

CAL-OSHA ADVISORY
COMMITTEE
MINUTES of MEETING
March 3, 2011



Department of Industrial Relations
Christine Baker, *Acting Director*

Division of Occupational Safety & Health

Ellen Widess, Chief

Chris Lee, *Deputy Chief* of Cal/OSHA Enforcement

Edward F. Callanan, *Assistant to the Chief*

(510) 286-7000

Cal/OSHA ADVISORY COMMITTEE
MINUTES OF MEETING – March 3, 2011
Department of Water and Power
111 North Hope Street-Conference Center Level “A”
Los Angeles, California

OPENING REMARKS

Chris Lee, Deputy Chief for Cal/OSHA Enforcement, called the meeting to order at 10:10 a.m. and expressed the regrets of Len Welsh, Chief of the Division of Occupational Safety and Health (DOSH), who was unable to attend. Mr. Lee announced that the next meeting of this committee would be held on May 5, 2011 in Fresno, at the Hugh Burns State Building, 2550 Mariposa Mall, Assembly Room, 1st Floor.

ADMINISTRATIVE/ENFORCEMENT REPORT

Mr. Lee reported the following administrative items:

1. The Division budget still has a state imposed hiring freeze. The total number of authorized positions for DOSH is 706.1, 625.7 are filled, leaving a vacancy of 80.4 or 11.4%.
2. Executive orders from the Governor’s Office call for a 50% reduction in the use of state vehicles, DOSH has approximately 200 such vehicles; another executive order requires a reduction of 50% in the use of state cell phones.
3. Currently Cal/OSHA has three district manager positions vacant, in addition to field personnel and clerical support staff.
 - Mr. Lee stated that he attended the quarterly meeting with Fed OSHA last week, where it was announced that the URS Corporation would be working with Fed OSHA and Cal/OSHA to put on a “Bay Area Safety Fest” at the end of this year or early 2012 and will feature seminars on training. Alan Traenkner, Special Assistant to the Chief of DOSH, will be working with URS on offering courses of particular interest to Cal/OSHA. This event will be free of charge and is expected to train between 750 and 1,000 people and will be open to the public. Information on this event will be widely distributed.
4. Region 9 of Fed OSHA has been charged with the responsibility of following up on the Enhanced Federal Annual Monitoring Evaluation Report (EFAME) that will be due in the national office by March 31.

DOSH has prepared and submitted material on our corrective action plan addressing some of the findings and recommendation of the formal report and the follow up report will relate to our response to the formal report. Some of the recommendations have already been implemented, others are in progress toward implementation and others

are under study based on the case files the Feds reviewed to make their recommendations. For instance, the question of more rapid response to complaints was discussed at a stakeholders meeting recently held in Sacramento to discuss this issue.

- Another of the EFAME findings found that Cal/OSHA was not “as effective as” the federal repeat violation policy. This will require more study, stakeholder involvement.
 - The final report of Fed/OSHA’s evaluation of all State Plan programs is expected to be released in mid-summer and should be on their website at that time.
 - Fed OSHA is also interested in complaint processing, fatalities, field personnel training and specifically fatalities relating to power transmission distribution.
 - Fed OSHA has expressed some concerns about the whistleblower investigations by the Department of Industrial Relations (DIR). Division of Labor Standards Enforcement (DLSE) where there appears to be a low merit rate (about 2%) as compared to the Federal rate (of approximately 23%). This issue will be discussed with the recently appointed Labor Commissioner, Julie Soo.
5. Mr. Lee discussed a case involving a Southern California firm, McGrath Contracting, involving a trenching fatality due to the lack of proper shoring, the trench collapsed. The Division issued several citations including a serious willful citation with proposed penalties totaling \$76,000. The case is now on appeal and if we are successful we will inform the State Contractors Licensing Board for their action which could result in the revoking of McGarth’s license.

Alan Traenkner, Special Assistant to the Chief reported on Cal/OSHA training aspects which are in full swing with several classes being offered on an accelerated basis, such as Legal Sufficiency, Interviewing Techniques, Inspection Techniques, etc. Some classes have attendance of fifty or more field personnel, but it has been suggested that future classes be limited to about 35 participants.

Up to this point, signing up for classes has been managed by the District Manager’s and Region staff, the training unit is now going over the rosters and assigning personnel to future classes so that everyone will complete the required courses. AB2774 has required changes not only in processing inspections, but it also places limits to who can testify at a hearing. For compliance officers to be recognized by the Appeal’s Board as experts they must be up to date on their Cal/OSHA training. We expect that all mandatory classes will have been taken by everyone by the end of September, but realistically we have set a deadline for December.

