

June 13, 2009

Candice Traeger, Chairwoman, Management member
Robert Pacheco, Public member
Art Carter, Labor Member
Occupational Safety & Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

Dear Members of the Board,

We write as 47 individuals who work as field inspectors, seniors and district managers who interact frequently with the Occupational Safety and Health Appeals Board to strongly protest Board policies and practices that have significantly undermined our ability to do our job of protecting the lives, health and safety of California's workers.

Over the last four years – and these policies continue to this very day – the Board has deliberately over-booked hearing days so that a single judge in the same location and the same time has as many as three or four hearings scheduled. The Board has continued to refuse to even indicate which case will be heard first. The Board has continued to hold hearings at distant locations where worker witnesses have great difficulty in appearing. The Board has continued to deny, or simply ignore, legitimate requests for continuances.

In June 2009, there are 32 days (at six locations) with three or more cases scheduled for the same judge, same location, same time. There are 14 days with four cases scheduled and one day with five cases scheduled (Oakland, June 17th).

How can we, who handle the majority of appeals for the Division, prepare exhibits, witnesses and arguments for three separate cases all scheduled for the same time? How can we convince worker witnesses to travel long distances, and then to come back after they have been sent home because their case wasn't heard?

The simple answer is that we can't.

That's why there have been hundreds more "settlements" over the last four years, many with drastic reductions of final penalties. These policies are in addition to the recent practice of the Board to dismiss cases, even those with serious injuries, on minor technicalities; and to unilaterally "interpret" legislation and ignore court rulings, so as to restrict the Division's ability to enforce the law.

The net effect of the Board's policies has been to sabotage the Division's ability to defend citations and penalties on appeal. Cal/OSHA's deterrent effect has been significantly undermined as employers learn they can "game the system" when the Division is coerced into settlements, often with penalties that are pennies on the dollar.

The people who pay the cost for these policies are California workers whose employers look at Cal/OSHA as an agency that is forced to fight with one hand tied behind its back.

We find it troubling that the Board has not processed the years-long backlog of petitions for reconsideration over which the Board has sole authority and responsibility. This again undermines worker protections in California as employers are not legally required to abate these citations which remain “under appeal” for years and years.

The voices of Cal/OSHA’s front-line employees have not been heard on these issues until now because many of us feared reprisals by the Board in the handling of our individual appeals cases, or the handling of cases from the offices where we work. The deck is already so stacked against the Division that any more obstacles from the Board would be too much. But the various hearings held this spring, and the fact that the Board finally has all three members, have given us hope that the Board’s unfair policies and practices can now be challenged.

As you must know, those of us representing the Division at appeal hearings are frequently “out-gunned” by the employers’ corporate attorneys who have more resources, personnel and time – even before we have been triple-booked with hearings, often in places where worker witnesses find it difficult to appear. The current case load and over-booking mean that DOSH attorneys are saddled with an impossible task of preparing multiple major cases for the same day or on sequential days.

We know that not all citations are “open and shut” cases and we believe everyone, including employers, should have the right to a speedy appeal and an impartial review of the facts. All we want is a level playing field.

We ask you to cease and desist with the Board’s unfair policies and practices against Division personnel, and restore the balance to the appeals process so that employers and the Division are treated fairly and equally. California’s workers have a right to, and deserve, a workplace health and safety agency that can do its job.

Sincerely,

Patrick Bell, Senior Safety Engineer, Research & Standards Unit, Oakland
Eric Berg, Compliance Safety and Health Officer, Process Safety Management/North
Jeffrey Berliner, Compliance Safety and Health Officer, San Diego District Office
Bill Biretta, Compliance Safety and Health Officer, Fremont District Office
Maureen Braun, Compliance Safety and Health Officer, High Hazard Unit/North
Garrett Brown, Compliance Safety and Health Officer, Oakland District Office
Mario Chacon, Compliance Safety and Health Officer, Foster City District Office
Fernando CostaMartins, Compliance Safety and Health Officer, Oakland District Office
Sabino DeGuzman, Compliance Safety and Health Officer, Oakland District Office
Kathleen Derham, District Manager, EEEEC Unit/South
Mike Doering, Compliance Safety and Health Officer, Process Safety Management/South
Susan Eckhardt, Compliance Safety and Health Officer, Fremont District Office

