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The **PUMP HANDLE**

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[Cal/OSHA's disappearing funds – where's the money?](#)



Posted by [garrettbrown](#) on September 14, 2017

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Starting in July 2015, the California Division of Occupational Safety and Health (Cal/OSHA) was authorized to hire several dozen more field compliance officers to protect the state's 19 million workers. Because Cal/OSHA's hiring has not filled all new positions or kept up with retirements, there has been an average of 34 vacancies of these fully-funded positions since then, resulting in \$11 million in unused resources through August 2017. Not only is this a missed worker protection opportunity, no one knows what's happened to these funds and where they are.

Another mystery is the whereabouts of estimated \$4.3 million dollars that has been collected from California's 15 oil refineries in a new assessment that began in 2014. But not all collected fees have been spent on activities by the 10 inspectors assigned to enforce "process safety management" (PSM) regulations at these refineries.

It is a little-known fact that Cal/OSHA does not control its budget or its hiring, instead the agency's parent – the Department of Industrial Relations (DIR) – has total control and final approval of Cal/OSHA's spending, hiring and policies. When I worked at Cal/OSHA headquarters between 2011 and 2013, we could never get a straight answer from DIR about our budget. Moreover, we went through several cycles where we were told we could hire inspectors on one day only to have that permission revoked a few days later.

These unused resources are important because Cal/OSHA needs all the money it can get to meet its own, state and federal benchmarks for performance, which is not currently the case. These resources could be used for more inspections of high hazard industries and employers; for more

follow-up inspections; for more planned inspections of trenching, lead and asbestos operations; and for effective implementation of the state's new PSM regulations of oil refineries.

The fact that Cal/OSHA's job "is not done yet" is reflected in recent reports by Federal OSHA and the National Safety Council.

Inspector position vacancies and unused resources

Funding for Cal/OSHA comes from three main sources: grants from Federal OSHA; the state Occupational Safety and Health Fund ("OSH Fund"); and various fees for services provided by Cal/OSHA. The major state funding is the OSH Fund which [assesses a tiny fee](#) (0.23 percent) on employers' worker compensation insurance premiums. The Governor and Legislature collaborate on the state budget that then authorizes a determined amount of spending for Cal/OSHA from the combined revenue streams.

Doing the math of the resources "left on the table" by DIR, starts with the annual salary, benefits and operating costs for each Cal/OSHA compliance safety and health officer (CSHO) which amounts to \$150,000.

With an average of 34 CSHO vacancies per month between July 2015 and June 2017, the unused resources for these compliance officers amounts to \$10.2 million. In July 2017 there were 30 vacant CSHO positions, and 29 vacant CSHO positions in August 2017 – for a combined total of \$737,500 in unused resources for the two months.

So the unused enforcement resources arising from vacancies in fully-funded CSHO positions between July 2015 and August 2017 is just shy of \$11 million.

The question then becomes where is this money? What is it being used for?

The money certainly is not being used by Cal/OSHA to enhance its protections of Californian workers. Mostly likely, as per [Section 15606 \(f\)](#) of the California Code of Regulations, DIR's Director Christine Baker is holding the funds in a trust account to be used for future reductions of the fees that employers are assessed annually for the OSH Fund.

In other words, these resources are lost to Cal/OSHA and are used to reduce fees on employers in following years. But since DIR handles Cal/OSHA's budget as an impenetrable "black box" – even for Cal/OSHA headquarters, let alone for workers and the general public – no one really knows.

One constant rumor has been that DIR has a giant "slush fund" – used for the DIR Director's pet projects – drawn from the multiple funds DIR controls for Cal/OSHA, three other state agencies, and the Commission on Health and Safety and Workers' Compensation. In the last state fiscal year, DIR [directed the expenditure](#) of more than \$641 million of its sub-agencies.

But, because of the lack of basic transparency at DIR, no one really knows what happens to funds that are authorized by the state Legislature and collected from employers for the OSH Fund, but then not used, as has been the case of the CSHO vacancies since July 2015.

Unspent refinery fee funds

Another mystery related to DIR's control of Cal/OSHA funds is the fate of funds raised from a new fee on oil refineries but, again, not spent on Cal/OSHA enforcement.

Following the massive 2012 fire at Chevron's refinery in Richmond, CA, the state legislature approved a new fee on the state's 15 oil refineries to finance enhanced enforcement of the "process safety management" (PSM) rules by Cal/OSHA's designated PSM Unit.

