

Cal/OSHA Advisory Committee Meeting
June 6, 2013
Oakland, California

Opening Remarks and Cal/OSHA Report by Chief Ellen Widess

- The budget has not been finalized as the situation remains fluid and uncertain. Cal/OSHA is working with DIR to minimize the impact of federal sequestration cuts on Enforcement and Consultation programs. Resources are being used efficiently and effectively to meet the needs in the field, and administration is doing what they can to support us.
- We are continuing two special emphasis programs: Heat Illness Prevention and Confined Space Hazards.
 - Heat Illness Prevention:
 - We launched the 2013 program with a well-attended press conference in Easton near Fresno. Many agriculture association co-sponsors of the event renewed their dedication and commitment to preventing heat illness in workers. Training was provided to over 700 farm workers, contractors, and employers.
 - A multifaceted approach is important, and enforcement alone is not the answer. Outreach, training, and consultation are also needed, and we are working with Erika Monterroza from the DIR Public Information Office in order to reach many audiences through radio and other forms of media.
 - We conducted our first Heat Illness Prevention Network conference call yesterday. There were over 75 industry representatives, government agency representatives, and others that participated in this useful forum. We would like to hear suggestions on how to make future forums more useful.
 - The Labor Enforcement Task Force (LETF) continues to do great work in targeting those who skirt labor, worker safety, and health laws. The director of LETF has also provided an extensive report on their activities. The Cal/OSHA LETF contingent will focus on heat illness prevention inspections in agriculture and landscaping industries during the heat season.
 - We have reached 8,500 people in outreach events so far in 2013, and 25 more events are already scheduled. Many here at today's meeting participate as partners, leveraging impact in sharing the message on heat

illness prevention. The key to success is partnerships with labor and industry associations, faith communities, and others to get the message out.

- There will be a Heat Standard Advisory committee in Oakland on July 8th. This is a continuation on the last four years of Cal/OSHA's efforts in preventing heat illness and deaths. We are looking forward to comments and suggestions about the heat regulation, Section 3395, can be improved to protect workers. Notice of the meeting will be sent out soon, and we encourage you to share that information with all of your networks who may not be on our mailing lists but may be interested and may want to participate.

- Confined Space Hazards:
 - We are concerned to see more worker deaths and injuries, and we highly encourage and welcome input on effectively informing employers and workers in order to prevent further confined space deaths and injuries.

- Refinery Safety:
 - DIR team and DOSH are jointly working on the Governor's Interagency Task Force to examine ways on making California a national leader in refinery safety. Effective emergency planning and response in case of accidents, such as the Chevron fire last August 6th, is a primary focus. It is important to involve industry and labor in finding the best ways to minimize risk and ensure safety for both workers and surrounding communities.

 - Productive stakeholder meetings were held that included the refinery industry, labor, emergency response agencies, other state and local agencies, and community-based groups concerned with health and environment.

 - Cal/OSHA has had extensive interaction with the U.S. Chemical Safety Board (CSB), including sharing the cost of laboratory analysis

 - Among the CSB's recommendations is consideration of the "safety case" approach that is used in several countries. That is something the Task Force is considering for further evaluation as a possible regulatory regime in California in the future. The Governor's Task Force report will have many findings and recommendations and will be out fairly soon. We look forward to reviewing them and how they affect us.

- There are several pieces of legislation produced as a direct result of the Chevron fire, which are under consideration by the state legislature, and which we are analyzing with DIR for their costs and possible impact on DOSH.
- We are concerned with the rising number of fatalities in the state. There were over 33 fatalities reported to Cal/OSHA in April, and 18 were deemed work-related. Some parts of the state, like San Bernardino which had 5 fatalities in one week in late May, have a disproportionate share of these deaths. We welcome and encourage suggestions for the reasons in the sudden rise in fatalities so that we can be more proactive in preventing these deaths.
- In addition, there is a rising number in residential construction injuries, and we would love to collaborate with more representatives in construction to work on preventing those rising trends.
- We will be celebrating Cal/OSHA's 40th anniversary on December 5-6, 2013, here in the Oakland State Office Building. The December 5th event begins in the afternoon and will include highlighting the positive impact of the Division's mission and work, present and future challenges, the importance of partnerships in prevention, and celebrating the work of many of former chiefs. We hope this forum will give us guidance for the future.
- December 6th will be a more in-depth research symposium, and we will share research findings, including those about California's changing workforce and workplaces. We will emphasize the importance of research in providing policies that will improve health and safety, and promotion of safety cultures in all workplaces. We are also looking into new technologies that would be more effective. "Save the date" notices will be sent out soon.

