

Inside Cal/OSHA – First Person Narrative

One Year After the Coup: Who’s running the show at Cal/OSHA?

By Garrett Brown, September 2014

September 2014 marks the one-year anniversary of the forced resignation of Cal/OSHA Chief Ellen Widess and the start of direct rule by Department of Industrial Relations Director Christine Baker. A year later there is no permanent leadership team, the roster is riddled with vacancies, and policy decisions have lurched between “political spin” crises and administrative *diktats* in response.

The picture that emerges is of an agency that continues to be under-staffed and under-resourced with every significant decision (and many routine, operational ones) made solely by the DIR Director. Staff in the Office of the DIR Director – who have little or no occupational health and safety training or experience in regulatory agencies – now exercise an undefined supervisory and oversight role over the OHS professionals and Cal/OSHA veterans in DOSH Headquarters and the field.

Headquarters Personnel

During the tenure of Chief Widess from April 2011 to September 2013, DOSH Headquarters staff held a Monday morning meeting that also involved the Regional Managers from southern California. The goal of this collegial style of management was to have all the key managers in the Division working together, with the same information (particularly from the field in southern California), and able to participate in the key policy discussions and decisions.

A year later these HQ staff meetings have been cancelled and the status these key leadership positions is indicated in the table below:

Staff attending weekly HQ Monday morning senior manager meetings (2011-2013)

Job Title	September 1, 2013 staff	Change	September 1, 2014 staff
Chief	Ellen Widess	Widess forced to resign	Vacant ; DIR staffer Juliann Sum is Acting Chief
Deputy Chief, Enforcement	Cora Gherga, Acting	Gherga reassigned as “Acting DC Enforcement Administration”	Vacant ; 3 staff designated as Acting DCs – Gherga, William Estakhri and Aston Ling

Deputy Chief, Health & Engineering Services	Deborah Gold	Gold is using accumulated leave and will retire in November 2014	Vacant; Gold part-time until November
Chief Counsel	Amy Martin	No change	Amy Martin
Special Counsel	Suzanne Marria	Marria reassigned to Legal Unit	Vacant
Special Assistant to the Chief	Garrett Brown	Brown retired	Vacant
Consultation Service, Program manager	Vicky Heza	No change	Vicky Heza
Administration Manager	Lynda Christy	Christy retired	Janice Yapdiangco is Acting Manager
Budget & Finances Manager	Angela Michael	No change	Angela Michael

A remarkable fact is that the three legislatively mandated leadership positions – Chief, Deputy Chief for Enforcement, and Deputy Chief for Health – are all vacant for the first time in memory, perhaps for the first time since Cal/OSHA was established in 1973. No plans have been announced to fill these positions with nominations that would be confirmed by the state Senate. All positions are filled with “Acting” staff.

The Deputy Chief for Enforcement position – key to effective regulatory enforcement – has been vacant since June 2012. The position (legally known as “DC for Safety”) now has three staff designated as Acting DC – which may not be in conformance with the state law requiring a single appointed and confirmed DC for Safety. Region I Manager Cora Gherga, who was the Acting DC from June 2012 to April 2014, was reassigned and is now “Acting Deputy Chief Enforcement Administration,” a newly created title. Region II Manager William Estakhri and Region VI Senior Safety Engineer Aston Ling now split the “Acting Chief Enforcement” designation.

The Deputy Chief for Health position was completely empty – not even an Acting assignment – between 2002 and 2011, when Deborah “Deeg” Gold was nominated and confirmed. The DC Health and Engineering Services position (as it formally known) is critical for management and direction of Cal/OSHA’s Research & Standards Unit, the Medical Unit and the Training Unit – as well as the units conducting inspections of elevators, pressure vessels, tramways and rides. Gold began working part time in June 2014 and will retire completely in November. No plans have been announced to nominate a new DC Health, which will significantly impact the Division’s ability to develop new regulations.

The Chief position, now vacant for a year, has been filled by an “Acting” assignment by Juliann Sum, a staff member of the DIR Office of the Director. No plans have been announced to nominate a permanent Chief and seek Senate confirmation.

The Special Counsel and Special Assistant to the Chief positions – important HQ staff positions – are completely empty. The Division’s Chief Medical Officer position is now vacant as Dr. Janice Prudhomme has returned to the California Department of Public Health after a three-year stint at DOSH. It appears no new physician will be hired to replace Dr. Prudhomme.

Maintaining DIR Divisions with “Acting” leadership for years at a time appears to be the preferred management method of Director Baker. In the Division of Workers Compensation, Rosa Moran was sworn in as the DWC’s Administrative Director in July 2011. Moran was removed in October 2012, reportedly for being insufficiently enthusiastic about Director Baker’s signature workers compensation reform implemented in 2012. Destie Overpeck has been “Acting AD” at DWC for almost two years now, starting in October 2012.

Having “Acting” staff in key leadership positions gives Director Baker direct and uncontested control of the Divisions’ policies and personnel, unencumbered by permanent staff nominated by the Governor and confirmed by the state Senate.

Over the last year various members of the DIR Office of the Director (OD) have exercised an undefined oversight and supervision role over DOSH Headquarters staff and down to the field level in some areas. The assignments of this staff – including Sean Ahearn, Amy Coombe, John Cummings, Dominic Forrest, Greg Santiago and Michael Wilson – frequently shift and DOSH HQ staff find themselves having to provide information and justifications to ever-changing minders. None of these DIR staff, except Wilson, have any training or experience in occupational health and safety. None of them, except Ahearn who once worked for the EPA, have any experience working in or managing a regulatory agency.

