

CAL-OSHA ADVISORY  
COMMITTEE  
MINUTES of MEETING  
*November 3, 2011*



Department of Industrial Relations  
Christine Baker, *Director*

Division of Occupational Safety & Health  
Ellen Widess, *Chief*

Chris Lee, *Deputy Chief* of Cal/OSHA Enforcement  
Deborah Gold, *Deputy Chief* of Health and Technical Services  
(510) 286-7000

**Cal/OSHA Advisory Committee Meeting**  
**November 3, 2011**  
**Highlights of Reports**

**OPENING REMARKS**

Christine Baker, Acting Director for the Department of Industrial Relations (DIR), opened the meeting by welcoming committee members, representatives from DLSE, DAS, DWC, and DOSH, and members of the public.

- DIR's goals are to bring labor and management together for better and safer jobs. DIR agencies will coordinate their work for better data sharing, more resources, training of staff (current and new). DIR's overall goal is to ensure quality of enforcement.
- Division is focusing on smaller businesses with high hazards to reduce hazards by providing information and training, as well as targeted enforcement.
- Labor Enforcement Task Force to begin operations in January 2012, with DIR directing operations targeting the underground economy.
- Due to budget constraints, there will be limited new hiring in DIR, according to priorities, and after the first round, we will be carefully and cautiously looking at budget limitations and available resources.

**OPENING REMARKS AND DOSH REPORT**

Ellen Widess, Chief, DOSH reported:

- Delighted to be part of larger team and its efficiency, resources, benefits and collaboration with DIR agencies.
- Very happy with valuable feedback from internal "Listening Tour," conducted by Garrett Brown and Peter Riley, on what works and does not work from staff.
- Administration is working on interviewing process of new hires. Priorities will be in the Legal and Medical units, as well as an increase of CSHO's throughout the state.
- One major critical need is to improve our ability to gather data for targeting inspections. We are doing outreach with other divisions in DIR and holding valuable meetings with stakeholders.
- There are major changes in how the new joint Labor Enforcement Task Force, including ongoing DOSH participation, will function. These changes include a more nimble approach to calendaring inspections, which industries and establishments to target, and how to establish a "level playing field" for responsible employers.
- There is a new economy in California with a much larger use of temporary agencies, such as in the warehouse industry, where labor violations, including health and safety hazards, are very common. We have found that workers are coming forth to report these violations, despite their concerns about immigration issues.
- DOSH has undertaken a major initiative related to mental hospitals run by the Department of Mental Health (DMH). There is a crisis of workplace violence in these facilities. DIR is responding to this crisis through both ongoing inspections where complaints have been received, and collaboration with DMH at the top level, initiated by the two Secretaries, LWDA Secretary Marty Morgenstern and DMH Secretary Diane Dooley

- Heat illness prevention continues to be a major priority of the Division.
  - Despite limitations, the Division made a major effort this year, involving all the Division's field offices in both state-wide and local inspections.
  - Inspection statistics indicate the highest rate of compliance to date with Title 8, Section 3395 – 84% of inspections. This was achieved by a combination of enforcement, educational outreach, and consultation, which have been conducted for several years now. We continue to investigate fatalities and illnesses. A notable feature of this year's inspections were that they were more comprehensive, evaluating other agriculture safety hazards beyond just water and shade.
- Deputy Chief for Health Deborah Gold will lead the Public Safety units (Elevator, Pressure Vessel, Amusement Rides and Tramways).
- DOSH HQ has been more responsive and supportive in an effort to improve staff morale. New training programs for inspectors, managers and administrative staff – some admin staff are receiving their first ever training from DOSH – are underway.
- Work is in progress to reinforce the impact of enforcement efforts.
  - Division continues to devote the bulk of its efforts to the most egregious violators;
  - We are using data of from DWC;
  - We are trying to use terrible accidents like Baxter Bioscience and Community Recycling and Resource Recovery, to maximize the deterrent effect of enforcement. The Division has issued willful citations. An Order Prohibiting Use was issued for the drainage system at CRRR to prevent further deaths or injuries.
  - In the Community Recycling and Resource Recovery case, we are working closely with other state agencies, local authorities, the state legislature, and others. I spoke at a meeting of the Kern County Board of Supervisors.
- In terms of legislative action this year, there is now a two year bill on PEL's, and other bills related to the Appeals Board before the Legislature. One bill did pass – AB-1136, the safe patient lifting bill. We may have an advisory committee for rule making for the patient handling bill. Also we are undertaking a contract with UC Berkeley to work on rule-making and internal training for compliance officers.
- With regard to the Advisory Committee itself, my thanks to Gail Bateson and Judy Freeman for helping with online survey. There was a small response to the survey; as some of them did not receive it, but we will send it out again. Division is open to ideas for changes in the committee's functioning to make it as useful as possible for all involved.