Cal/OSHA Enforcement Report by Acting Deputy Chief Cora Gherga

- We have redistributed three of the counties that we had allocated to Region I. Lake and Mendocino counties are now part of Region II, covered by the Sacramento District Office. San Benito county also has been moved to Region II, now covered by the Modesto District Office. These changes have been reflected in the "district office locator" on the Division's website.
- We are in the process of reducing our administrative costs by using space and resources more effectively. We are reconfiguring several offices in the Oakland State Office Building, as we did last year in the Los Angeles state building. All of the changes will be completed by July 1st and posted on the website.
- Federal OSHA monitors the performance of Cal/OSHA for a number of key activities, including response to fatal accidents and imminent hazard complaints. According to their

analysis, the Division is responding effectively and in a timely manner. We have been able to respond consistently to fatalities within 24 hours.

- Unlike in prior years, this year's confined space accidents are consistently due to mechanical hazards than atmospheric hazards. Citations have been issued in three major cases and are posted on the Division's "major citations" webpage, and have been covered in the *Cal/OSHA Reporter*. We ask for your help and suggestions in conducting effective outreach and increasing workers' and employers' awareness and understanding of hazards in confined spaces
- There have been other notable cases since our last Advisory Committee meeting, including citations issued at southern California warehouses, additional citations issued to Sutter's Summit Hospital in Oakland related to aerosol transmissible diseases, and a fatality at the Port of Oakland.

Consultation Service Report by Program Manager Vicky Heza

- Consultation is on track to meeting its 2013 goals, which are outlined in the report sent out before the meeting. We are continuing to do considerable outreach on heat illness and confined space throughout the state.
- The construction pocket guide was popular when we met with construction industry representatives, and we were asked to make it available as a mobile application. We have worked with IT, and the mobile app will be available soon. Printed documents are still of value and will be available to those who do not have access to electronic means of communication. We are prioritizing documents that will easily lend themselves to an html format, which is more translatable to the mobile app. Documents will continue to be available by PDF.
- The heat illness prevention e-tool was translated into Spanish. It is a lengthy document that should be the next available on the mobile app as well. We have to thank DIR Information Technology (IT), as well as the DIR Communication office for helping us out on this.
- Tree trimming accidents and fatality reports seem to be on the rise, with 31 deaths in 2010, 41 deaths in 2011, and 36 deaths in 2012. New tree trimming regulations became effective last October, and it is important to note that the Title 8 numbers will be different on the citation because the Title 8 section numbering system changed at the end of the year. We are working with HQ staff to come up with a training program, and several existing slide shows are being merged to create one, updated version. Internal training will be done, and then we will reach out to the tree trimming industry to host events to disseminate the information.
- Construction data was divided into general building, highway and street construction, and specialty trades and analyzed for trends. Violations of Title 8 sections 1509 and 3395 appear in the top five Title 8 citations in each group. The other top 5 cites are related to

scaffolding, excavating, and portable ladders. This analysis will help us target resources and develop a strategic plan within construction for Cal/OSHA. We also plan to focus on falls and amputations.