Lurching between political spin and *diktats*

While the DIR OD staff may not have much experience in workplace health and safety, they owe unconditional loyalty to the DIR Director. At the same time, DOSH’s Acting Chiefs are acutely attuned to the Director’s political concerns and the desire to “spin” the agency’s functioning and image.

This has resulted in a series of policy memos that were issued with political concerns in mind, but then had to be retracted shortly later because of lack of consultation with the staff who would have to implement them, and the belated realization of the infeasibility of these dictates from on high.

On May 27, 2014, Acting DC Enforcement Estakhri issued a memo redefining the criteria for “high profile cases” and requiring unprecedented reporting by enforcement District Offices of proposed Serious citations not only to DOSH HQ but also to DIR OD staff. [The political ramifications of these procedures was outlined in an earlier posting to Inside Cal/OSHA at <http://insidecalosha.org/DIR's%20Micro-Managing.pdf>]

On July 2nd, apparently stung by criticism by Federal OSHA in the draft of the annual FAME audit of Cal/OSHA, Acting Chief Sum issued a memo outlining mandatory, and contradictory, goals for “increasing the effectiveness of Cal/OSHA enforcement.” [The inherent problems of these dictated goals, and the response of the Division’s ranks, was outlined in an earlier posting to Inside Cal/OSHA at <http://insidecalosha.org/Do%20More%20with%20Less.pdf> . The final FAME report was issued by Fed OSHA in August 2014 and can be accessed at <https://www.osha.gov/dcsp/osp/efame/california.html>]

Both memos generated deep concerns among DOSH staff, both field inspectors and managers, because of the near-zero consultation in developing these proposals, and the infeasibility or adverse consequences of actually implementing them.

In an effort to tamp down the staff outrage over the previous *diktats*, Acting Chief Sum issued a third memo on July 18, 2014, titled “Supporting District Managers and Staff” [see accompanying PDF file]. At the end of this memo, Sum reported that the new reporting procedures in the May 27th memo were “cancelled.” New procedures for reporting cases to HQ/DIR and for “increasing productivity” in Cal/OSHA enforcement offices are still pending.

Understaffing persists and in key units

Part of the “productivity” problems in enforcement units is the persistent under-staffing. In mid-August 2014, the six enforcement regions of Cal/OSHA had 187 compliance safety and health officers (CSHO), with six of these not conducting independent inspections as they are trainees. This compares to the 195 CSHOs in those six regions in January 2011, when Arnold Schwarzenegger left office, and with the 250 California Fish & Game Wardens in the field at the end of 2013.

Cal/OSHA’s ratio of inspectors to workers – the standard measure of staffing both nationally and internationally – in August 2014 was one inspector to 99,465 workers. This compares to a ratio of 1 to 66,000 at Fed OSHA; 1 to 33,000 at Washington State’s OSHA; and 1 to 28,000 at Oregon OSHA.

DIR’s Budget Change Proposals (BCP) enacted for the current state fiscal year provided for 10 additional CSHOs (nine are already hired and included in the count of 187) for the Process Safety Management unit conducting refinery inspections, and for 9 additional CSHOs (about half already hired) for the regular enforcement units.

By the end of the fiscal year (June 2015), it is possible that the enforcement staff level may reach those of the Schwarzenegger Administration, but not the 200 CSHO level that existed in the year 2000, fifteen years ago. The inspector to worker ratio would still be much worse than Fed OSHA or the state plans in Washington and Oregon. California wildlife will continue to enjoy better protections than California’s workers.

Two key DOSH units – the Medical Unit (MU) and the Mining & Tunneling (M&T) unit – are particularly understaffed for the critical tasks they are responsible for.

The Medical Unit – now without Dr. Prudhomme – consists one physician and one occupational nurse – half the unit’s size under Chief Widess and much smaller than the seven physicians and three nurses that the Medical Unit had in 1975. The Medical Unit’s work has substantially increased over time as new regulations – ergonomics, bloodborne pathogens, aerosol transmissible diseases, workplace violence in health care, and safe patient handling – now require MU participation in inspections. Emerging hazards like Valley Fever also trigger Medical Unit involvement.

The M&T unit now has half the number of field inspectors that it did 15 years ago. The unit already is unable to conduct half of the every-two-months inspections required by state law of the 75-100 tunnels under construction at any time in California, or to administer all the required exams for blasters, gas testers and mine safety representatives.

Within the next three years, there will be 16 major new tunnel constructions in California requiring even more intensive and extensive inspections required of the half-strength M&T unit. These projects include Governor Brown’s “Bullet Train” and “Delta Water Bypass” project as well as a dozen other major transportation projects like Los Angeles’ “Subway to the Sea.”

The cost of micro-managing

A year after the September 2013 coup in Cal/OSHA, the agency remains under-staffed, under-resourced, over-supervised by DIR OD staff, and with an “Acting” leadership that is not authorized to make decisions but rather only to transmit policy directives that are not based on a working knowledge of how Cal/OSHA actually does its work.

Director Baker is fond of telling audiences that she works “14 hours a day, seven days a week.” I don’t doubt it.

If one maintains key positions with “Acting” assignments for years; if one refuses to delegate authority and insist on making virtually every decision about the Division yourself; if one’s management style is one of a “micro-managing control freak on steroids” – then you will work 14 hours a day, seven days a week.

The result is bad management and bad decisions for the Division, and an unsustainable, toxic work environment for everyone else.