## **CAL/OSHA ENFORCEMENT REPORT**

Christopher Lee, Deputy Chief for Enforcement, reported:

- There are three significant cases which will have press releases, they are as follows:
  - Baxter, Los Angeles district office issued 4 willful serious citations of which 3 were accident related and proposed penalties total over \$370K.
  - Sutton Pastiche of Terra Bella, Fresno district office issued 3 willful serious accident related citations and proposed penalties total over \$210K.
  - All American Window Cleaning, Santa Ana district office issued 2 willful serious citations and proposed penalties total over \$135K
- We would like to recognize Fed/OSHA's Jose Benavidez who is present today.

- New interests and programs from Fed OSHA: they are conducting a new evaluation of whistleblower protections in California, which are the responsibility of DLSE; they have issued new materials and guidance on workplace violence inspections; and they have replaced the 1986 guidelines on pyrotechnics.
- Funding issues:
  - Enforcement received one-time money from Fed OSHA (\$700,000) for purchases of equipment and training;
  - Consultation also receive \$100,000 in one-time Federal money for equipment and training;
  - The base award is \$27.4 million – the same as last year;
  - Federal Budget: we all know about the difficult budget talks with Congress, which will have an unknown effect on Fed OSHA's budget and its support for state plans;
  - There are new Fed OSHA Area Directors in San Diego and Oakland. The Oakland office has the responsibility to monitor our state plan.
- Heat illness inspections have targeted agriculture, construction, landscaping and other outdoor activities. There have been two types of inspections – local "heat wave" inspections based on weather conditions, and then the traditional "travel sweeps" throughout the state. We have seen the highest rate of compliance, up from 36 % to 84%, since the heat special emphasis program began
- Major outreach efforts have included working with migrant worker communities and Binational health care organizations; Consultation Service staff have also partnered with SCIF to reach their clients.
- Michael Wilson, director the Labor Occupational Health Program at UC Berkeley, reported that a study of confined rescue responses that he was involved will be published in February 2012. The study found that over 50% of surveyed employers stated their primary confined space rescue plan that consisted of calling "9-1-1" and expecting the local fire department to perform the rescue. The accompanying survey of local fire departments in the study indicated that their response time to retrieve people from confined spaces ranged between 45 and 175 minutes, well beyond the four-minute period when workers can be pulled alive out of confined spaces.

### **CAL/OSHA CONSULTATION PROGRAM REPORT**

Vicky Heza, Program Manager of the Consultation Program, reported the following:

- Consultation has completed the Spanish translation of the Trenching Safety Fact Sheet and IIPP for High Hazard Employers. Both are available on the web. It is completed and now there is a Bilingual translation on web. We the Construction Pocket Guide is in progress.
- Publication unit priorities are new and updated regulations, and needs as identified by Consultation area offices.
- CAL/OSHA info.com" website is closed. Information is now available on the DIR website. The site is very interactive and contains different forms, including a downloadable Log 300 in Excel format.
- Consultation "offer" letters track employer's high ex-mod. Approximately 500 letters have been issued to industries such as construction, sugar and confectionery, dairy, meat, etc.

### **RESEARCH AND HEALTH STANDARDS REPORT**

Steve Smith, Principal Safety Engineer reported on the following:

- A proposed 15-day notice will be sent to the board this month for the proposed section 5155, permissible exposure limits (PEL) for carbon disulfide, hydrogen fluoride, sulfuric acid and toluene head at the April 21<sup>st</sup> board meeting. Additional updates are being considered on an ongoing basis by the Health Expert Advisory Committee (HEAC) that will meet on December 8<sup>th</sup>.
- A new Title 8 section is being developed regarding AB 1136 safe patient lifting that would bring down the new labor code requirements and become effective January 1<sup>st</sup>. A follow up advisory committee will be scheduled later next year to discuss any clarification or revisions needed to the new Title 8 standard.
- Earlier this year, 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 section 5198 and 1532.1 medical surveillance requirements to be consistent with recommendations of the 2009 California Department of Public Health (CDPH) guidelines. CDPH is suggesting further updates to the rest of lead standards and DOSH plans to schedule a second advisory meeting early next year.
- 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 the bloodborne pathogens regulation to specifically address health hazards in the adult film industry. The committee last met in June and a proposal is expected to be sent to the Board next year.
- The national American Industrial Hygiene Association (AIHA) recently announced that they will stop putting out new WEELs.

