring asbestos in the Calaveras Dam, in seismically dangerous areas in the New Irvington Tunnel, and under the Bay.
  - Retirements of some experienced staff leaves some critical gaps DOSH hopes to fill
  - Some consolidation of southern California offices, per the Governor's Executive Order, for cost savings and reallocation of staff where most needed.
  - DOSH and its Bureau of Investigations' referral of significant cases to district attorneys across the state. Examples include referral of UCLA lab worker's death to LA DA (case is ongoing); referral of cases to SF DA resulting in jail time for roofing company managers following worker death, and opening case involving death of young pregnant worker in printing press accident. -
  - **DOSH's Confined Space Emphasis Program for 2012:** new focus of both DOSH enforcement and consultation programs to prevent future worker death and serious injuries due to confined space hazards. DOSH had 7 deaths and additional serious injuries in different industries across the state in 2011. The most recent involved the death of two young workers and brothers, aged 16 and 22 at Community Recycling in Lamont. DOSH's approach will be comprehensive, using all resources, partnerships and media to achieve goal of 0 deaths from confined space hazards in 2012.

- Strong commitment of DOSH to deal with the underground economy. DOSH has strong team as part of LETF, working with CSLB, DLSE and EDD. Focus on agriculture, construction, garment industries, auto body shops, and considering other industries where labor abuses are occurring.
  - DOSH working closely with the CSLB to prevent fatalities and serious injuries in the construction industry, as well as occupational illnesses that aren't documented properly

## Research and Standards

*HEAC:* DOSH is ending its multi-year round of Health Expert Advisory Committee (HEAC) meetings by convening one more meeting (end of May) to summarize its progress, followed by another meeting to determine new priority substances that affect the most workers and that can make the most difference.

*PELs:* The Office of Administrative Law (OAL) recently approved the last four new Permissible Exposure Limits (PELs) – carbon disulfide, hydrogen fluoride, sulfuric acid and toluene.

*Lead Standard:* The Lead Advisory Committee met recently, and reviewed recommendations of the California Department of Public Health (CDPH) on revising blood-lead levels, medical removal protection levels, and trigger tasks. Still waiting for the Office of Environmental Health Hazard Assessment's (OEHHA) recommendation. DOSH will be reconvening another advisory group and will provide its own proposal on protective and feasible changes to the lead standard in general industry and construction.

*Safe Patient Handling Act* (AB 1136), now Labor Code 6403.5, became effective January 1 and applies to virtually all acute general care hospitals in CA. OAL determined that rulemaking was necessary to implement the Act that was not sufficiently specific.

DOSH convened a stakeholder meeting of over 120 participants in January, and will convene another meeting March 29 to get input for the regulation. Steve Smith and Bob Nakamura are taking the lead on this. DOSH hopes to get a proposed standard to the Standards Board by this summer. Dr. David Rempel of UCSF and UC Berkeley is advising DOSH on ergonomics issues and internal training related to safe patient handling.

DOSH has developed Interim Enforcement Implementation Guidelines and Frequently Asked Questions that are posted on the DOSH website. Until a regulation is adopted, DOSH field staff will be looking at acute general care hospital employers' Injury and Illness Prevention Programs for evaluation of safe patient handling hazards and identification of methods to control these hazards when responding to complaints.

*Agricultural Personnel Transport Vehicles:* DOSH working with agricultural and engineering experts from NIOSH, UC Davis Ag Center, Cal Poly, and others to identify the hazards to workers and the means of controlling them. DOSH will convene a stakeholder meeting in Modesto the last week of March to get broad input. An experimental variance for Grimmway Farms is under consideration.

