

DOSH Staff Comments on Fed OSHA Audit of Cal/OSHA

October 2, 2010

It is not necessary to support each and every recommendation made by Fed OSHA in its September 28th State Plan Audit of the California Division of Occupational Safety and Health. Some of the findings and recommendations are based on differences between current California law and Federal law.

We can say definitively that the audit confirmed many of the significant problems the ranks of the Division have tried to publicize and resolve for years, actually since the “Employee Generated Improvement Project” of 1999. The Fed audit also missed completely – perhaps because of lack of equivalent Federal law or practices – several major problems in DOSH.

The next moment for change will be the Division’s official response and “action plan” to address the audit findings, due at the end of October. This is the moment for a renewed push for genuine and meaningful changes at DOSH, and not just cosmetic changes or window-dressing to satisfy Washington. We can see with the “crash course” trainings done in the last six months that the “cure” may be almost worse than the disease with the ineffective, nearly useless trainings.

Major Weaknesses Confirmed

The Fed OSHA audit confirmed, based on a thorough review of DOSH functioning, the following major weaknesses:

- Persistent and significant **understaffing of field inspectors**. Interestingly the 1980 Court-ordered benchmarks (334 safety and 471 health, for a benchmark of 805 inspectors) are still in place, despite DOSH efforts in 1984 and 1994 to revise them downward. This means the September 2009 staff level of 193 inspectors represents only 37% of the safety and 16% of the health staff benchmarks;
- The **capricious and arbitrary behavior of the Appeals Board** was detailed at length, incorporating the findings previous reports, including our own June 2009 letter, and studies by the Legislative Counsel and Senate Labor Committee;
- The Division has not used all available means, including court suits, to **contest Appeals Board rulings**, allowing bad decisions and precedents to stand;
- Performance of specific District Offices, and Division-wide averages, indicate **significant problems in opening citations, issuing citations and verifying abatement**;

- Significant lapses by inspectors and District Offices in failing to **interact with unions**;
- Significant lapses by inspectors and District Offices in failing to **communicate with accident victims and their families**; and
- **Failure to train CSHOs**, especially new hires, in key subjects essential for effective inspections.

Major Problems Not Identified

At the same time the Federal OSHA audit was completely silent or barely noted several key problems we have been trying to publicize. These include:

- the **lack of an effective Medical Unit**, which requires us to go begging to the Occupational Health Branch of the Public Health Department for assistance. There are important standards that require assistance of medical personnel for effective enforcement, including the ergonomics, bloodborne pathogens, heat illness and aerosol transmissible disease standards;
- the **de facto absence of a health or industrial hygiene program** at DOSH, meaning this entire aspect of safe workplaces is barely functioning;
- the **lack of multi-lingual capacity among inspectors**, meaning that there are less than 30 field inspectors who speak a language besides English;
- the **adverse impact of “sweeps,”** such as for heat illness or ARRA inspections, which have positive effect in enforcing these regulations but also, because of understaffing, have the effect of “robbing Peter to pay Paul” in terms of District Office complaint and accident inspections;
- **understaffing** not only affects field inspectors but also other units, especially the **Legal Unit** whose attorneys have way more cases than they can handle;
- **Key training issues**, such as non-existent management training for new District Managers, and lack of on-going mentoring of new CSHOs, were not identified in the audit. The years-long lack of resources and commitment, and the absence of a professional training unit after Jack Oudiz’ retirement, has meant low quality trainings, when held, with a very limited scope.

Weaknesses of the Fed OSHA Audit

The initial response of DIR-DOSH has been to complain about the methodology of the audit, seemingly to divert discussion from the substantive issues highlighted in it. The weaknesses of methodology in our view center on the lack of priority among the findings

and recommendations – surely there are “high priority” changes that need to be made in the near future.

Also the audit did not address the underlying causes and contributing factors of their findings that are essential to recognize if prompt and effective counter-measures are to be implemented.

For example, understaffing of the compliance field units and the Legal Unit makes it very difficult for individual inspectors, District Offices and the Legal Unit to swiftly investigate, correctly issue and successfully defend citations. The lack of a Medical Unit has already reduced annual ergonomic inspections to more than a couple dozen, and will adversely affect enforcement of the ATD standard.

Going Forward from Here

The DIR’s 7-page response letter accompanying the release of the audit was revealing. The letter complained that the identified significant weaknesses were “old news” that the DIR-DOSH were aware of for “many years.”

If that’s the case, what exactly has the Division’s leadership done to correct these weaknesses? Why have their efforts been so singularly unsuccessful in so many areas? What is being planned now, and how is it different from what has already failed?

We need to carefully monitor what’s being proposed and implemented in the following areas:

- **Understaffing:** while it is unlikely that we will ever reach the 1980 benchmark of 805 **field inspectors**, it is crucial for any DOSH-sponsored revision of the Federal benchmark to reach at least the inspector to worker ratio of Fed OSHA itself and, better yet, the average inspector to worker ratio of other state plan states (see attached charts). Additional **attorneys** are needed for the Legal Unit. An emphasis on **bilingual inspectors**, or a special effort to support inspectors willing to learn another language, should be part of the mix.
- **Medical Unit:** There are reportedly plans to re-establish a medical unit, but the benchmark should be at or close to the level of 7 physicians and 3 nurses that existed in 1975;
- **Appeals Board:** Given the near universal condemnation of the behavior of the Appeals Board by state courts, state legislators and now Fed OSHA, the Division needs to seize the moment to make significant and permanent changes.
- **Trainings:** Len Welsh was quoted in the latest *Cal/OSHA Reporter* as saying “We’ve been doing training like there’s no tomorrow for months now. We’re

planning ahead for three year' worth of training.” But as many of us who attended these trainings, they have been generally ineffective and downright useless in some cases. If truncated OTI courses (some of which themselves are not good) taught by DOSH personnel with limited subject matter expertise and zero expertise in effective training techniques are the Division's three-year plan, then these trainings are unlikely to be useful.

DIR-DOSH will respond formally to the audit by the end of October, with an action plan for addressing the important issues confirmed by the audit. As the saying goes, “the devil is in the details,” and we will need to be very vigilant about what exactly is being proposed and how exactly it will be implemented.

We have a great opportunity here to take a step back and think about what kind of workplace safety and health agency DOSH should be, and then fight for what's needed to achieve that in spite of all the financial and political difficulties that we face.