- Mr. Traenkner also announced that DOSH and the Ironworkers have developed a partnership to provide compliance officer training to DOSH staff on the hazards associated with working the iron. The course is being held at facilities provided by

- DOSH will soon be entering phase two of its training initiative; it is now in the planning stage to provide technical training on various hazards, such as electrical hazards, respiratory protection, noise, health sampling, etc. This training is scheduled to begin after July 1, 2011.

Jon Wroten, Staff Services Manager III reported the following:

- A. It is now expected that the new Information System, discussed at the last meeting will go into effect on May 30th, rather than the previous date of March. Fed OSHA has been providing us with training materials, manuals, guide and other assistance to help in our switch from the old, outdated IMIS system.
- B. At the request of the Committee at the last meeting, a website for the Cal/OSHA Advisory Committee has been established and can be reached at the DIR website, click on the Cal/OSHA tab, and on the left hand side, under links and you will find the first link is for the Cal/OSHA Advisory Committee which will take you to a new main page which describes the Advisory Committee and lists all the dates and locations for the remaining meetings for this year (2011). A second page lists the agendas for upcoming meetings and minutes of all meetings held in the past year (2010). All minutes are available in PDF format and limited access on word. It is our goal to place such information for past years (2008, 2009) on the site. Also, still available are special.
- C. Advisory Committee meetings that occurred for the rulemaking process, this information is now available on the main Cal/OSHA advisory page. (Sample pages are available from Mr. Wroten)

CONSULTATION SERVICE REPORT

Vicky Heza, Program Manager of the Consultation Service was unable to attend due to previously scheduled meetings and Dan Leiner, Area Manager for the San Fernando Valley, Santa Barbara and Ventura Counties, and NWLA area provided the following report:

1. The pocket guide has been revised (a green cover will replace the orange cover) and is available online at Consultation's website. The printed version is available in 8 1/2x 11 formats, and will remain so until software has been developed for the actual pocket size and funds are found for its publication. In addition, when the software is developed the service will make CD's available to companies who wish to print the

2. Consultation is also working on an e-tool for ATD, which has been going through internal review and several revisions have been made and it will be sent to the State Department of Public Health for further review and comments, as well as the State Association of Occupational Health Nurses for their input. The Consultation Service would be pleased to send it to other organizations or individuals who request the opportunity to review and comment. It was stated that there are broader implications in the document and requested that a copy be sent to all members of the Cal/OSHA Advisory Committee. Mr. Leiner noted that Deborah Gold of Cal/OSHA's research staff was the principal originator of the document.
3. Mr. Leiner stated that Consultation, in partnership with the State Compensation Insurance Fund, will be presenting 20 seminars this summer and fall dealing with Heat Illness and the high heat procedure requirements. The seminars will also provide information on AB2774.
4. It was noted that the Consultation Service is subject to the hiring freeze and have been unable to fill several vacant positions which has resulted in the delayed publication of several of our documents.
 - A. Currently the staff is focusing its priorities on such items as the High Hazard list of companies with elevated modification ratings in construction and agriculture industries.

RESEARCH & STANDARDS SAFETY REPORT

Joel Foss, Acting Principal Safety Engineer, reported the following regarding Safety Standards. There were two issues covered:

- 1) Diesel engine shut-off devices in the oilfields. On February 8, an advisory committee was held in Sacramento to consider a petition proposing changes to the Petroleum Safety Orders, which would require automatic shut-off devices for all diesel equipment used around oil wells during drilling and production. Diesel engines are a worrisome source of ignition in the oilfields, because if enveloped in flammable gases or vapors, they race and cannot be shut off- until they backfire and ignite those gases or vapors. In 2009, an advisory committee considered a similar petition to require the same automatic shut-off devices for diesel equipment in refineries, not oil wells. That advisory committee was adamantly opposed to the petition, and rulemaking was suspended. The advisory committee on February 8, however, did reach consensus to require shut-off devices within 50 feet of an open well bore. This was a compromise, because the original petition had proposed a 100-foot perimeter around the well bore, and would have required the devices around oil wells that were capped as well as open well bores. But these compromises are reasonable ones, made to address practical concerns brought up by industry reps in the advisory committee. A 50-foot perimeter will effectively require all well service trucks and equipment with diesel engines to be fitted with shut-off devices, because they are used directly next to the wellbore. Division personnel consider this rulemaking to be a real milestone, because

