

**Cal/OSHA Advisory Committee Meeting**  
**August 6, 2015 – 10:30 a.m.**  
**Oakland, California**

**Welcome & Opening Remarks by Christine Baker, Department of Industrial Relations Director**

- We are very excited about sharing the ongoing success of the Cal/OSHA program, and we welcome all members of the advisory committee.
- Turnaround of an agency is very difficult. When we had an economic downturn, fed OSHA took 30 positions, and we were battling for the first several years. Context: lifted cap on budget, grateful to employers to allow release of cap on Cal/OSHA budget to move forward and increase funding.
- In our 2<sup>nd</sup> year, we added funding and filled a gap in positions that were identified, including 30 positions sequestered by fed OSHA. We are moving quickly this year with additional funding to add staffing, and Juliann Sum will add detail to that later. This strategic direction has taken several years to implement.
- Policies and procedures are being worked on, and staff are being trained. We also continue to have retirements across DIR, so it is not unique to Cal/OSHA. It is an ongoing issue to try to onboard people at the speed that people are retiring.
- We also are fixing longstanding fee and collection issues in DIR. We are shifting to online payment processes. Many of this is not visible to the public, but our systems used to consist of three staff bringing checks to the banks. Now payments can be handled online, and there are fewer people touching funds. Transactions are being accounted for systematically and securely, and can be tracked.
- We created a call center where workers and employers are be routed quickly by our trained staff to address and solve issues. We have hired college graduates for this work, and we are up to speed.
- LETF is going strong, and after a thorough surveillance process, we were able to identify employers with multiple citations. We have an underground hotline and a referral service online. Pamphlets are available. This all comes under DIR for strategic direction. We have a compilation of databases to target effectively, and we've assessed \$9 million in penalties.
  - Construction had the greatest number of serious violations.
  - LETF revealed widespread problems of automotive employers without insurance, and were not covering for worker's comp.

- Wage theft and workers' comp is pervasive in the restaurant industry. 43% of LETF inspections have resulted in violations.
- Clyde Trombetta, Mike Wilson, and the rest of our teams are working on regulations on process safety management. Rand Corporation is doing an impact assessment, which is required by law for estimated costs or benefits over \$50 million. There is a benefit to the public for protecting communities around refineries.
- Worker rights publications in multiple languages are being developed.

### **Introductions & Overview of the agenda by Juliann Sum, Cal/OSHA Chief**

- Introduction of staff, sister agencies staff, and new members of the advisory committee. A newly revised roster has been prepared.

### **Website & Publications**

- Cal/OSHA is committed to providing accessible, clear information within state government and to the outside world. In the past half year, we're continuing to upgrade information, especially on our website. Pages are accurate and complete with more information for workers and employers: how to report accidents, file complaints, mandated reports, and ongoing reporting with fed OSHA.
- We've also finished our fact sheets for workers which are posted on our website. We've put together basic workers' rights in occupational safety and health, which was a collaborative effort of 50 managers. This is in the process of being translated with a goal of mass distribution during inspections.
- There is also a 2-page fact sheet on temporary employees, which includes obligations of primary employer.
- The most popular publication is the construction pocket guide, which is being finalized. Erika Monterroza, head of Communications, is in charge of coordinating works to design and publication. Currently the pocket guide is being proofed and edited to make it more accessible. We will have a version online so that it's easily accessible on mobile devices.
  - **Question:** When will the pocket guide be available?
    - It will be available as soon as it's complete, as we need to make corrections. This is a high priority for us because it is high priority for you.
  - **Question:** Is there retaliation information for temp workers?

- It's on the worker's rights fact sheet. Our Labor Commissioner has multiple brochures in different languages.
- **Question:** Will the pocket guide be in multiple languages?
  - We can't answer that at this time, but we can update you later on that.
- **Question:** Is there a cycle for reviewing it or changing it?
  - We'll update on an annual basis. Eric Berg and his team are the ones that went through this and made sure we had updated through May 1 all of the regulations.
- We have updated the DIR page on permits and registrations, fixed pages for all the employers, and have a new page on occupational health standards. It feels like the regulatory process takes a long time, but there are many steps, and this page shows you how complex it is. That page at least will help with communications on where we are on occupational health standards and occupational safety standards. Horcher standards have different steps.
- Heat guidance documents and heat illness prevention documents are side by side with the old regulation. OAL had changes, so current documents reflect that.