- **Advisory Committee:** Chief Widess thanked everyone for their responses to the survey and will wait for additional responses. DOSH has reached out to all current members of Advisory Committee to gauge interest in continuing to serve, or suggest replacements. Advisory Committee recommended adding a representative from the agriculture sector. Some suggested having meetings throughout the State. However, due to travel and budgetary restraints, Advisory Committee meetings will be in Oakland, with continuing efforts to make meetings more accessible throughout the state.
- **Stakeholder meetings:** Chief Widess has continued to meet with more stakeholders. Future meetings scheduled with Mercer, AgSafe, Building Trades (in Northern and Southern California), CIHC, and others to be scheduled.
- **Legislative hearings:** Chief Widess will be testifying, along with Labor Commissioner Julie Su, on February 15<sup>th</sup> before the Assembly Labor Committee at a hearing entitled, "Confronting the Challenges of a Subcontracted Economy: The Experience of Warehouse Workers in the Logistics Industry as a Case Study." She will report on DOSH's experiences investigating safety and health hazards in the warehousing industry.

**Chris Lee, Deputy Chief for Enforcement:**

- Statistics available covering October through December 2010:
- DOSH inspections and violations
- DOSH on-site inspections and violations cited by reason
- DOSH on-site inspections and violations cited for major industry groups
- Improved communication and consistency in field enforcement
- Discussion of enforcement cases
- Federal Issues:
  - DOSH received its final award (\$27,400,000) from Fed/OSHA for the Cal/OSHA State Plan 23(g) grant for this year. Although this is the same as last year, the good news is that it was not reduced as anticipated.
  - Possibility of one-time excess Federal funds as other state programs may not be able to fully expend their awards. DOSH is looking at possible uses for such funds, including internal training, expanded bilingual outreach, and equipment purchases.

- Federal OSHA Region 9 begun its FY 2011 Federal annual monitoring of the Cal/OSHA program. DOSH will have an opportunity to review the draft report before it is submitted to the National Office.

**Jim Lopes: Consultation Service Report:**

- Consultation new staffing update:
  - Nick Gleiter, Area Manager, Oakland area office
  - Gene Glendenning, Area Manager, Fresno area office, in addition to coordinating the Consultation High Hazard Program
  - Mario Feletto, Area Manager, Sacramento area office and Research and Education Unit
- For Federal fiscal year (FFY) 2011, Consultation met or exceeded all its strategic goals related to on sites, outreach and strategic partnerships and is on course for the first quarter of FFY 2012 to meet or exceed this year's goals.
- Consultation statistics:
  - 82 partners in Voluntary Protection Program (VPP)
  - 20 partners in VPP Construction
  - 40 partners in Safety and Health Achievement Recognition Program (SHARP)
- Ongoing and Planned Outreach/Training for (FFY 2012):
  - Consultation has met with some of its partners regarding confined space and four train-the-trainer sessions for agricultural processors scheduled for April 2012. The partners include Western Agricultural Processors, AgSafe, Zenith Insurance and Boswell Farms.
  - Single training event scheduled with the Wine Industry Officers of Safety (WINOS) in St. Helena on February 15<sup>th</sup>.
  - Consultation met with State Compensation Insurance Fund (SCIF) for future mixed employer group Confined Space training sessions to be held throughout the state.
  - Preliminary meeting with Joint Powers Insurance Authority in Southern California for future training sessions for their 240 water districts throughout California.
  - Continuing with Heat Illness Prevention outreach, and met with representatives from Walter Clark and Associates (broker who insures only farm labor contractors (FLCs)) for train the trainer sessions throughout the State. Last year, Consultation trained 121 FLC owners and 584 of their supervisors. The majority of these events were in Spanish.

- Apprenticeship Construction Safety Training (various building trades) in collaboration with apprentices of the Associate General Contractors (AGC) program in San Diego who are working on California Public Works, Federal Davis-Bacon and private construction projects throughout California.

