

CAL-OSHA ADVISORY
COMMITTEE
MINUTES of MEETING
January 6, 2011



Department of Industrial Relations
John Duncan, *Director*

Division of Occupational Safety & Health

Len Welsh, 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 – January 6, 2011
Elihu Harris State Building
1515 Clay Street, Suite 1304
Oakland, California

OPENING REMARKS

Len Welsh, Chief of the Division of Occupational Safety and Health (DOSH), called the meeting to order at 10:00a.m. Mr. Welsh introduced two new members to this advisory committee, John Messing of the OSHA Training Center at Las Posita Community College and Vince Lamaestra of the Pacific Maritime Association (PMA). It was noted that Mr. Messing has substantial experience in the field of civil construction, project management, and safety, in addition to a professional safety certificate from the University of California at San Diego.

Mr. Lamaestra has been with PMA for fifteen years and represented Longshoremen for thirty years and has a laudable approach to Labor/Management relations as he advocates a sense of partnership and the necessity of working together. Mr. Welsh noted that Mr. Lamaestra has attended many ad hoc rulemaking meetings and has been a valuable contributor at such meetings. Mr. Welsh welcomed both new members to the committee and expressed his appreciation for their willingness to volunteer their time and effort to advance the mission of the committee.

Mr. Welsh thanked all of the committee members for their obvious commitment to the goal of advancing safety and health regulations and policies for the protection of all workers in the State of California. The Division has always welcomed input from committee members. Consideration will be given to forming Ad hoc Committees to task members on various issues. If there are those who wish to seek membership on the committee it was suggested that they forward a letter requesting to be considered for such membership.

It is DOSH's aim to maintain a balance in the membership of labor, management and experts from academia and the professions. It was urged that committee members give their views on Cal/OSHA publications, etc. It was announced that the next meeting of this committee will be held on March 3, 2011 at the Department of Water and Power in the Level "A" Conference Center, 111 North Hope Street, starting at 10am.

ADMINISTRATIVE REPORT

DOSH along with all other State agencies are awaiting the presentation of the new Governor's budget due to be released next week. DOSH is no longer dependent on General Fund money and should not be affected by restrictions placed on those who depend on the General Fund. However, up to now we have been subjected to such restrictions such as furlough days, a hiring freeze, and reductions on vehicle use.

DOSH has submitted three separate Budget Change Proposals, currently pending, for new Federal monies from OSHA to support the creation of a new district office, and

revitalize our medical and training units, with the addition of 32 personnel positions. Federal OSHA requires a dollar for dollar match of funds and California has an overmatch of State funds and should be able to advance our monetary requests. Federal OSHA has allocated the funds to us but we don't have State authority to hire but we will be pursuing this matter with the new administration, including the newly appointed Secretary of Labor and Workforce Development, Marty Morgenstern.

Mr. Welsh referred to the audit of Cal/OSHA by Federal OSHA (EFAME) that was recently released and raised one issue relating to Cal/OSHA not responding, at times, to complaints of hazardous conditions in a timely fashion. It was stated that Cal/OSHA has an obligation under the State Labor Code to respond to formal complaints, that is, one from an employee, employee representative, prosecutor or law enforcement professional, alleging a serious hazard within three calendar days; 14 working days for alleged non-serious hazards with the option of responding by letter. The Division is most interested in evaluating a policy change to look at the nature of the complaint to determine the seriousness of the hazard alleged, and respond on that basis, and not base the response solely on who made the complaint.

This policy change would result in a higher yield of discovering and dealing with serious hazards. In addition we are pursuing training for field dispatch personnel to gain an insight into interviewing techniques that can more adequately gain relevant information from the complainant as to the seriousness of the alleged situation. Managers' professional judgment must be able to prioritize more accurately in order to field personnel out in time to prevent employees' exposure to injury or death.