### **Budget, staffing, recruiting, hiring, and training**

- We have a flyer on recruiting health and safety inspectors. There is a continuous exam process, and we want to recruit as many people to take the exam in order to be eligible. Once on the list, people can apply to jobs on our website.
- There are 16 Senior Safety Engineer positions, which are higher level and promotional. Associate Safety Engineer positions will be backfilled once Senior Safety Engineer positions get filled. Additionally, there are also 18 Assistant Safety Engineer positions available, so we are interviewing these three levels. If we find a candidate at the assistant or junior level who is a good fit, we can hire them. The focus is on programmed inspections in high hazard industries. Hiring more staff means that programmed inspections will be divided equally.
- Elevator safety engineer recruiting flyer is also available for those interested in being an elevator safety engineer. There are 20 available positions for that.

### **Federal OSHA funding and reports**

- We have posted a number of fed OSHA related documents, and we also have a page on fed OSHA jurisdiction, which explains who has jurisdiction over what worksites.
- We have posted a response to the federal OSHA's evaluation of a CASPA that was filed in 2014. It is an in-depth report that puts data together to show that, contrary to the

evaluation, we've been improving over the last two years.

- Fed OSHA's annual monitoring evaluation is on their website, and we were given time to respond. We have a 1-2 page letter on a corrective action plan, and we went to our records to address concerns. We have corrected most of the problems to date.
- It was a good opportunity that allowed us to look philosophically at what Cal/OSHA is about. There has been tension because of our resources and conducting more high-quality inspections: programmed inspections versus complaint and accident inspections. We have invited fed OSHA to discuss programmed inspections with us.
- We also have a question about lapse time, as there is an ongoing issue on how to close inspections. There is the 1BY form for employers to rebut serious citations, and we allow time for that, which then affects lapse times for serious citations. Interruptions increase time to close inspections, and we would like to really explore what would be considered a reasonable lapse time for California. We value programs with interaction with the employers, so if we reduce lapse time, there will be a tradeoff.
  - **Question:** On the applications online, is there already a list of qualifications that someone must have in order to apply?
    - The flyer for recruiting inspectors has a link to our HR site, and that lists the qualifications needed to take the exam.
  - **Question:** There are concerns from workers that information flyers are not being consistently given at inspections. Is there a tightening around procedure of passing that out at inspections? Are these only given at the opening conference? What is the policy and procedure?
    - These are going through the LETF. The four-page fact sheet is going to be given out. Our inspectors just received within the last 30 days, so they haven't been around for that long. The instruction is to give it out during the opening conference, and they talk to employees during inspection and give them out during interviews.

### **Field Enforcement by William Estakhri, Regional Manager**

- New enforcement district managers are all listed on the website. We are also gearing for the new positions that are authorized for us.
- The last 60 days involved responding to complaints and accidents with the roofing maximum enforcement program in place, to make sure those workers have fall protection.
- High hazard industry list is now posted on the Cal/OSHA website. Mining & Tunneling has been involved in inspections, and the numbers are available on our handout.

## **Enforcement Administration by Cora Gherga, Acting Deputy Chief**

- Juliann has already touched on many issues that we are facing. Our biggest achievement is that we completed and submitted our federal grant application, and it's the same amount of funding that we get from the federal government last year. The state share increased considerably. It is a major project that we have to engage in every year to ensure that our program meets all our requirements. Many people in headquarters were involved, and Juliann was instrumental.
- Annual monitoring is a 3-year cycle, and there is a 1-year enhanced cycle. Fed OSHA pulls files from district offices on various parameters and activities and comes up with reports. The following year is a follow-up where full reports and inspection files would be reviewed with respect to prior findings. Corrective action plans will be posted on the federal website and on our website when completed. Our response, effort, and introspection is on another document that you can access on the website. It was a major enterprise to look at the entirety of the program.
- There are ongoing issues in the federal OSHA Information System (OIS), a database in which we both enter data and from which we generate enforcement documents. It is a repository of information. Everyone who goes to the OSHA website can check inspection and violation histories throughout the nation. Inaccurate information could hinder the way we do inspections. We do a lot of training of staff who are the users of the system, and we generate a lot of reports from tracking. It is just not yet completely customized for a program the size of California. We would like to be able to provide information in a timely fashion.