Department of Industrial Relations (DIR) Report by Director Christine Baker

- DIR is continuing to improve enforcement and targeting, so that we focus resources on the non-compliant employers.
- Our resources and budget are a major challenge. DIR and the Labor Agency take accountability seriously, and our website is being updated to be transparent as possible. The website reflects the policy of each division, and each division is working hard with the Administration to put this together.
- We have structural problems within Cal/OSHA's budget. We have to make some hard decisions in cutting more than \$2 million for the federal sequestration cuts. We need to continue to shrink DOSH's footprint, in terms of real estate costs, and shrink administrative costs so that key positions are filled and we maintain our core programs.
- We are updating regulations, particularly in elevators. This is a critical project because addressing each variance to outdated codes is currently a major cost and unnecessary work. Computer systems and accounting systems are old. There is a need to reduce duplication of inputting data so that money can be directed towards key goals.
- We have collapsed the High Hazard-TICF into the larger OSH Fund. They have been integrated in an effort to be more efficient and effectively dedicate resources to Enforcement and Consultation.
- Cal/OSHA's 40th anniversary will be celebrated in December 2013. We will highlight DOSH's accomplishments and impact, as well as working with those who want to help us improve how we do business.
- LETF has been a great success. Partnerships with businesses and labor have been the key to this success. We know in advance who we are targeting and why. This is much better use of staff time. There is an available 800 phone line for complaints during weekends, and I sometimes answer that line. Several calls have been in Spanish. I give those to my teams as priorities, and these stories are heart wrenching. We need to be responsive to these workers.
- The recent DLSE report shows that there are people out there who are taking advantage of workers, and when there is one kind of violation (wages, taxes, health and safety), there are usually others as well. We need to target that area very closely.

- We ask for cooperation and patience as we are aligning our budget. We are being careful, prudent, and cautious, but we do want to have the best OSHA in the nation. We need to fine tune and improve.
- There is a major change in workers compensation, which has been a huge success. There are increased benefits to workers by over 30%, and medical delivery is changing for the better. This reform provides for independent medical care, evaluated by evidence-based medicine outside of litigation. The waiting period has dropped to 11 days instead of more than 18 months.

Research and Standards Report by Deputy Chief Deborah Gold

- The Lead report from OEHHA on a new PEL has been sent out for peer review, and comments are being received. The model's calculations are being reviewed, and the best projection for a science advisory committee to present the model will be in the fall.
- Bob Barish, our staff member who worked on PELs, recently retired and priority has been to get substances discussed in the advisory committees to the Board. There are a few more substances going through the process. One of the things that we learned was that we could improve how we evaluate feasibility, so when we are in a position to resume the HEAC process, we will have more effective feasibility criteria for the committee meetings.
- We have a good proposal on ethylbenzene, with a substantial reduction in the PEL. This may not be the end of the discussion, but we have a good reduction in place.
- The Hazcom proposal for GHS went into effect May 6th, and will be good for six months, and can be extended for another six months after that. We need to be completed with California rulemaking on Hazcom/GHS by May 2014. The December 1, 2013 deadline for employee training is both the federal and California deadlines. Employers need to have training done by then on labels, pictograms and the new format. The Division will be conducting its own internal training for uniform enforcement and consultation.
- Elevators will have a June 26th subcommittee meeting in San Diego on car top railings.
- Suzanne Marria is working on a Memorandum of Understanding (MOU) on Tramways to avoid duplication or conflicts between federal ski lift regulations and our standards. Nancy Medeiros and her group are working on regulatory development.
- Adult film legislation in the California legislature has come to a halt. The Division will now resume drafting a regulation. The final draft for Safe Patient Handling regulation will be sent to the Board by the end of this week or next week. We are hoping for a hearing in August or September.

- There have been news reports on *coccidioidesmycosis* (“Valley Fever”) in power plant construction sites in San Luis Obispo, Bakersfield, and desert areas. There are many construction sites and development projects, many energy-related, in the Bakersfield area that will continue for a number of years. We are working with the California Department of Public Health (CDPH), and we want to develop a uniform and consistent approach. We are trying to learn from similar situations around the state to come up with appropriate control measures. If anyone has information to share with us on Valley Fever, please contact me or Janice Prudhomme. Debra Lee is the lead person from Enforcement.
- A revised Policy & Procedure on personal protective equipment (ppe) will be posted on the DOSH website later this month.

