

Cal/OSHA Advisory Committee Meeting
October 4, 2012
Oakland, California

Report by Ellen Widess, Chief of Cal/OSHA

To provide greater access to Advisory Committee members and other interested parties who could not attend in person, Cal/OSHA provided a video teleconference link to enable stakeholders and representatives in Southern California to take part in the Advisory Committee meeting. This is a first in Cal/OSHA history, as we increase our efforts to reach all interested stakeholders.

DIR Report:

Christine Baker, Director of the Department of Industrial Relations (DIR), was not able to attend the meeting. Chief Widess reported on several Department developments:

- There is a renewed effort to ensure efficiency of DIR's internal systems and facilities to reduce state expenses as much as possible. The new ACES penalty collection system will result in higher rates of collected penalties for all DIR agencies. The Los Angeles state building is being reorganized to compact office space and accommodates several agencies that were in private spaces. Cal/OSHA's District, Legal and Bureau of Investigation offices will be affected. The recently approved Workers' Compensation reform is expected to save \$1 billion dollars in employer costs and will provide an additional \$700 million in benefits to workers. DIR is focusing its efforts on improved targeted enforcement to enable Cal/OSHA and other agencies to use their resources most effectively.

Cal/OSHA Report by Chief Ellen Widess:

- Cal/OSHA resources are being used as strategically and efficiently as possible. There have been no new hires since the last Advisory Committee meeting in June due to budget constraints. The Division will use Federal one-time money in 2012 for training to increase field staff's skills and effectiveness.
- Our strategic goal is to create a sustainable culture of safety in all California workplaces. Cal/OSHA cannot be everywhere and it is the responsibility of employers to ensure safe and healthful workplaces. They are in the best position to know and control hazards. Given the Labor Code's mandate that Cal/OSHA give priority to accident and complaint investigations, Cal/OSHA remains primarily a complaint and accident driven agency. The Division continues to meet with employer organizations, labor and worker advocates throughout

California to enable us to target our resources in the most effective manner possible, and looks forward to forging new partnerships to maximize worker protection in all industries.

- **2012 Heat Illness Prevention:**

There will be a report on Cal/OSHA's heat illness prevention program later in the meeting, but there are a few details to highlight. The Division's annual effort on preventing heat illness began this year in April, and inspections regarding heat-related illnesses are still being conducted, especially with the recent spikes in temperature throughout the state. We have noted increased compliance this year, in part due to the effectiveness of broader education and outreach efforts.

- Process Safety Management (PSM) has attracted increased attention, in light the Chevron Refinery fire that occurred on August 6, 2012, in Richmond. Because Cal/OSHA and other regulatory agencies have on-going investigations, specific details of the inspections cannot be provided.

- (1) Cal/OSHA has three investigations underway at Chevron's Richmond refinery regarding: (1) cause of the fire, (2) the refinery's leak repair procedures, and (3) an investigation of a Chevron subcontractor whose workers were put at risk on the day of the incident;

- (2) Cal/OSHA opened another inspection of Chevron's El Segundo refinery, which has a crude unit and piping similar to those at the Richmond refinery;

- (3) Cal/OSHA has met with sister agencies, state and local, to coordinate efforts to protect workers as well as environmental and community health. The Governor's Office has brought relevant agencies together to ensure that there is more data sharing, more communication of enforcement history in the state's refineries. The Labor Agencies, DIR Director Baker, and Chief Widess are participating in the Interagency Working Group, working to improve refinery safety and agency coordination.

- There was a recent ammonia-related death of a Fresno winery worker in a facility that is also covered by the Process Safety Management standard. This tragedy emphasizes the need for proactive steps to ensure worker safety in similar facilities. Cal/OSHA will be issuing a Hazard Alert about ammonia hazards, especially geared for California's wine industry. Thanks to the Consultation Program for developing this alert and working with the industry.
- Yesterday, there was a confined space death at a Bakersfield co-generation energy facility – the first worker death in a confined space this year. In January 2012, Cal/OSHA launched a special emphasis program to prevent such deaths. The Division has devoted substantial

resources prioritizing this hazard in enforcement inspections, and increasing outreach and education with employees and labor organizations.