## **Consultation Services by Vicky Heza, Manager**

- The Consultation program's onsite activities are on track to the activity goals from last year's grant. The program was monitored by fed OSHA, and the good news is that we met the measures, such as the time frames to get consultations completed. Comments in our annual evaluation were related to the level of detail of the content of the case files. We are working on that and will revise reports one more time so that every case file is consistent. We continue to collaborate for training.
- For publications, we are partnering with HESIS, and we have worked to put together a hazard communication fact sheet. This should be finalized this week from Consultation's perspective, and we will provide that to Juliann soon.
- We are also working on a hazard communication booklet that will also be sent to Eric's group for their evaluation and input.

## **Research & Standards by Eric Berg, Acting Deputy Chief**

- As Juliann has mentioned, the steps that we go through for regulations are on the website, and it is quite a complex process.
- Workplace Violence in Healthcare: There were concerns on the latest draft and minutes. The proposed regulation is posted on website, and that proposal is nearly ready for formal rulemaking. We just need some fine tuning.
- Sexually Transmitted Infections: This is currently in informal rulemaking.
- Lead: We had several advisory committee meetings, and we are going to have more in the future to work with industry and labor to make sure all our levels can be achieved.
- PELs: Several will be updated, and we are looking at medical data.
- Hotel housekeeping: We had several advisory meetings, and we are fine tuning the draft regulation. We will have future advisory committee meetings on this.
- Process Safety Management – Clyde Trombetta: We are in the final steps of pre-rulemaking. We are coordinating with Cal OES and Cal EPA to make sure we harmonize as best we can. We hope to finish our end of the process and forward to the Standards Board in September or October. We need to finish the Initial Statement of Reasons and the impact report, and then it will be sent to the Standards Board.
- Regarding occupational health, there is a proposed draft for first aid requirements. That is in the final stages and should be ready for formal rulemaking soon.
- Occupational safety regulations will be discussed by Marley Hart.

## **Occupational Safety and Health Standards Board by Marley Hart, Executive Officer**

- The regulations that Eric has discussed are on the Standards Board's page as well.
- Reinforcing steel and post tensioning operations: We had advisory committee meetings and are in the process of putting together the fiscal impact report. Once that's done, we will go through pre-rulemaking.
- Multistory skeletal steel construction: This is currently at the Office of Administrative Law for approval.
- Skylight fall protection: There will be a public hearing.

- Tractor mounted personnel platforms: This is slated for an August 20th adoption.
- Crane and derrick safety orders: We just had meetings last week. There is one more 2-day meeting in October, and after that, the engineer will finish stage 1 documents on it. We have had about four or five 2-day meetings on this. There was good participation and a great process. Our goal to have documents done by the end of the year.
- Confined space: There is a federal rule, and we're doing horcher. The goal is to notice and adopt language from federal OSHA, and then we will do cleanup later. Horcher is a different process for rulemaking, so most of APA requirements are exempt.
- Working alone in construction: There was an advisory committee in June.
- Ag operations: Advisory committee meetings have concluded, and we have sent out final minutes and draft proposals. We have received comments back and the fiscal impact assessment back.
- Structural firefighting: PPE must be updated based on legislation passed last year, and we will see if California needs more updating. We have asked for assistance from our legal team since this is a huge hurdle.
- Residential fall protection: At the request of fed OSHA, we are going to convene an advisory committee meeting for residential fall protection probably in October. It is quite an involved advisory process. We have reached out to key players ahead of time, and there will be more information once the location is decided upon.
- The Standards Board is filling one position, an associate safety engineer position, and it has never been filled before, but we are doing so now in anticipation of retirements. We do have an ASE advertised at this current time, and we are hopefully looking to hire by the end of the year. We need to start the training process before the retired person leaves.
  - **Question:** I haven't read the federal standard on confined space, but normally our standards are more protective. Are we losing anything?
    - We're not. We do not currently have equivalent standards to what fed OSHA has done. This will be an improvement to California standards, and not a weakening of them.
  - **Question:** Appreciate work on stakeholder meetings. We're wondering when the rulemaking on night work would come out?
    - All the information is in now, and an engineer is assigned to this to develop the ISOR. The regulatory text is already written, and we are making every effort to keep it moving on.
  - **Question:** Isn't there a timeline for anesthetic gases standards? Is there a legislative timeline for when it has to be passed?
    - That is a health standard.