Mr. Welsh asked the committee if they felt that a special meeting be held to discuss this issue, and the response was generally positive, so it was stated that such a meeting might be arranged over the next four weeks, and we will develop statistics for discussion on this and related matters. In response to a question, Mr. Welsh stated that DOSH has had a productive meeting on EFAME with Van Howell of Federal OSHA assigned to their Oakland office where several issues were discussed, including management effectiveness, hiring of top management who are aware of improving the processing of citations more promptly and accurately etc., and the realization that we are making progress in these areas. A mutual spirit of cooperation has been evidenced in our conversations and we will advise the committee of future developments regarding EFAME discussions and progress reports.

DOSH is making progress in its effort to issue citations on a more timely basis in advance of the statute of limitations (six months) and to make sure that fading memories of the incident do not occur before an appeal. Jon Wroten is doing a great job in helping us to reach this goal. It was noted that Federal OSHA will be preparing a progress report in EFAME for our review and discussion.

Mr. Welsh noted that AB2774 was a complete reboot for Cal/OSHA as it relates to the definition of a "serious violation". Labor Code 6432 now establishes statutory mandates which includes the requirement that we provide written notice to employers with regard to each serious violation we intend to issue and to give the employer fifteen days to respond before such issuance. This procedure is expected to increase dialogue between the inspector, his/her district manager and the employer prior to the issuing of the citation.

Presently, the inspector is expected to discuss such citations with the employer with the aim of achieving abatement promptly. An employer should be aware that no matter what the ultimate disposition of the citation, it will remain on their record forever.

The new procedure should allow the inspector to be more accurate in his/her issuance of the citation and will be one that holds up on appeal. This bill also provides that our field personnel are to be given proper recognition of expertise based on their work product rather than have a medical expert come in to testify as to the probability of an injury occurring under the circumstances cited. This does not prohibit the use of a medical expert by any of the parties in a hearing but does require our safety engineer and industrial hygienists to be able to adequately justify citations by their own knowledge, experience, and skill.

Mr. Welsh asked Amy Martin, Chief Counsel for DOSH to discuss the present circumstances of various pending cases and the status of developing the new form to be given to employers when a serious violation may be issued. Ms. Martin noted that the bill took effect on January 1, 2011; and DOSH made an effort to close as many inspections as possible by the end of December 2010. For those cases not closed by that date, we will be required to use the new form. The form is a single page, one side will advise the employer of the regulation we believe was violated and the actual description of what the inspector felt was wrong. On the other side of the form will be space for the employer to tell their view of the circumstances (they may use as many sheets of paper as necessary) to detail their view. Some employers may feel that this information might be giving away their case, but they should be made aware that the incident will remain forever on the record no matter what the ultimate disposition of the case may be. It is the Division's goal to ascertain the truth, whether we are right or wrong, based on both the inspector's observation and the employer's response. We should know up front whether or not a case is accurate and sustainable.

Obviously both the Appeals Board and the Standards Board are affected by other issues contained in the bill and Ms. Martin noted that the Cal/OSHA Reporter's webinar to be held on January 26, 2011 at 10:00a.m., may help interested parties to better understand the nuances of the new law. She also noted that a Policy and Procedures Directive on this issue is about 99% completed and she would be pleased if anyone has question on this matter to call or e-mail her; in addition, committee suggestions and comments will be welcomed. It was noted that as of this date (January 6, 2011) the form was not yet on the web but would be soon, and the form will be sent to all on this Advisory Committee's mailing list.

It was urged that there be a section of the DOSH website devoted to such matters for all interested parties for educational and informational purpose. A Cal/OSHA Advisory Committee section on our website is a distinct possibility.

Jon Wroten, Staff Services Manager III, reported the following:

1. The old IMIS system will soon be replaced by OIS-OSHA Information System. The present IMIS system is composed of old hardware and software. The new federal system is web-based which allows field personnel to click on an icon and log-on from any system by an authorized user. The new system allows instant availability and it

permits tracking and trends. It also improves management capabilities and use of information.