- **Agricultural Safety:**

- (1) The Division continues to gather worker safety data as part of an experimental variance issued to Grimmway Farms for the transportation of farm workers in fields and on farm roads. The data will provide key information needed by the Division to evaluate worker safety related to the use of tractor-mounted or tractor-pulled transport platforms.

- (2) Night work in agriculture: The Division has begun to evaluate work hazards associated with night time farm work is also being evaluated, including low illumination, working with and around machinery, trips and falls, snakes and other hazards. To address changing agricultural work practices in California, Cal/OSHA will be working with growers, farm workers and advocates, and academic institutions to ensure that this night work is being done safely.

- **Workplace Violence:**

Progress is being made towards reducing workplace violence in the state's mental hospitals, where the Division has ongoing inspections. New legislation (AB 2399) requires state mental hospitals to implement IPPs that address workplace violence. The Division is working collaboratively with the Department of State Hospitals on a comprehensive approach to preventing workplace violence in the state's mental hospitals.

- **Repetitive Motion Injuries:**

The Division is addressing repetitive motion hazards, injuries and best practices in the hotels and hospitals:

- (1) Repetitive motion injuries suffered by hotel housekeepers greatly affect work productivity and employers' workers compensation costs. At the request of the Standards Board, the Division will hold an advisory committee meeting on October 23rd, 2012, to gather information on the nature and scope of housekeeper repetitive motion injuries, what control measures and training are currently being conducted, and whether specific regulation is needed.

- (2) Cal/OSHA is developing regulations to implement recently enacted legislation (AB 1136) on Safe Patient Handling. The Division is enforcing the new law through Title 8, Section 3203, the Injury and Illness Prevention Program, until specific regulations are adopted by the Standards Board.

- Labor Enforcement Task Force (LETF) is a coordinated effort led by DIR, between Cal/OSHA, Division of Labor Standards Enforcement (DLSE), Contractors' State Licensing Board (CSLB), Employment Development Department (EDD), and the Board of Equalization (BOE) to curb labor law violations by irresponsible employers in the underground economy. DIR's Renee Bacchini is coordinating this effort. Target industries for LETF this year are agriculture, construction, restaurants, garment, and auto body shops. Statistics from the 2012 joint inspections to date indicate that construction has the highest number of violations, with agriculture second. Cal/OSHA inspectors on the LETF teams have issued a significant number of citations. More information on LETF will be provided at the next Advisory Committee meeting.
- Cal/OSHA is working closely with the Retaliation Unit of the Division of Labor Standards Enforcement (DLSE) to effectively refer all worker complaints about illegal employer retaliation and non-compliance with Labor laws. More than 90 labor law complaints have been forward to DLSE since May 2012 with about 30 of these related to employer retaliation against workers for reporting health and safety issues, and the others relating to possible wage and hour and workers' compensation violations.

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

- There are four new district managers in Concord, Foster City, West Covina, and the High Hazard South in Santa Ana. Their names and contact information are posted on the Cal/OSHA website.
- Each district and regional office now has an email address to improve public access to our offices. With these dedicated inboxes, all messages will be received and responded to promptly.
- Acting Deputy Chief Gherga has visited many of the district offices to ensure consistent policies and enforcement, and to hear about the needs of field offices.
- Fed OSHA Grant: Cal/OSHA received \$28 million for its enforcement program this year. Cal/OSHA completed its responses to the Federal FY 2011 FAME evaluation, and DIR is now coordinating the responses and corrective action plans from both Cal/OSHA and DLSE. The text of the FFY 2011 FAME report is now posted on the Federal OSHA website.
- High Profiles Inspections:
 - There have been several inspections of warehouses in the Inland Empire in which citations were issued, and several other inspections are still open. Joint liability of both warehouses and their staffing agencies is being considered in these cases;