- Eric Berg: We have a rulemaking on anti-neoplastic, which is being worked on right now. I don't currently know the dead line, but we can get back to you.

## **Occupational Safety and Health Appeals Board by Art Carter, Chair**

- Introduces fellow board members:
  - Judi Freyman – management position
  - Ed Lowry – public member
  - Han Ha – new executive officer for the board
  - Neil Robinson – presiding law judge
  - New administrative law judge will be announced tomorrow
- Meetings were changed from Wednesdays to Thursdays.
- A regulation that the Board has approved and is in process is the abatement process.
- OASIS is now with the Director. After she signs off, it will go to Agency for review, and then it will go to OAL, which will trigger the public comment period. We will respond to all comments we receive. The Board was very transparent in this process. We had five public meetings, asked Judy to meet with management, and Ed Lowry met with many of you. There was a lot of input on this matter.
- For a pilot project for those dealing with regulatory and general violations that are under appeal. Rather than pre-conferences being calendared right away, get together and try to resolve it. After 60 days, if we haven't heard from you, then we will step forward with preconference. That has been going on for 3-4 months. 90 appeals that have been successfully done this way. This frees up more time for administrative law judges to research and write law instead of listening to tapes. We have very complicated cases that take up a lot of time. At end of September, we will evaluate this process. If those of you have gone through this, please contact our office and let us know what you think.
- The Board has had out-of-date software for 25 years. We began development of a new program with strong support from IT and DIR. Neil Robinson is our point person and will explain how the new OASIS system that we acquired will be of value.
  - Neil Robinson: When we were conceiving a new computer system, we had to look at it from the perspective of many participants at the Appeals Board.
  - For employers and representatives, one of the key features is access to our calendar to see appointments with Appeals Board in real time. The new system will accommodate that request.

- The software also allows people to log into their cases and see electronic information in their file. Any representative can see documents that are filed electronically.
- A party can elect to be served documents from the Appeals Board by postal mail or email.
- Online filing of appeals is also new. Work is going into developing a website that will be used for employers to file appeals online. Filing of other documents online. All participants in case can file other documents online.
- We would like a reduction of erroneous cases. Often, there is a lag in paper work, so accounting begins to work before an appeal is on file. We're going to have the opportunity to create an interface with accounting to reduce erroneous collection.
- We're not going to be charging for any of these services, all completely free. People who wish to be 3<sup>rd</sup> parties to complaints, their requests aren't addressed soon enough. New system will help by having work queues for presiding judges, can be expedited to them to be acted on faster.
- We've had misinformation with DIR accounting, and now we will be able to develop an interface that makes sense to accounting. It will also allow accounting to collect on those citations that have not been appealed. That capability does not currently exist. The accounting interface will push case statuses and collectability of citations, and it should eliminate a lot of the problems we have today.
- The Division will have an advantage with the ability to see what has been filed in the electronic cases and service by email which will rapidly allow them to access information from us.