2. Heat illness cases for 2010 had one confirmed heat fatality (at Gallo Farms).
 - a) Three other cases of fatality are still being determined.
 - b) There have been 20 confirmed heat illnesses and one fatality in manufacturing.
3. Heat illnesses by industry are: agriculture at 21% and construction at 10%.
4. Currently under investigation are 8 additional non-fatal cases.
5. All 4 fatalities have occurred outdoors.
6. The enclosed pie chart provides info relating to both fatalities and nonfatal accidents. Mr. Wroten discussed the contents of the enclosed charts.

Alan Traenkner, Special Assistant to the Chief of DOSH reported the following:

As noted earlier, AB2774 is a major change that will require significant training related primarily to the identification of serious hazards, but also to several other related matters such as mandatory training. Immediate training on implementing AB2774 will be covered in a webinar. One aspect of AB2774 allows a Cal/OSHA compliance person to testify if they are current on their mandatory training. Federal OSHA has enumerated six courses that every compliance officer must take to be efficient in the performance of their duties, they include: orientation to enforcement, accident investigation, health standards, safety standards, interviewing techniques and inspection techniques and legal aspects. Cal/OSHA has adopted the same mandatory training. These classes cover how to question and how listen to get the type of information necessary to collect sustainable evidence. Many of our personnel have already taken the legal aspects course led by Amy Martin and over the next few months everyone will have taken this training. I feel this is the most important class that everyone needs to be able to prepare a sustainable violation.

In addition to the above courses, we are providing training on hazards recognition related to such areas as steel erection, fork lift training, personnel hoists, and we have several specialty classes planned for the future. Training was provided to staff in June related to heat inspections for those involved in heat sweeps. It should be noted that most courses will be required not only for inspectors, but also for managers, and research and standards personnel. All of the mandatory classes are being provided on an accelerated basis.

ENFORCEMENT REPORT

Chris Lee, Deputy Chief of Cal OSHA Enforcement, gave the following report:

1. Called the attention of the committee members to three handouts relating to statistics. A copy of each of these handouts is enclosed with these minutes.
2. Cal OSHA Mining and Tunneling personnel have been working on the Caldecott Tunnel inspecting the project from Orinda to Oakland every 60 days. The project is 3,400 feet in length, and is a grassy area with Methane gas. A total of 7 crafts are on-site. This project received half of its total funding from the American Recovery and Reinvestment Act program.
3. In response to a question, it was noted that Cal/OSHA had been regularly inspecting the site at Devil's Slide near Pacifica. Ventilation has been an issue for some time but they are being addressed. The contractor reports to us and DOSH has found out about problems before anyone was harmed.
4. Mr. Lee referred to the a reliable Container Corporation case where a McKinley rotary die cutting machine was not completely working, so they were using a forklift for the opening and closing of the printing press machine. The operator of the forklift was not informed that an employee had entered the machine which resulted in fatal injuries to the employee. Cal/OSHA assessed a citation for \$140,000.
5. DOSH issued 2 citations based on a complaint from an employee of National Steel & Ship building company relating to suspended overhead loads while employees were under a 500 ton ship module. The citation was cited as willful. A second citation related to insufficient staffing of riggers on a crane which led to an accident resulting in 2 willful citations.
6. Two (2) citations were issued to Mission Fragrances and Flavors Company due to employee exposure to diacetyl. The company was cited based on regulation 342 for failure to notify us and failure to follow the diacetyl regulation.
7. DOSH is working on a program relating to significant history employers who have received 3 inspections within the last 5 years with one or more of the following categories: a serious injury, a serious illness, a single fatality, and/or a serious willful, repeat or failure-to-abate violation. Employers meeting these criteria may be subjected to multiple site locations (if they have more than one site), and possibly heavier sanctions consistent with our P&P. Once this policy has been approved by the Chief, it will be implemented and posted on our website. Federal OSHA promulgated their Severe Violator Enforcement Program, and our efforts in this regard are a response to the federal program change and the need here in California to be able to focus on those employers with a significant history.

The annual DOSH report SOAR required by Federal government which lists our accomplishments and issues on a yearly basis and provides a balanced evaluation for the EFAME report is available on our website.