- Citations have been issued to five hospitals for safe patient handling violations under the new law. There are also ongoing investigations in other hospital facilities. The citations have been issued under Section 3203 since we do not yet have a Title 8 regulation specific to these hazards. Headquarters is reviewing these inspections and citations to ensure consistency throughout the state;
- Cal/OSHA and Fed OSHA have collaborated in an investigation of the death of a lab worker who contracted meningitis while working on a project for the Veterans' Administration in San Francisco.
- There have been several tree trimming accidents resulting in fatalities, involving electrocutions and falls from heights. This is a cause for concern, and the Division is exploring how to reduce these injuries. A new regulation on tree trimming will become effective later this month.
- The Division and California Rural Legal Assistance Foundation conducted three joint workshops this summer, one of which was also attended by representatives of the United Farm Workers Union. The cross-trainings were very productive in exchanging information about Cal/OSHA policies, procedures, and enforcement, and in learning about farm worker populations, especially indigenous workers from Mexico.

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

- Vicky Heza introduced Jim Lopes, Regional Manager of Consultation, based in the Fresno office, and thanked him for his invaluable contributions.
- To date, there have been 50 formal seminars on heat illness prevention, and there were many more informal onsite seminars at workplaces throughout the state. There also have been 34 formal seminars on confined space hazards. In response to the recent fatality at a co-generation plant in Bakersfield, Consultation has been in touch with the employer association and hopes to conduct additional seminars with co-generation power plant operators.
- In response to a new Fed OSHA program focusing on nursing homes and residential care, Consultation launched a pilot headed by Kelly Howard in San Diego, which will eventually go statewide. Twenty-two employers were sent "offer letters" to be included in the pilot program. Kelly also has developed a checklist tool for consultants to use as they conduct onsite inspections. This tool is a good indication of the issues that Consultation will be checking in its inspections.

- The Consultation Service is developing a comprehensive training plan for Consultation staff.
- Following a recent winery fatality, a Hazard Alert on Anhydrous Ammonia was issued. It will be posted in English and Spanish on the website. Consultation has also reached out to the winery industry to ensure awareness of this workplace hazard.
- The Consultation Program is working with a coalition developed by DIR, including Small Business California, other business groups, and the Labor Occupational Health Program at UC Berkeley to develop training modules for small employers in specific industries on developing and implementing effective IPPs. The coalition hopes the materials and workshops will enable small employers to develop IPPs that will be helpful to their specific industries.

Cal/OSHA Standards Board Report by Marley Hart, Executive Officer

- Three standards were approved by the Office of Administrative Law (OAL) and changes will be effective October 25th (tree trimming) and November 1st (cranes and woodworking).
- Globally Harmonized Systems (GHS) rulemaking has been noticed for the November 15th public meeting.
- The written report from the Standards Board sent out prior to this meeting provides additional details on the 2013 rulemaking agenda.

Cal/OSHA Research & Standards Report by Steve Smith, Principal Safety Engineer

- Health Unit: Three major items: (1) hazards in the hotel and hospitality industry, (2) safe patient handling, and (3) development of Globally Harmonized System (GHS) changes to the Hazard Communication standard:
 - There will be an advisory committee meeting on hazards, injuries, and best practices housekeeping in the hotel and hospitality industry on October 23, 2012. Senior Safety Engineer Amalia Neidhardt is the lead staff person for the Division;
 - There were two advisory committee meetings earlier this year on Safe Patient Handling regulations to implementing AB 1136. A new draft of the proposal was sent out yesterday, incorporating comments from the last meeting. The Division hopes to submit a draft to the Standards Board later this year. Comments to the

new draft can be sent to Bob Nakamura, the lead staff person on this issue, to bnakamura@dir.ca.gov and (510) 286-7005;

- An initial package of the GHS changes to the Hazard Communication standard includes primarily Federal OSHA language changes. The goal is to send this to the Standards Board for the November meeting. A follow-up proposal, and additional rulemaking, is anticipated in early 2013. One or two rules, in addition to the one going the November Standards Board meeting, are possible.
- Patrick Bell and his senior safety staff are working on three items: updating Petroleum and Gas Well Drilling regulations; identifying differences between Federal and California Fall Protection/Prevention rules; and Fired and Unfired Vessel Safety Orders throughout Title 8. The Safety Unit is also reviewing six variances.
- Additional details are available in the handouts sent out prior to the meeting.