**Division of Labor Standards Enforcement (DLSE) by Joan Healy, Senior Deputy Labor Commissioner**

- I brought materials with me. One is a newly printed Filing of Retaliation complaint. We've gone through the Labor Code and identified 45 statues of protected activities. We have a very active legislature. AB 1522 for paid sick leave went into effect July 1<sup>st</sup>.
- We have copies of our Report of Retaliation brochure, which is available in several languages: English, Spanish, Vietnamese, Chinese, Korean, and Tagalog. There is a Russian one but didn't bring it.
- We've also provided two federal OSHA reports, which include statistics that are generated by our website, not IMIS. One is a year-to-date. The second document included is the last quarter. Every time we run these reports, we always see certain anomalies, but if you compare the two documents, the backlog of cases would be the same number.

- We have 527 open cases of retaliation based on health or safety issues. Of those, there are 490 violations of Labor Code 6310, and there are an additional 49 violations of Labor Code 6311.
- Typically, we assign OSHA cases right away. Currently, we have 59 cases as of July 25<sup>th</sup> that are not yet assigned for investigations. We have five dedicated deputies who only investigate safety complaints with 87 cases per deputy, so we're not able to meet the 90-day deadline. The numbers are self-evident.
- What we are doing with Christine Baker's help is working with the Department of Finance to go into statistics to see if we are adequately doing the job with the available resources we have. We will be getting recommendations for additional positions.
  - **Question:** For the corrective action plan to the FAME report, typically there are 2 corrective action letters: the DOSH letter and the DLSE letter. Is there a DLSE corrective action letter, and is that posted?
    - Juliann Sum: The corrective actions will come from the Director's Office, so the three components of DIR will be together.
    - Joan Healy: I have reviewed the FAME report 3 different times, and I just forwarded a current response this morning. Would like to point out that one of the purposes of the FAME report is to point out state plan deficiencies. It does not report what we are doing well on or that we are exceeding standards. We have always taken seriously their recommendations. Prior to submitting cases for review, and when the FAME report comes back, I review that as well. We do have serious concerns of the FAME report. There are a couple of changes in the findings, and there are several things that are flat out wrong.
  - **Question:** The Teamsters started a campaign for immigrant food processing workers, and this is a comment to thank DLSE and Cal/OSHA's efforts on pursuing that case.
    - We appreciate that so many labor advocates are here, and we would like to note that that particular case is still open, so the investigation is not complete. We would like to make it clear from the Labor Commissioner that we don't represent the workers. We are impartial, so we have an obligation to enforce the State Labor Code.
  - **Question:** Will DLSE come back in the future for these meetings?
    - We hope to have Joan here when she's available.
  - **Question:** Timeline on getting more inspectors?
    - It is part of the governor's process and we are working on that right now.
  - **Question:** Of the open cases, are those prioritized on whether a worker was terminated or retaliated against or are cases prioritized chronologically?

- Our field inspectors will get calls from workers they've interviewed, and if they were retaliated against, we do a fast track investigation in those complaints. We do something similar with Cal/OSHA inspections.

## General Discussion

- **Question:** This is a question for William Estakhri. In your handouts, it says you've inspected 150 mines; what were the results of that? I am also curious penalty-wise for heat inspections.
  - Answer: We don't have the numbers on hand, but if you want a follow-up, we can find that. For mining and tunneling, it is a program since it's in the labor code. It is mixed, just like heat illness. During high heat times, we do some proactive inspections. If you want to follow-up later on, we can provide answers after doing research on our end.
- **Question:** Thank you for publications that have come out. On the temp worker initiative, is there any additional work?
  - Juliann Sum: We would like to embark on a new campaign to reach out to workers and employers. For how we code our dual-employer inspections, I will defer to Cora.
  - Cora Gherga: We don't code our dual-employer inspections. We've already done more than fed OSHA in that we hold primary employers responsible. This has been happening in California since the 1970s. When we have dual employers, we open inspections on both employers. Because dual-employer situations have not been new for us, we haven't embarked on new coding. We believe we are way above the federal paradigm right now.
- **Follow-up question:** Is there a way to see in system that employees worked at the same worksite?
  - Yes, with the establishment mailing address versus site address. Those would be different.
- **Question:** In a normal construction economy, we're seeing health and safety violations. Does the department have adequate resources on residential construction?
  - We are asking for more resources for underground industries.
- **Question:** On the regulatory general pilot program, 1) for the 60 days allotted for settlement, isn't there pressure to settle? How are you dealing with that aspect to find appropriate resolutions? 2) The pilot will last for 6 months, so what is that process and metrics for that?
  - The vast majority of these cases are ones where parties haven't settled, and there is a formal appeal. The purpose of this is to encourage people to talk to each other. There is no pressure at all. It is always their call. More often than not, these things are resolved in discussions on appropriate settlements. We check after 60

days if they've settled, and if not, set for hearing. This is to free up time for administrative law judges for more serious cases.