**Art Carter, Chairperson OSHA Appeals Board report:**

- Both Art Carter and Ed Lowry were confirmed by the Senate Rules Committee and subsequently by the full Senate on January 13<sup>th</sup>.
- The Appeals Board has filled one Industrial Relations Council position and three hearing officer positions. For the last two or three years, the Board has had one presiding law judge and one administrative law judge for all of Northern California. The new presiding law judge for Northern California is Martin Fassler,
- The Board will continue to be able to get out its Decisions After Reconsideration (DARs). Last year the Board issued twice as many as the previous year due to hard work of dedicated staff.
- The Board will now be able to hold hearings closer to the venue where the alleged violations occurred. Bakersfield is an area that will be holding hearings, as well as other locations.
- The Board hopes to repeat successful training session done in 2010 by presiding law judges and attended by Division inspectors, attorneys representing employers and unions, and other stakeholder groups. The next training would be available to stakeholders and held in three different cities.
- The Board will be looking at its policy on how they interpret the employer obligation to report serious injuries or fatalities
  - The Board was advised by OAL that the regulatory package from 2010 and 2011 was approved. The most important item was the manner in which the Board deals with any case that alleges a criminal violation or criminal wrong doing. The new regulation provides that when the Board is notified by the DOSH Bureau of Investigation (BOI) or any prosecuting authority that there is an active investigation, the Board will not proceed on any civil hearing for three years. Additionally, if the Board is subsequently notified that a charge has been filed, the Board will not proceed on any case until it receives notification that there has been a pleading or it's in process of settlement or it has been dismissed. Absent that filing and if the three year period expires, the Board on its own motion, or if requested, may consider expanding the time beyond the three year period. This is an option of the Board.
  - The new regulations also address continuances and timely responses from the Board. The obligation is now on the party requesting a continuance to ensure that all parties have been notified and they are in agreement.

- The Board will be processing a regulation on live video-conferencing of witness testimony and hearing proceedings. One of the elements will be that the requester must have a valid reason for requesting the video-conference and will assume the costs. Issues needing to be resolved include means of protecting the integrity of the process, quality of proceedings and how video conference may affect an ALJ to determine credibility.
- Abatement was discussed at the last Appeals Board Advisory meeting. There is a consensus that industries – including construction, agriculture and others that are very dynamic – need a regulation providing for rapid hearings because the abatement period is so short.
- Regarding the proposal dealing with expanded party status, the Board will be looking at who can participate, deceased worker's relatives, union representatives, and others who may have relevant information.

### **MARLEY HART, EXECUTIVE OFFICER, OSHA STANDARDS BOARD REPORT**

- On February 1, 2012, the Vehicle Exhaust Retrofit rulemaking was approved by OAL and will become effective on March 2, 2012. [Sections 1504, 1591, New Appendix A, 1597, 3363, 7016, and New Section 4925.1](#)
- The Airborne Contaminants package that was proposed by the Division last year is still at OAL. It was adopted by Board in January but no formal approval received from OAL, but it is expected by March 5<sup>th</sup>.
- The Standards Board made a commitment to have an advisory meeting on the Personnel Protective Equipment (PPE) – Duty to pay issue in the first quarter of 2012. The Board staff will convene an advisory committee meeting to discuss if it is appropriate to include exceptions for payment of PPE, and if so, to determine what the appropriate exceptions should be. The Board has had numerous people ask to be included in the proceedings. Board anticipates having meeting specifics by the end of February. Those who would like to receive information about the meeting should e-mail the Standards Board.
- The next Standards Board meeting is set for February 16<sup>th</sup> in Sacramento. The agenda is posted on the Board's website. The public hearing item is:
  - Ladderway Openings – Section 1621. This rulemaking was a Form 9 request from the Division.
- Petition File 526 from UNITE HERE International Union to address occupational hazards faced by housekeepers in the hotel and hospitality industry. This petition request will be evaluated.

- Copies of the Standards Board 2011 Year in Review were provided. The Boards activity was relatively consistent with previous years except for slightly fewer number of rulemakings noticed and adopted. Of the 17 rulemakings noticed for public hearing, 16 were initiated by the Standards Board staff and 1 was submitted by DOSH (airborne contaminants). Elevator variances still make up the largest number of the docketed variances.
- Copies of the Standards Board 2012 Proposed Rulemaking calendar were provided. This list includes only rulemakings that the engineering staff at the Board will undertake, not health proposals that may be submitted by DOSH for Board consideration and action. DOSH has provided their list of rulemaking projects that they intend to submit to the Board in 2012. Their list includes: first aid, lead, adult film industry disease prevention, airborne contaminants, hazard communication GHS update, respirators for emergency medical personnel and hotel housekeeping safety. They also plan to submit rulemaking for passenger tramway safety orders update, and tunnel safety orders update. No dates have been provided for any of the submittals.
- Due to budgetary constraints, the Board's travel is limited. In 2012, eight (8) monthly meetings will be held in Sacramento. January's meeting was in Oakland; the Board will be meeting in Costa Mesa in April; in San Diego in July; and in Burbank in October.