Cal/OSHA Appeals Board Report by Ed Lowry, Member

- The newest member of the Board, Judi Freyman (formerly on the Cal/OSHA Advisory Committee), has attended two Appeals Board meetings to date. Lowry has been on board since April 2011.
- The Appeals Board has reduced its case processing time from docketing to hearing by five months, from 16 months in 2008 to 11 months in 2012. Currently, there is no backlog of appeals.
- The Board now has eight Administrative Law Judges (ALJs), with an additional judge on loan from another agency.
- As of August, the number of pending Decisions After Reconsideration (DARs) are down from 89 in April 2011 to 54 in August 2012, and decisions have been steadily coming out. The Board has issued 63 DARs since January 2012.
- The Appeals Board held a hearing on a proposed regulatory packet, and is reviewing all written and oral comments from interested parties.
- The Appeals Board also has an advisory committee, but there is no scheduled meeting in late 2012. An advisory committee meeting may be scheduled for early 2013.

Cal/OSHA's 2012 Heat Illness Prevention Campaign by William Krycia, Ag Safety Coordinator

- Cal/OSHA's 2012 Heat Special Emphasis Program policy has been implemented throughout the state to ensure that all workers in California are protected in all outdoor industries. All Cal/OSHA field staff from DLSE (who often accompanies Cal/OSHA) has been trained on the head standard and policy.
- While employers' compliance with the heat standard is increasing, the Division has continued to issue citations, particularly in agriculture and construction, for lack of written programs, training, and access to water and shade, and emergency procedures.
- The 2012 Heat Campaign included coordinated statewide investigations involving multiple teams throughout the state. All District Offices sent out inspectors during local heat waves. Staff from DLSE accompanied Cal/OSHA investigators during many inspections. In addition to heat illness regulations, other violations were cited, including IIPP, field sanitation, unshored trenching, and others.
- Outreach efforts:
 - There was extensive outreach to many outdoor industries with multimedia publicity and expanded train-the-trainer workshops.
 - The Division utilized a new bilingual outreach team, consisting of retired annuitants and bilingual health coordinators who provided information to a wide spectrum of organizations with Spanish-speaking and limited English-speaking workers. They also worked with Spanish-speaking and limited English-speaking employers.
 - The Division conducted a webinar for the renewed Heat Illness Prevention Network and held many meetings with agricultural and construction and landscaping employers to promote enforcement and increase compliance.
- See handout for more detailed information on the 2012 Heat Special Emphasis Program.

Ellen Widess, CAL/OSHA Chief

- Federal OSHA money has been continued at 2011 funding levels via the Congress' Continuing Resolution in place. The Division's funding from federal MSHA may be reduced due to federal cuts in MSHA funding. This would have serious impact on the Division's Mining and Tunneling Training Program. There are new mining projects in

California, and major tunneling projects underway, in addition to the San Francisco Hetch Hetchy Water Delivery Project.

- The Occupational Safety and Health (OSH) Fund is up for renewal this summer. That funding is essential to maintaining Cal/OSHA's capacity for effective enforcement, consultation, and outreach to reduce workers' injuries, illnesses, and fatalities and promote safe and healthful workplaces.

General Discussion and Q&A

- **Update on the Permissible Exposure Limits (PELs) for airborne contaminants?**

The Division will convene new HEAC and FAC committees, and is seeking new members. Bob Barish is the lead staff person on this issue. The Division is awaiting word from the CA Department of Public Health (CDPH) on their recommendations for new PEL and action level for lead exposure.

- **Given the challenges on resource constraints and budgets, how can professional associations and individual professionals help the Division?**

The Division actively encourages involvement and input of safety and health professionals on all our advisory committees and rulemaking.