- With respect to if this is working well, we've had about 90 of these cases that have been settled and haven't had feedback on whether there were problems. If there were, we'd want to hear about it and look into it. If it's a matter of tweaking the process, then we'd do that. We're sensitive to people feeling pressured.
- **Follow-up question:** The question is coming from wanting to know in terms of labor participation in pretrial arrangement. The problem is labor and workers are not parties to the appeal. They don't ask for party status, and are not aware of an informal process unless the union has filed a complaint. There is no notice to workers who file complaints on their own during this informal process.
  - With respect to Board's process, when an employer files an appeal, workers are notified. In order for a party to be granted status, there has to be an appeal and an application for party status. Perhaps this could be a future regulatory process?
  - We implore you to let us know if there is a particular issue with notice or participation. We want to know what's occurring so that we can address that. We want to be transparent, so please reach out to us.
- **Follow-up comment:** This is an issue that affects those who are not unionized. What we see in the field are pre-settlement discussions between attorneys. The non-unionized are put to the side. If prior to appeal, we request that DOSH attorneys are more cognizant to include potential 3<sup>rd</sup> parties who don't have 3<sup>rd</sup> party right yet because an appeal has not been filed yet. Once it gets to the Appeals Board, then 3<sup>rd</sup> party can get their application to file within 30 days.
  - How would DOSH attorneys know who to contact?
- **Follow-up comment:** During the process, employee or rights group are in the ear of the inspector. Perhaps the District Manager or inspector should keep in mind to address the individuals' needs before a settlement or before an appeal. It's at the informal conference stage. There is a separate part of the problem in the way the closing conference is legislated as well. By statute, workers don't have the legislative right. This is something we can continue to discuss with DOSH.
- **Question:** DLSE sees themselves as impartial. In some ways, this concerns me in respect to retaliation. This creates the biggest problem for unrepresented workers when they file a complaint because there is no one that helps them fill out that form. The Labor Commissioner has an obligation to help those people to ask the right questions of the workers so that there is an adequate complaint when that worker fills out that form. These folks don't have anyone on their side.
  - There is some misinterpretation of what was said. We are impartial, but it doesn't mean we don't investigate. Once a claim is filed, we're in contact with the complainant within 3 weeks. We ask for information and tell them what the steps are.

- **Question:** Would like to ask you to consider involving stakeholders when you work on your philosophical question about complaints.
  - We are aware of stakeholder input, and we definitely want fed OSHA to meet with stakeholders as well. All these things are not going to be in a vacuum.
  
- **Question:** Thank you for moving the lead regulations forward, and we think staff did a great job. Peter Scholz moved this forward in a nice way. We are hoping Eric Berg could give more information on the status of the anti-neoplastic regulation.
  - Grace Delizo is the senior safety engineer handling this project. We are trying to move it forward this year, and we will have to get back to you, if you'd like.
  
- **Follow-up comment:** The last advisory committee on it was 14 months ago, so we would like to hear an update on that.
  - We are also working to get a better handle on tracking regulations, so by next meeting, we are hoping to have that on hand.
  
- **Question:** It is great that the some of the old PELs are moving forward, but other PELs are now completely stopped. Is there a process to get that back on track?
  - That is tied to our resources, and we don't have an immediate answer on that.

**Closing by Juliann Sum:** We are very grateful for everyone coming today. We do value your input, and we need your input as we move forward. What we balance and prioritize will involve you. The advisory committee schedule on the website. If there are any pieces or links you want to suggest, please feel free to email me directly.

**Meeting ends at 12:48 p.m.**