CONSULTATION SERVICE REPORT

Vicky Heza, Program Manager for Consultation Service, gave the following report:

1. The Service appreciates the feedback we have received concerning various publications.
 - A. The Construction Pocket Guide has been delayed due to change in the ladder standards, but should be published soon, it may be previewed on our website for a limited time.
 - B. The Consultation Unit had set a goal in 2010 of 900 on-site inspections and/or intervention and actually did 1,300 which included 400 small subcontractor sites. This SHARP program gave us entry to the small contractor segment of the construction industry; the goal for High Hazard Industry was set 1,025, but we did over 1,200. The goal in the agricultural industry was 200 onsite and we did 559 part of all onsite involves heat illness prevention.

We had projected to enroll 20 agricultural employers in the Golden Gate program, but we actually enrolled 24. Our outreach program to educate Hispanic workers exceeded our goal of 500 visits (total of 923 visits) with a bi-lingual training component. In our partnership programs our goal was to enroll 300 and we exceeded that by 30. SHARP program enrolled 20 new employers and renewed 8 existing participants; renewed 6 employers, 2 of which were in the construction industry.

The VPP sites are continuing to grow and we are meeting with several members to develop the best practices and mechanisms to enroll more VPP subs to other recognition programs. The service has been working with a group of large construction companies to achieve illness and injury reduction with the goal of no fatalities and it is shown that such companies are very motivated to achieve that goal.

RESEARCH & STANDARDS SAFETY REPORT

Joel Foss, Acting Principal Safety Engineer, reported on the Research and Standards Safety Unit Activity.

Joel Foss, the Acting Principal Safety Engineer for the Research & Standards Development Safety Unit, discussed a fall protection product called the AES Raptor fall protection cart. These carts provide an anchorage for fall arrest equipment, which in a fall event plunges a claw-type anchor into the roof deck. A fall protection equipment vendor has sold a number of these carts here in California, and has been asked by a customer if the use of the carts complies with Cal/OSHA safety regulations.

At the last Cal/OSHA Advisory Committee, Foss reported on the Raptor product, and explained that the vendor told him that the carts were already in use throughout the state. Foss then asked the Committee members and the audience if anyone has seen them in use here in California.

Foss updated the Committee about research on the Raptor, and discussions about the fall protection carts with the directorate of the ANSI Z359.6 standard, which governs design standards for all fall protection equipment. This committee does not have specific requirements for the design of the claw-type carts, which makes it difficult to evaluate these devices (there are at least three brands of claw-type carts on the market- Raptor, Grizzly and Viper).

However, the Division intends to use more general design requirements in the ANSI Z359.6 standard to make an evaluation. Division staff is slated to visit one employer who has purchased a number of Raptor units, and will make a more complete report after that visit.

When asked by an Advisory Committee member if the Division's safety concerns also extended to ballast-type fall protection anchorage carts, like the Miller 'Edge', Foss explained that these were easier to evaluate than the claw-type carts, since they are manufactured by a number of companies, and meet specific requirements in the ANSI Z359.6 standard.

RESEARCH & STANDARDS HEALTH REPORT

Steve Smith, Principal Engineer, Research & Standards Health Unit, provided the following report:

1. The [section 3395 heat illness prevention proposal](#) was adopted by the Standards Board in August and went into effect November 4th. Also last summer, the Department launched a new outreach campaign of heat training classes and related training materials posted on the Department's [heat website](#). [Amalia Neidhardt](#) is the contact person for heat related information at 916-574-2993.
2. Anew [Section 5197](#), Diacetyl went into effect on December 2nd. The proposal was developed with the assistance of the 2007 advisory meetings on [Diacetyl](#) and the findings of an ongoing targeted inspection program focused on the flavorings industry. [Mike Horowitz](#) at 510-286-7009 is the contact person for this proposal and related activities the Division is conducting in the flavorings industry.
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 next meeting is scheduled for February 8th in Oakland and the contact person for this advisory committee is [Deborah Gold](#) at 510-286-7006.
4. The section [5155](#) Health Expert Advisory Committee (HEAC) 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.