Appeals Board Report by Board Chair Art Carter

- The Appeals Board is also affected by the federal sequestration cuts and will have to reduce some budget cuts for the Board.
- The new regulation for Expedited Proceedings for appeals where abatement is contested or has not occurred will become effective on July 1, 2013. This will shorten the timeframe for pre-hearing and hearing in cases in which a cited employer has not abated conditions where a citation alleges a serious, willful repeat, or a combination of those classifications. An email will be sent to the Division and all stakeholder groups. This regulation should build on what was a successful pilot in 2009, and has strong support by labor and management.
- Board members Ed Lowry, our Public Member, and Judith Freyman, our Management Member, appeared before the Senate Rules Committee in May and received the Committee’s approval for their appointments. The appointments move to the Senate for a final confirmation vote.
- We are now conducting hearings using video conferencing, which has taken some time because of varying problems related to technology and security issues. The video conference hearings ties in with budget savings for the Board. If we can make video conferencing available so that a hearing officer is able to involve parties who are unable to go to a location, this will be very helpful and save costs. We are working on a new regulation for video conference hearings, which we hope to have ready by the end of 2013.
- The Board has a new Executive Officer, Carrie Johnson, who has done an outstanding job on a system update. There have been a lot of positive changes internally and administratively.

- The Board will continue to work with its stakeholder Advisory Committee with an aim of completing regulations language this year as well.

Standards Board Report by Board Executive Officer Marley Hart

- A written report was provided with the agenda, but a few points will be highlighted.
- The final statement of reasons for the ethylbenzene PEL has been issued, and an August 2013 adoption date is anticipated.
- The Globally Harmonized System (GHS) update to the Hazard Communication that was adopted as of May 6th is now on our website. You can toggle to see both the current and new standard, and once we have a final standard, the website will be updated. The safety portion of GHS will go public hearing in August 2013.
- Safe Patient Handling will be tentatively scheduled for a September 2013 public hearing if we get documents this week. Otherwise, it will be in October 2013.
- Petition 533, which requests amendments to Title 8, Tunnel Safety Orders, Section 8425 with regard to refuge chambers was before the Board in June 2013.
- At the request of Federal OSHA, we are reviewing California's residential fall protection heights, which are different from the federal regs, and contacting people who worked on the original California rulemaking. Federal OSHA has asked for information by end of July 2013.

2013 Heat Illness Prevention Report by Heat Coordinator William Krycia

- During 2012, there is a steady progress in increased employer compliance with regulation because of multi-pronged outreach efforts to employers and workers.
- Unfortunately, there were still two heat related deaths in 2012, both in construction. We also had 48 confirmed heat illness in agriculture, 3,839 heat-related inspections, and an overall compliance rate of 72% in construction, and 69% in agriculture.
- In 2012, the most frequently cited heat regulation sections were 788 written program violations, and 246 employee training violations.
- Two Orders Prohibiting Use (OPUs) were issued last year.
- During 2012, over 2000 heat outreach activities were conducted by Enforcement and Consultation staff with a wide range of employers, worker and community organizations.

The efforts of DOSH's Bilingual Outreach team – three Spanish-speaking retired annuitants – also helped in successful educational outreach efforts.

- For the 2013 heat season, we have already begun inspections throughout the state – incident investigations, complaint inspections, and planned inspections based on weather conditions. We have adopted a regional approach this year to take full advantage of local knowledge of work sites (ag, construction and landscaping), and to respond rapidly to local heat waves.
- The heat report sent out with the meeting agenda has the complete set of statistics from last year's inspections.

Comments and Questions on Reports

What is the exact total of federal sequestration cuts to DOSH and how are these being absorbed? [Question to Director Baker]

- Approximately \$2.6 million of DOSH's budget has been cut and we are holding open some vacant positions and finding administrative efficiencies to cover the shortfall.

What is the litigation case you spoke of regarding DOSH's budget challenges? [Question to Director Baker]

- We inherited a lawsuit against the Division by the United farm Workers union that was filed during the last Administration.

Companies who are approved for solar projects in the desert should be asked to show heat illness prevention program.

- All construction permits issued by Cal/OSHA already involve a review of the employer's written heat illness prevention program, where we evaluate both the written program and the implementation process. Permits from other agencies or local authorities may not include this review of heat programs.

What are Cal/OSHA's recommended best practices for providing directions to the work site to emergency responders? For example, how do we know which emergency responder to get in contact with if the job site is close to fire stations and several hospitals?

- For fixed sites, the employer must locate all emergency providers around you and designate which ones to be contacted. For non-fixed sites, the employer must make

plans in advance of work starting at a given site to identify and designate the emergency responders to be contacted. The supervisors on the job site need to know this information and know the area, so that they can help direct emergency responders to a site. It is not acceptable that supervisors on the crew do not know how to direct an emergency responder to the location.