- **How many new PELs have been advanced to the Standards Board?**

The status of PEL's is on Cal/OSHA's website. They include: Hydrogen fluoride, Toluene, Carbon disulfide, Sulfuric acid, Ethyl benzene, Hydrogen chloride, Naphthalene, and n-Methyl pyrrolidone.

- **Any changes in the advisory committee on PELs?**

CDPH will now provide toxicological reports on substances under consideration. Two-pagers will be put together as a beginning framework for discussions by the HEAC advisory committee. Advisory committee members can also submit articles and studies for review. With the added toxicology support and expertise from new committee members, the Division hopes to make good progress in the coming year.

- **(from Southern California) Any new legislation and policies employers should be aware of while going through the Appeals Board Process?**

There was no legislation passed relating to enforcement policies this year. The Division is most concerned about cases where abatement has not occurred. The Appeals Board website has the most updated information about appeals, new rules, etc.

- **Reflections on AB 2774?**

Chief Counsel, Amy Martin: There have been no decisions yet by the Appeals Board on cases so there is no Board interpretation of AB 2774 procedures yet. Without a definitive Decision After Reconsideration (DAR) yet from the Board, there is no precedential ruling yet. There haven't been any major issues of compliance with AB 2774 procedures to the Board yet, so we are waiting to hear what the Appeals Board thinks and whether AB 2774 has had the overall effect intended.

- **Concern about the change in the Form 1BY related to dropping the specific Title 8 section to be cited.**

Chief Counsel, Amy Martin: The statute does not require the Division to cite a specific Title 8 Section, and so far there have been no cases before the Board on this specific issue. Sending the Division a response to the Form 1BY is not required, and there have been no specific appeals on this issue either. We are aware that some employers feel that not having the section numbers on the Form 1BY makes their response more difficult. For the Division, there are several reasons why staff believe the section number is not required and not good policy.

- **More information on the tree trimming fatalities – did these involve trimming palm trees or landscaping?**

More detailed information will be provided.

- **Concern about Consultation expending more resources into development on an IIPP model for restaurants and small businesses when IIPP regulations have been in effect for 22 years.**

This is an important new effort. Consultation will assist DIR and LOHP by providing for outreach mailing lists, and helping publicize the availability of the materials. The training will be done by LOHP at UC Berkeley. Having been approached by small businesses to get help with IPPs, the Division feels this project will fill an important need for small employers. This is a pilot effort to see if this model works well in one industry (e.g., restaurants), and if it is helpful, it could be replicated with other industries.

- **If a small business has less than ten employees, do they need an IIPP?**

Yes.

- **Update on the First Aid standard, and when can we expect a report on lead from CDPH?**

The Division plans to finalize the recommended First Aid standard this year. Mike Horowitz is in charge of this project. The CDPH Occupational Health Branch (OHB) has been waiting for the Office of Environmental Health Hazard Assessment (OEHHA)'s determination of a new PEL for lead. The Division will then need to review OEHHA's model. The Division believes it is best to have a complete regulatory package for lead rather than address issues like medical removal in a piecemeal fashion.

- **More details on heat violations.**

The Division will produce a 2012 Heat Illness Prevention Report. Cal/OSHA staff (Amalia Neidhardt) will be presenting on a panel at the annual meeting of American Public Health Association in San Francisco on October 31st.

- **Indoor heat concerns from ILWU:**

The Division has been citing IIPP (Section 3203) for indoor heat violations and will be considering the effectiveness of Section 3203 for indoor heat and whether an indoor heat standard is warranted to provide more specific responsibilities of employers and greater protection for workers.

- **Consistency of enforcement of heat standard.**

The Division has not had any calls about inconsistent enforcement of the heat standard this summer. To establish a uniform policy, the Division conducted three sets of trainings this year at the beginning of heat season with field inspectors, team leaders, and all managers. This has also been reinforced throughout the summer with weekly heat calls and review of heat citations and enforcement.

Meeting adjourned at 12:30 p.m.