Abgail Fabricante, Compliance Safety and Health Officer, Oakland District Office
Michael Frye, District Manager, Foster City District Office
Wing Sang Fung, Compliance Safety and Health Officer, Oakland District Office
Cora Gherga, District Manager, San Francisco District Office
Nick Gleiter, District Manager, Oakland District Office
Deborah Gold, Senior Safety Engineer, Research & Standards Unit, Oakland
Chris Grossgart, Attorney, DOSH Legal Unit, Oakland
Mark Harrington, Compliance Safety and Health Officer, Santa Rosa District Office
Mike Horowitz, Senior Safety Engineer, Research & Standards Unit, Oakland
Jeff Ferrell, Senior Industrial Hygienist, Asbestos Unit, Sacramento
Thomas Johnston, Compliance Safety and Health Officer, Process Safety Mgmt/North
Shohreh Kheradpir, Compliance Safety and Health Officer, High Hazard Unit/North
Eleanor Kilner, Compliance Safety and Health Officer, Fremont District Office
Barbara Kim, Compliance Safety and Health Officer, Foster City District Office
Keith Koterbay, District Manager, High Hazard Unit/North
Mariano Kramer, Senior Safety Engineer, Research & Standards Unit, Santa Ana
Michael Loupe, Compliance Safety and Health Officer, San Diego District Office
Army Lum, Compliance Safety and Health Officer, San Francisco District Office
Scott McAllister, Senior Industrial Hygienist, Region I, Santa Rosa
Vajie Motiafard, Compliance Safety and Health Officer, San Francisco District Office
Darcy Murphine, Compliance Safety and Health Officer, San Diego District Office
Gene Murphy, Senior Safety Engineer, High Hazard Unit/North
Sylvia Murray, Compliance Safety and Health Officer, Oakland District Office
Bob Nakamura, Senior Safety Engineer, Research & Standards Unit, Oakland
Doug Neville, Compliance Safety and Health Officer, High Hazard Unit/North
Jack Oudiz, Senior Safety Engineer, Professional Development & Training, Sacramento
Carol Parisek, Compliance Safety and Health Officer, Santa Rosa District Office
Peter Riley, District Manager, Process Safety Management/South
Dawn Schaniel, Compliance Safety and Health Officer, Fremont District Office
Geraldine Tolentino, Compliance Safety and Health Officer, Oakland District Office
Clyde Trombettas, District Manager, Process Safety Management/North
Chris Wing, Compliance Safety and Health Officer, Oakland District Office
Doug Woods, Compliance Safety and Health Officer, Santa Rosa District Office
Michael Zimmerman, Compliance Safety and Health Officer, San Diego District Office

(Positions listed for identification only)

Attachments: Charts on over-booking and hearing locations

cc: Len Welsh, Chief, Division of Occupational Safety and Health
Chris Lee, Deputy Chief for Enforcement, DOSH
Vicky Heza, Deputy Chief, Special Projects
John Duncan, Director, Department of Industrial Relations
Ted Toppin, PEEG-Professional Engineers in California Government
Chris Voight, CAPS-California Association of Professional Scientists
Members of the Senate Labor and Industrial Relations Committee
Members of the Senate Rules Committee
Members of the Assembly Committee on Labor and Employment

Latest Data on OSHAB Policies and Practices

May 29, 2009

Board's hearing overbooking practice continues

The Board's official May 4th "master calendar" for May-September 2009 indicates that hearing days with three or more scheduled hearings for a single judge are set for 15 days in the month of May 2009 and 32 days in the month of June.

May 2009

Hearing Location	Days with multiple hearings (3 or more) scheduled
Oakland	May 5, May 7 (4 cases), May 12, May 13, May 14, May 26, May 27 (4 cases), May 29
West Covina	May 12, May 28
Sacramento	May 20
San Diego	May 13
Stockton	May 14, May 28, May 29

Source: Appeals Board Master Calendar dated May 4, 2009.

June 2009

Hearing Location	Days with multiple hearings (3 or more) scheduled – including a 5 case day
Oakland	June 2, June 5, June 9 (4 cases), June 10 (4 cases), June 17 (5 cases), June 18 (4 cases), June 23 (4 cases), June 24 (4 cases), June 26 (4 cases), June 30 (4 cases)
West Covina	June 2, June 4, June 9, June 16, June 17, June 23
Sacramento	June 2 (4 cases), June 3, June 5, June 16, June 17, June 18
Stockton	June 9 (4 cases), June 10 (4 cases), June 11 (4 cases), June 23 (4 cases), June 24 (4 cases), June 25 (4 cases)
Van Nuys	June 2, June 16, June 18
San Diego	June 3

Source: Appeals Board Master Calendar dated May 4, 2009.

In June 2009, there are 14 days with 4 cases scheduled for the same judge, location and time – and one day has 5 cases scheduled (Oakland, Jun 17th).

Limited hearing locations continue

The Board's official May 4th "master calendar" indicates that for the months of May and June 2009 only six sites are being used. There are no hearing sites north of Sacramento or south of Stockton in the Central Valley.

Hearing Location	Number of Scheduled Hearings, May 2009	Percentage of Total Scheduled Hearings
West Covina	38	29%
Oakland	34	26%
Stockton	19	15%
Van Nuys	19	15%
Sacramento	13	10%
San Diego	6	5%
4 other "designated" but unknown locations	0	0%

Source: Appeals Board Master Calendar dated May 4, 2009.

Hearing Location	Number of Scheduled Hearings, June 2009	Percentage of Total Scheduled Hearings
West Covina	45	25%
Oakland	44	25%
Stockton	28	16%
Van Nuys	22	12%
Sacramento	22	12%
San Diego	17	10%
4 other "designated" but unknown locations	0	0%

Source: Appeals Board Master Calendar dated May 4, 2009.

In May, 85% of all hearings are being conducted in only four locations – West Covina, Oakland, Stockton and Van Nuys. In June, these four sites will hear 78% of the appeals.

Large Backlog of cases on reconsideration without abatement

According to the April 29, 2009, agenda of the Appeals Board's meeting, the following petitions for reconsideration are still awaiting a decision from the Board, which has the sole authority and responsibility to issue such decisions. The employer is not legally required to abate, or correct, the cited hazard while its appeal is pending.

Calendar year appeal was filed	Number of petitions for reconsideration still awaiting decision by the Board*
2000	1
2001	0
2002	1
2003	19
2004	5
2005	14
2006	12
2007	11
Total	63

* Closed session agenda, April 29, 2009, posted at: www.dir.ca.gov/oshab/CS4-29-09.pdf