Employers have typically directed emergency responders to a major intersections as a point of reference, but that's not sufficient in more rural areas. More clarification is needed on how employers can meet their responsibilities in remote areas.

- The regulation requires the employer to have the ability to give accurate directions if emergency response is needed. The employer's responsibility is to develop an effective system to meet that requirement. The Division has come across very creative solutions, like poles with flags for places that aren't on GPS.

Proposal made by the Pacific Maritime Association for a collaborative Heat Illness Prevention Week extravaganza involving Cal/OSHA, employers, labor, communities and the media for better outreach and education.

- Great idea. We can discuss further on planning.

Is there any particular provision in the heat standard that will be addressed at the Advisory Committee meeting on July 8th?

- The Notice for the meeting will provide the scope of the meeting, but we are interested in hearing from all stakeholders what they think is working and what's not working in the current standard. Please feel free to express all your concerns.

Question regarding the 2011 BOI online report that shows that there are some district attorneys who fail to prosecute before deadlines. Why is that?

- There is no universal answer. Each district attorney has their own particular way of dealing with these cases, and each county is different. Sometimes there is turn-over in a given office and there are new people unfamiliar with the process, but the process begins anew. We have been deeply involved in building relationships with different district attorney offices on a long term basis. It is encouraging that the trend seems to be on an upswing, and our percentage of referrals taken to prosecution is getting better. The 2012 BOI report will be posted soon.

Follow up: The BOI reports are very informative documents, as well as an excellent tool that helps people in the regulated community identify what is happening.

There are a high number of complaint inspections, but these generate a low number of serious citations. Why?

- The California Labor Code requires that we investigate “formal” complaints, those made by workers or their representatives. However, some “informal” complaints (such as anonymous complaints or ones from family members) can also point out serious hazards that merit investigation. In general, complaint inspections yield a smaller number of Serious citations than accident inspections or high hazard industry inspections – but we are required by law to conduct the complaint inspections. We direct our district managers to keep in mind the best utilization of our resources when evaluating all complaints and assigning on-site inspections or investigations by letter. Some hazards identified during an inspection do not result in Serious citations, but they are still hazards and need to be corrected. We are interested in the best targeting of our inspections and the most efficient use of our resources – while also meeting our legal mandates and mission of worker protection.

What is the “safety case” approach in terms of refinery safety that we are hearing about?

- The U.S. Chemical Safety Board made a recommendation in its April 2013 preliminary report of the Chevron refinery fire in Richmond that California consider adoption of the “safety case” regulatory regime that is used in the United Kingdom, Norway, and Australia. It is basically a permitting or licensing approach where the refinery operator must present its complete safety program (its “safety case”) to a team of highly qualified and multi-disciplinary government regulators who have the authority to deny or issue a permit to operate. The safety case regulators have the power to require refinery operators to adopt programs and policies that go beyond national laws but are considered “best practice” for the industry and are in use elsewhere in the world. This is very different from the regulatory model in California or anywhere in the U.S., and it requires a large number of highly trained government regulators and a regulatory system that will allow permit requirements stricter than existing regulations. The Division, as part of the Governor’s Working Group on Refinery Safety is studying the safety case and all its implications for California and DOSH.

What is next step after the peer review of the PEL report on lead standards?

- *Barbara Materna, CDPH:* CDPH has contracted with Office of Environmental Health Hazard Assessment (OEHHA) to do a project resulting in a report that will show the relationship between air lead and blood lead through scientific modeling. Current models have not been updated since the 1970s, so many advances in the process have occurred over past decades. The report has now gone through two rounds of peer review, and the latest round had further review to better fit the model for actual data. This final scientific work has been done in consultation with peer

reviewers, who are now submitting their comments. CDPH will then use these OEHHA-recommended models to generate CDPH-recommended permissible exposure limits and action levels for consideration by Cal/OSHA in revising the standards for PELs and medical removal levels. There will not be another round of peer review, but once this round is completed, both OEHHA and CDPH internal reviews need to be done. CDPH will then transmit its recommendations to Cal/OSHA.

Follow-up: When will it reach Cal/OSHA?

- We are aiming for the fall, when it will be presented in a scientific symposium.

Meeting adjourned at 12:30 p.m.