## **CONFINED SPACE SPECIAL EMPHASIS PROGRAM REPORT**

Garrett Brown, Senior Safety Engineer and Special Assistant to the Chief of DOSH reported the following:

- The Special Emphasis Program (SEP) has been initiated because of the spike in confined space deaths in 2011 – seven deaths compared to two each in 2010 and 2009. National statistics indicate that 60% of confined space deaths are would-be rescuers who enter the space to save a coworker without adequate training or equipment. Almost all of these deaths are preventable if employers follow the requirements of Title 8.
- The two biggest problems identified from past confined space inspections are: (1) employers do not recognize confined spaces and the hazards they present; and (2) employers do not have effective rescue plans – many simply intend to call “911”.
- The goal of SEP is zero confined space deaths in California in 2012. DOSH hopes to achieve this through a coordinated, comprehensive initiative by all units within DOSH to ensure employers identify confined spaces, and to ensure employers have effective programs, including effective, on-site rescue plans.
- The specifics of the SEP are as follows:

- All enforcement inspections during 2012 will include the identification of confined spaces and an evaluation of the employer's confined space programs and rescue plans, where confined spaces exist, in addition to the complaint issues or accident investigation that triggered the inspection. Available today is the January 31<sup>st</sup> protocol for conducting these inspections;
- All Consultation Service visits during 2012 will include the identification of confined spaces and an evaluation of the employer's confined space programs and rescue plans, where confined spaces exist. Available today is the January 31<sup>st</sup> protocol for conducting these inspections;
- A major outreach and public education effort is planned to inform as many employers and workers, and their organizations of the SEP and its components. Among the activities planned to date are:
  - A media event in Oakland on February 14<sup>th</sup> with the Oakland Fire Department and representatives of the employer and labor communities. A similar media event will occur in Los Angeles in March;
  - An hour-long webinar scheduled for February 23<sup>rd</sup> open to all interested members of the public;
  - An increased focus in the Consultation Service's ongoing work with employers, workers comp insurers, industry associations on confined spaces and the SEP;
  - An expanded outreach to labor and community-based worker organizations to inform them of confined spaces hazards and the SEP.
- DOSH wants to take advantage of work that has already been done on confined space hazards by other government agencies, such as the Occupational Health Branch of the California Department of Health (which just released a "Worker Fatality Alert" on one of the 2011 confined space fatalities) and the Labor Occupational Health Program at UC Berkeley (which just published an article in a professional journal on confined space rescues).
- DOSH would also like to partner with business and labor groups that have been active on this issue, including a confined space work group convened by the Phylmar Regulatory Roundtable, and the ongoing confined space work of the United Steel Workers unions in the state oil refineries.

During the discussion following the report:

- Michael Wilson of LOHP provided details on his just-published study in the February 2012 issue of the Journal of Occupational and Environmental Health.

- Elizabeth Treanor of the Phylmar Regulatory Roundtable reported on her organization's efforts to develop a self-assessment survey form for employers and to compile information of "good practices" with confined spaces.
- Chris Laszcz-Davis of the Environmental Quality Organization pointed out that there are a large number of unreported "near-misses" in confined spaces that do not result in injuries or deaths.
- Vince Lamaestra of the Pacific Maritime Association explained the confined space materials that maritime employers have developed and circulated among longshore workers, and offered to make these available to any interested parties.

Public Discussion

**ADJOURNMENT AND NEXT MEETING:**

The meeting adjourned at 12:20 p.m.

The next meeting is scheduled for 10:30 am on Thursday, June 7, 2012, in Room 1304 of the Oakland State Office Building, 1515 Clay Street, Oakland, CA.