## RESEARCH AND SAFETY STANDARDS REPORT

Patrick Bell, Acting Principal Engineer reported the following:

- DOSH staff participated in an Advisory Committee on Construction Crane Standards, and put new regulations in Construction Safety Orders.
- Advisory committee will be held November 29<sup>th</sup> – 30 on use of All Terrain Vehicles in employment settings. Subject areas in the proposal include: use of head protection, ROPS, seat belts, and training.
- DOSH is taking a serious look at the safety of farm personnel transportation in California agriculture. DOSH has heard about the desire to increase use personnel transport vehicles and concerns about their safety. DOSH is getting input from Agricultural Safety and engineering experts in academia (UC Davis, Ag center, Cal Poly), government (NIOSH/ Fed OSHA), and DOSH senior safety staff. Goal is to thoroughly research all safety issues, existing standards, and all alternative transportation modalities, to ensure the safety of workers being transported in all vehicles used in agriculture. DOSH will be convening a stakeholder meeting after reviewing the advice we receive from these experts and will welcome the input of all stakeholders in this advisory process to help us reach a sensible and protective solution.
- Fed OSHA is advancing slowly on residential fall protection. DOSH has not received any comment on existing rules and policies, nor is DOSH anticipating any instruction to change current regulations (six feet rule). If Fed OSHA issues instructions requiring modification of regulations, DOSH would expect reasonable time to permit OSHSB to convene an Advisory Committee to ensure necessary industry, labor and public input.
- Many wind turbine generator tower access ladders have less than minimum required space on the climbing side of the ladder. Tower section flanges project into the climbing space. DOSH will not require relocation of ladders in existing towers, but will require installation of deflector plates above and below tower flanges. Owners will be instructed to seek a variance for the existing non-conforming installations. DOSH will notify Wind Turbine Generator manufacturers directly, or via

American Wind Energy Association, of the need to make corrections for minimum required clearance for all new towers after some date to be established.

- Questions were raised about the Crane Advisory Committee.

## **CAL/OSHA STANDARDS BOARD REPORT**

Marley Hart, Executive Officer, Standards Board, informed:

- Since the July 7<sup>th</sup> Cal/OSHA advisory committee meeting, eight (8) rulemaking proposals have been adopted by the Standards Board and all have become effective, except one that is still in review at OAL.
- Board issued third 15-day notice for the Off-Road Diesel Retrofit rulemaking proposal. Comments are due November 21, 2011. Board anticipates this proposal will be on the December 15, 2011 Board agenda for adoption.
- There was no Board motion at the October 20<sup>th</sup> Board meeting to adopt the proposed rulemaking for Personal Protective Equipment – Duty to Pay. Instead Board members requested that Board staff 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 exception should be. The OAL has been notified that board is not proceeding with the proposed rule as noticed on December 3, 2010.
- The next Standards Board meeting is set for November 17<sup>th</sup> in Costa Mesa. Information will be posted on Board's website this Friday. The items for public hearing were shared.
- Currently preparing 2012 rulemaking calendar. A complete list of rulemaking proposals being considered will be presented to the Standards Board at either the December or January meeting.
- The 2012 meeting schedule is nearly final. Meetings will be held the third Thursday every month. Because of budget constraints, most meetings will be held in Sacramento, with one being held in Oakland, San Diego, Burbank and Costa Mesa.
- Brief discussion held about board members with expired terms.

## **CAL/OSHA APPEALS BOARD REPORT**

Art Carter, Chairperson of the Cal/OSHA Appeals Board reported the following:

- Candace Traeger's current term expires on January 15, 2012.
- Manuel Melgoza is retired and the Board has appointed Martin Fassler as Presiding Judge.
- Judge Barbara French is retiring December 30, 2011, after 18 years.
- The Board is hiring additional Administrative Law Judges, with three currently authorized for hiring. The Board has received 100 applications for the positions.
- The Board expects to hear the first appeal cases involving AB 2774 in December 2011 or January 2012.
- Today is the last day for comments on the regulation package of rule changes. No comments have been received during the 15-day comment period.
- The Board is unable to continue the expedited appeal pilot project due to lack of resources.
- Board policy is that if BOI or a District Attorney request a stay for the entire criminal statute period (as much as three years), then no hearing will be held.
- There are some technical problems for pilot project on taking hearing testimony by video conference call equipment, but the project is expected to begin in January or February 2012.
- The Board's customer service survey was adopted two weeks and will be on-line soon.
- The Board has a 24-hour hotline for complaints regarding the behavior of ALJs, and the number is 916-274-5760. No complaints have been received to date.

**ADJOURNMENT AND NEXT MEETING**

Meeting adjourned. The next meeting will be held as follows:

Date: February 9, 2012

Place: Elihu M. Harris State Building  
1515 Clay Street  
Oakland, CA