LEGAL UNIT REPORT

Amy Martin, Chief Counsel for the Division, reported the following:

1. As the year comes to a close Cal OSHA legal is reviewing case activity as well as BOI activities. Final numbers are not available at this time, but BOI continues to improve its relationship with District Attorneys around the state. Several new counties were represented at the most recent CDAA conference (a yearly conference attended by both Cal OSHA representatives and district attorneys) and Cal OSHA looks forward to greater participation in the coming year. However, Cal OSHA's BOI unit is still understaffed by three investigators. This, combined with the ongoing furloughs has decreased the number of referrals made by the unit. In the coming year BOI will attempt to be more selective in the cases referred.

2. Notable cases:

Mascon Inc.: In this matter an ALJ upheld a serious accident related citation under the outdoor heat standard. The matter is currently before the Appeals Board for reconsideration. Because this is the first serious accident related citation upheld under the heat standard, the Division believes the resulting Decision After Reconsideration will likely be the subject of a Writ no matter which party prevails.

United Assoc. Local Union 246 v. Occupational Safety and Appeals Board (Harris construction): The matter remains on appeal.

Patient Zero v. California Division of Industrial relations et al: This matter concerns the Division's attempt to obtain the work history of an adult film performer who tested positive for HIV. The performer at issue, Patient Zero has seeks an injunction preventing the Division from obtaining that information based on personal privacy. Both parties have filed for summary judgment. In addition, a male adult film actor has tested positive. The Division is currently investigating that incident. Stakeholder meetings concerning possible amendments to the bloodborne pathogens standard in relation to adult film are ongoing.

3. AB 2774 concerning the classification of serious citations: The Division believes that the provisions of the bill requiring the Division to solicit relevant information from employers prior to the issuance of a serious citation will lead to greater communications between the Division and the regulated community. In addition, the bill substantially changes the way that serious citations will be litigated. All employers are urged to carefully review the language in AB 2774.

APPEALS BOARD REPORT

Candice Traeger, Chair, Cal/OSHA Appeals Board asked Marley Hart, Executive Officer of the Standards Board, to give the following report on her behalf. Through November the Appeals Board has docketed 3,721 appeals and had decided 3,809 appeals and issued 18 decisions after reconsideration.

STANDARDS BOARD REPORT

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

John MacLeod, Chairman of the Board was re-appointed as a member of the Board with a term expiring in 2012. Bill Jackson, also a member of the Board has been re-appointed to a term expiring in 2014.

The Board will next hold its business meeting in San Diego in 2 weeks. Items on their agenda are set forth in the January 2011 calendar of activities.

1. The cranes and derricks standards will be discussed in January because it is subject to a Horcher requirement to make them as effective as a federal standard, as a result this issue has been subject to only a 30 day public comment, rather than the usual 45 days, the reason for the period is twofold.

A.

- B. We have an obligation to have the standard in place in six months thus we are committed to meeting the time frame and expect it to be adopted in February.

The January changes to the standards are only to bring us up to a level that is at least as effective as the Federal regulations; however we may have further rulemaking changes so we are looking for comments from the public. Our staff has been working with stakeholders and others on this complex standard.

New regulation language pertaining to the retrofit of vehicles is now published and public comments on this subject will be accepted until February 17, 2011. The California Air Resources Board has recently amended their original standards, which extended dates which should provide a lot more avenues to explore and which reduce the number of vehicles to be retrofitted. It may be noted that we have revised our standard to provide clearer guidance to the regulated community.

Deborah Gold, of the Cal/OSHA staff will make a presentation to the Standards Board in March, one year post adoption of the petition regarding the adult film industry. The 2011 rulemaking calendar will be presented to the Board at the January Board meeting and will be available online. A copy of the calendar of activities for November is enclosed with these minutes.

ADJOURNMENT AND NEXT MEETING:

The meeting adjourned at 12:55p.m. The next meeting of the Committee will be as follows:

DATE: March 3, 2011 (**Thursday**)

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

PLACE: Department of Water and Power
111 North Hope Street, Conference Center "Level A"
Los Angeles, California