- 2) Portable fall protection anchor carts. The Research & Standards Safety Unit continues to evaluate portable fall protection carts used in the roofing industry and elsewhere. Portable anchors are a relatively new item, and are not explicitly covered by current regulations. Fixed anchors permanently attached to the roof are required for window cleaning and building maintenance operations, but the Construction Safety Orders do not clearly prohibit portable such anchors. The R&SD Safety Unit is looking for guidance on writing a Form 9 with clear guidelines. The ANSI Z359 standards committees on fall protection equipment have developed design parameters for ballasted-type carts, where an engineer can determine what weight will withstand what kind of shock load that would be transmitted in a fall event. But the Z359 committees thus far have not developed standards for claw-type carts, which depend on a jagged anchor to engage with the roof membrane when the cart is pulled toward the roof edge. The R&SD Safety Unit is withholding judgment on claw-type carts until such standards become available- rumored to be sometime in 2011.

RESEARCH & STANDARDS HEALTH REPORT

Steve Smith, Principal Engineer, Health Standards Unit, reported the following regarding health standards:

1. An update to the permissible exposure limits (PEL) for carbon disulfide, hydrogen fluoride, sulfuric acid and toluene in section 5155 is proposed for public hearing in Oakland on April 21st. Additional updates are being considered on an ongoing basis by the Health Expert Advisory Committee (HEAC) that last met on December 14th to discuss arsine, gallium arsenide, n-propanol and other priority list substances. The next [HEAC](#) meeting is scheduled for March 23rd and the contact person for the PEL update process is [Bob Barish](#) at 510-286-7001.
2. On February 23rd in Oakland an advisory committee considered updates to the occupational lead standards regarding medical surveillance and related proposed changes. The proposal was developed in response to a recommendation by the Western Occupational and Environmental Medical Association (WOEMA) to revise the occupational lead sections 5198 and 1532.1 medical surveillance requirements to be consistent with recommendations of the 2009 California Department of Public Health (CDPH) guidelines. [Bob Nakamura](#) at 510-286-7005 is the contact person and the agenda for the meeting, draft proposal and related handouts can be found on our website at <http://www.dir.ca.gov/dosh/DoshReg/5198Meetings.htm>.
3. In response to a petition (# 513) granted by the standards board, an advisory committee held several meetings in Los Angeles and Oakland last year to consider [amending Section 5193](#) regarding bloodborne pathogens to specifically address health hazards in the adult film industry. The committee met on February 8th in Oakland and is expected to meet next in June. The contact person for this advisory committee is [Deborah Gold](#) at 510-286-7006.

4. Cal/OSHA will continue its outreach campaign to prevent heat illness in outdoor places of work such as construction and agriculture. Heat training classes and related training materials will be posted on the [heat website](#). [Amalia Neidhardt](#) is the contact person for heat related information at 916-574-2993.

LEGAL UNIT REPORT

Due to last minute urgent business, no member of the Legal Unit was available to make a presentation at this meeting. Recent developments in cases will be discussed at the next meeting.

APPEALS BOARD REPORT

Candice Traeger, Chairwoman of the Cal/OSHA Appeals Board reported the following:

1. The Board is still ahead of its backlog.
 - The numbers of appeals coming in have been really low and have been declining the last couple of years due to the economy.
 - 2008, was a high year, there were 951 appeals filed in the first two months, this year, for the same period the number is 543.
 - The number of appeals resolved from a high of 1182 in 2007, while the number this year has declined to 548 for the same two month period.
2. The number of hearings has been reduced to two a day and the settlement rate is the highest it has ever been, 90%; and only 3% has gone to hearing in the last two months.
3. The Board had set a goal of issuing decisions after reconsideration (DAR) within three years from the date of Board action. However, with mandated reduced staff the goal is now four years.
 - Last year there were 17 DAR's for the full year while this year there has been 18 for the first two months.
4. The Board, also affected by the hiring freeze, has a vacant attorney position and attendant support staff, substantially affecting the effort to deal with increasing petitions for reconsideration.
 - Cases going to court requiring oral arguments are affected by the above cited vacancies.
5. Administrative Law Judge Vacancies exist in Northern California including one that was to have been assigned to the Abatement project. Thus, it now appears that the

appeals process rate will take up to 12 months rather than the current 10 months, thus changing the criteria for determining a backlog.

