

Inside Cal/OSHA – First Person Narrative

New laws and regs – Great! But who will enforce them?

By Garrett Brown, October 2014

The end of the 2014 Legislative Year in California produced a bevy of new laws related to workplace health and safety, and there are significant new regulations in the rule-making pipeline. But Cal/OSHA's enforcement staffing is still below that of Arnold Schwarzenegger's tenure as Governor and the number of state game wardens working for California's Fish & Game Department.

Cal/OSHA's Research & Standards unit is hard at work on pending regulations to reduce workplace violence in health care, improve heat illness prevention regs, and conduct more oversight of the state's 15 oil refineries. The Standards Board has approved a "safe patient handling" regulation, now to be implemented and enforced. Governor Jerry Brown last month signed into law important legislation to increase public/worker awareness of chemicals used on the job via strengthening the HESIS unit, and to require DOSH verification of actual employer correction of hazards before they receive a reduction in the citation's civil penalty.

All good things – and "leading the nation" in many areas – but are there enough compliance safety and health officers in the field to enforce these regs so that they are more than just words on paper?

In September 2014, Cal/OSHA's six enforcement regions had a total of 181 CSHOs, including two who only work part-time and 10 who are trainees that do not conduct independent inspections on their own [[Sept 2014 - DOSH Staff Summary Chart - CSHOs.pdf](#)]. This number already includes 10 of the 12 new hires for the refinery Process Safety Management unit; and about half of the 9 new CSHO positions funded by the 2014/15 state budget.

DOSH's September Organization Charts (actually six separate charts) indicate there are 18 vacant CSHO positions in enforcement offices. But it is unclear how many of these positions will be filled – and when. Most of these empty positions are from CSHO retirements, but DIR has dragged its feet in backfilling these vacancies in the past.

In the meantime, DOSH's enforcement offices had 181 CSHOs in September – below the 195 CSHOs that Governor Schwarzenegger left Governor Brown in January 2011, and below the 200+ CSHOs Cal/OSHA had 14 years ago in 2000.

The inspector to worker ratio – the standard measure of comparison used nationally and internationally – for Cal/OSHA in September was 1 inspector to 102,762 workers. This is much worse than Fed OSHA's ratio of 1 to 66,000; Washington State's ratio of 1 to 33,000; and Oregon's ratio of 1 to 28,000 (all these ratios for November 2013).

The adverse impact on worker protection in California of this chronic understaffing is described in great detail in the narrative positions of the two DIR "Budget Change

Proposals” (BCP) that were incorporated into the state’s 2014/15 fiscal year budget, starting in July 2014 and ending in June 2015.

BCP 14-02 [[DIR - BCP 14-02 PSM.pdf](#)], which added 12 CSHO positions (10 now filled) to the Process Safety Management unit that has responsibility for inspecting not only the state’s 15 oil refineries, but another 1,600 chemical plants as well. The added CSHOs were required by the state legislature in legislation passed and signed into law last year.

BCP 14-03 [[DIR - BCP 14-03 DOSH.pdf](#)], which is highly touted as “filling unfunded DOSH positions,” actually eliminates 5.5 DOSH positions and funds only a total of 9 CSHO positions for the 27 enforcement offices (two of three offices will get zero new CSHOs). One of the eliminated positions was a Medical Unit occupational health nurse, which means the critical Medical Unit will only ever have one nurse to work with the one MU physician (the other MD position remains vacant). In 1975, Cal/OSHA had a Medical Unit of seven physicians and three occupational nurses.

The narrative text of BCP 14-03 explains how DOSH is unable to meet the Fed OSHA guidelines for opening and closing inspections, and is not conducting mandatory inspections required by state law. The BCP’s nine newly funded positions – half of them already filled and counted in the current 181 CSHOs – will hardly make a dent in meeting unmet state mandates and federal guidelines.

Cal/OSHA’s major funding mechanism (combine with Fed OSHA grants) is the Occupational Safety and Health Fund, which is completely independent of the state’s General Fund and which based on a 0.25% surcharge on employers’ workers compensation insurance premiums. The OSH Fund has never been fully tapped by the Brown Administration, although the sole purpose of this (non-General Fund) fund is protecting worker health and safety.

Until July 2014, there was a \$52 million cap on the OSH Fund – which was never reached by Brown. Starting this July, the cap was removed (technically there is a \$57 million cap but the legislature can allocate more money if it decides it is necessary) – but DOSH funding is still below even the nominal \$57 million cap.

At a time of continuing under-staffing with all the entirely predictable results, Cal/OSHA is under-resourced and money is being left on the table.

The full extent of Governor Jerry “Austerity Forever” Brown’s under-resourcing of the state’s workplace health and safety agency – the cost for this enforced austerity is borne by the state’s workers – is visible in the September 2014 listing of DOSH staff positions by unit and job classification [see accompanying document]. On the third page of the document, there are totals for “filled,” “vacant” and “total” positions.

Subtracted from available “vacant” positions are the 5.5 positions eliminated by BCP 14-03; 13 positions being held open by DIR for the Federal “sequester;” and 2 positions on “loan” (loaned to who?). Total positions for DOSH in September 2014 are listed as 641.5 – in January 2011, DOSH had 703 total positions according to this same series of

monthly charts. Under Governor Brown and DIR Director Christine Baker, 61.5 DOSH positions have gone “poof” and of those left, 33.5 are vacant.

One concurrent development – you decide whether it is related – is a big jump in workplace fatalities in California in 2013. Last month, the federal Bureau of Labor Statistics reported preliminary data for 2013 fatalities. Fatalities in California last year reached 385 workers – up 8.8% from 2012’s preliminary estimates, and at the same time as there was a decline of 6% in national fatalities. Final stats won’t be available until next April, but there is usually a 5% increase from preliminary figures in California, which would mean 2013 fatalities of over 400 workers – well over one worker being killed on the job every day of the year.

Even more disturbing, was the 7.2% increase in fatalities in 2013 among Latino workers – 189 Latinos killed among the California total of 385 worker deaths. Latino worker deaths were 37% of California workplace fatalities in 2012; in 2013 they jumped to 49% -- almost half the workers killed on the job in the state.

DIR is now reportedly working on another BCP for state fiscal year 2015/16, which does not start until July 2015. If all of DIR’s pretty words about “rebuilding Cal/OSHA” are true, the proof of pudding will be in the 2015/16 BCP...or not.

DIR could make a start by actually backfilling the 18 vacant CSHO positions noted on the agency’s own organization charts for DOSH, and the 33.5 overall vacant positions on its other September 2014 chart.

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Cal/OSHA at 41?

Last year’s abruptly cancelled “Cal/OSHA at 40” celebration is back – sort of. On December 15th there will be an invitation-only, day-long gathering at the Oakland State Office Building to celebrate “100 years of workers’ compensation and safety and health in California.” [[Dec 2014 DIR event.pdf](#)]

The one-hour panel on “celebrating 40 years of Cal/OSHA” consists of three agency bureaucrats – DOSH Acting Chief Juliann Sum, Appeals Board Chair Art Carter, and Standards Board Executive Officer Marley Hart.

The opening and closing panels feature another cluster of bureaucrats (the same set at both time slots) – bureaucrats speaking to other bureaucrats in front of a carefully-vetted audience. More fun than a barrel of monkeys...

At least it’s not the same program as last year, personally designed by DIR Director Baker, which featured more employer representatives (11) than unionists or worker advocates (7), plus not one but two appearances by Marti Fisher of the Chamber of Commerce – an organization that bitterly opposed the creation of OSHA and has fought virtually every job safety protection since then.