6. Progress is being made in the area of the regulatory process, EG. Board is resubmitting the package that was rejected by the prior administration, and it is anticipated that the present administration will look more favorable on the submittal.
 - A new rulemaking package dealing with party status will soon be submitted and a favorable reception is anticipated.
7. The Board has determined to establish a “hotline” that will accept anonymous complaints to overcome a perception that criticizing a judge would result in some form of retaliation.
 - However, the Board currently has a policy of allowing parties to object to the assignment of a particular judge with or without cause.
8. The Board has indicated interest in pilot testing of a video project that would allow hearings to be conducted in this format. The Board has established a working group to deal with the logistics utilizing excellent equipment already available to the Board and which is compatible with other existing technologies. Other State agencies, now using this method such as the Franchise Tax Board have offered the use of their facilities. However, there are technical problems that must be explored before acceptance of this method occurs such as; authenticity of witnesses who wish to testify when there is no one else in the room to help identify the witness; another potential problem occurs if there is a technical breakdown of equipment and no technician is available to resolve the problem.

In addition, a potential problem relates to the introduction of large exhibits into evidence.

STANDARDS BOARD REPORT

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

1. The next Standards Board meeting is scheduled for March 17, 2011 in Van Nuys. Information about that meeting is posted on the Boards website. Please note that there will be NO public hearing items on the agenda.
 - April public hearing agenda items include: Section 5155, Airborne contaminants; Section 6755 and 6799.1, chain or wire rope access equipment (Jacobs’s ladder).
2. Board staff continues to work on the Federal regulation for cranes and derricks. At the January Standards Board meeting it was determined that such standards be placed in the Construction Safety orders, rather than the General Industry Safety Orders. Board staff is preparing revised documents and anticipates that it should be ready for Board adoption at the April 21, 2011 meeting. There will be no further public comment but the new wording will be available to the public prior to the hearing and Federal OSHA

- Board staff is preparing a 15 day notice relating to the modification for the Diesel retrofit rulemaking proposal that was heard during the February 17, 2011 public hearing.
- At the February 17 meeting, the Board will be considering two petitions:
 1. Petition 518, submitted by a retired judge, Laura Hammers seeking to limit resident work hours for hospitals, residence and intern work hours to twelve hour days, and limited hours a week. This was also a matter submitted to Federal OSHA but the California request was more restricted. The petition has been considered by both DOSH and Board staff and will be considered by the Board at the March 17, 2011 meeting. It was noted by a Committee Member this would appear to be a wage and hour issue rather than one appropriate for the Standards Board.
 2. The Board will also consider petition 519, pertaining to Section 3400 (c), relating to requirements for first aid supplies.
 3. At the same meeting, March 17, the Board will be provided with an update on petition 513 which pertains to the adult film industry. The presentation will be by Deborah Gold who will discuss the status of proposed regulations after a series of some five meetings or so of an advisory committee, studying controversial issues pertaining to the industry.
 4. A copy of the Boards "Calendar of Activities" for March 2011 is enclosed with these minutes.

OPEN DISCUSSION

1. Linda Delp, a Committee Member, urged that Cal/OSHA do whatever is necessary to keep the issues of Occupational Safety and Health before the public despite the budget considerations. It was noted that news releases related to Workers Memorial Day and/or such items as the Triangle Shirt Waist fire commemoration (100 years ago in New York) have been issued.
 2. Malcolm Driggs, a Committee Member, stated that California has been recognized as a leader in the field of Occupational Safety and Health for decades and more publicity should be made available to the general public to make citizens aware of the remarkable achievements of Cal/OSHA.
- Mr. Lee stated that Len Welsh and John Duncan, Director of the Department of Industrial Relations endeavored to stress the positive aspects of Cal/OSHA in their response to the Federal audit.

3. Elizabeth Thomas, assistant professor of nursing for Occupational Nursing in Environmental Health at UCLA, stated that the NIOSH funding for Occupational nurse trainees, industrial hygienists, and occupational physicians is now on the “chopping block”. This funding is the only source for training professionals in this field. Ms. Thomas urged everyone to contact their Congressional representatives to advise them that the proposed cuts are totally unacceptable.
4. There is a website for those seeking to “start a business” with all regulations including Cal/OSHA’s is on website calgold.ca.gov.
5. Elizabeth Treanor, a Member of this Committee called the attention of all attendees to a bill introduced into the House of Representatives in Washington, HR571- “Insuring Worker Safety Act”, which provides a process for review of State programs which would allow States to request a formal hearing of Federal OSHA evaluation of such plans. She recommended that staff and other interested parties read the bill.

ADJOURNMENT AND NEXT MEETING:

The meeting adjourned at 11:55 a.m. The next meeting will be held as follows:

DATE: May 5, 2011

TIME: **10:00 a.m.**

PLACE: Hugh Burns State Building
2550 Mariposa Mall
Assembly Room, 1st Floor
Fresno, CA 93721