In the two state fiscal years from July 2015 through June 2017, DIR collected a total of \$9,568,000 in [refinery fees](#) (page 6). The fees are restricted to enforcement activities at refineries, and are not for use at the 1,900 non-refinery facilities that handle hazardous chemicals and are also covered by PSM regulations.

During these two years, the PSM Refinery unit had 10 CSHOs, with annual costs of \$150,000 per inspector, or a total of \$3 million. Manager, supervisory and clerical staff for the two PSM field offices ran another \$1,860,000 for the two years. Office operating costs could be an additional 100,000 a year per office, for a two-year sum of \$400,000.

This means that the refinery-fee expenses for the two years would be no more than \$5,260,000. But DIR collected \$9,568,000 in refinery fees.

This means that \$4,308,000 of the refinery fees collected between 2015 and 2017 went unused. What happened to this \$4.3 million – and where the money is now – is a question that refinery workers and the communities just across the fence line of the 15 refineries deserve to know.

Perhaps Section 15606 (f) has also been applied to these funds and the oil giants already have and will receive refunds in the form of reduced future fees from DIR. Transparency on the part of DIR is needed here as well.

The need for answers to these questions is more critical than ever. [Enhanced PSM regulations](#) are set to take effect in California on October 1st. All available resources are needed for enforcement and to support the new participation rights of refinery workers.

DIR's bad precedent with the Elevator Fund

How DIR handled the Elevator Fund bodes ill for making full use of resources for worker and public safety.

In 2015, the Elevator Fund had a surplus greater than \$35 million dollars, a level which violated state rules. DIR, with the support of the Labor Secretary and Governor's Office, declared a "fee holiday" on the building owners and operators who pay the annual fees for inspections and other activities by Cal/OSHA's Elevator Unit.

In 2015, the Elevator Unit had more than three dozen vacancies of fully-funded inspector positions. Moreover, at least 35 percent of the state's elevators had expired permits, and the Unit did not have the inspectors needed to conduct the annual inspection and renewal of elevator permits.

Instead of using the Elevator Fund surplus to fill the inspector vacancies and reduce the backlog of uninspected elevators – as required by state law – DIR declared a fee holiday.

In January 2017, DIR promulgated an emergency regulation to permanently slash elevator fees by 25 percent for inspections, certifications, installation and alteration of elevators. This emergency regulation was extended for another six months in July, and DIR intends to make it permanent by the end of the year.

All this occurred in 2017 while the Elevator Unit still had 14 vacant inspector positions and a backlog of uninspected elevators with expired permits reported to be more than 20 percent throughout the state.

It is clear that providing building owners, developers and corporations with refunds took precedence for DIR over using existing funds to hire inspectors and protect the public and workers in buildings with uninspected and potentially unsafe elevators.

How the resources could be used

For more than two years, DIR has "left on the table" millions of dollars. These resources could have been used for important worker protection activities such as:

- More inspections of high hazard industries and employers. Cal/OSHA's the High Hazard Unit had vacancies for District Manager in both District Offices and four inspector vacancies (i.e., 20 percent of total CSHO positions);
- More follow-up inspections of workplaces where serious citations were issued but not corrected by the end of the inspection. Cal/OSHA is well below the 20 percent follow-up inspection rate required by state law;
- More planned ("programmed") inspections of worksites where operations include demolition, trenching, lead and asbestos use. Cal/OSHA is well below its own benchmark for these "permit inspections" which often reveal unsafe conditions arising from these dangerous job tasks;
- More "health" inspections involving evaluation of worker exposures to airborne chemicals, noise, ergonomic and repetitive motion hazards. These health inspections are more time consuming to conduct. As a result, they receive lower priority when there are not enough CSHOs to open the mandatory accident and worker complaint inspections; and
- More support activities for the 10 PSM inspectors assigned to refinery enforcement. This is especially important because of the October 1st effective date for PSM regulations being enforced by Cal/OSHA and Cal/EPA.

Cal/OSHA's work is not yet done

Cal/OSHA is considered by many to be the "premiere OSHA state plan." It offers full coverage of both private and public sector workers, has numerous regulations that are stronger than Fed OSHA's, and the state provides more resources than required by Fed OSHA. Yet Cal/OSHA's performance needs improvement beyond the truism that "everything can be improved."

California's [injury rates are worse](#) than the injury rate in states covered by Federal OSHA for Fed OSHA and other major industrial states. (The state's fatality rate is below the national average.)

Fed OSHA's [latest assessment of Cal/OSHA's performance](#) – the Federal Audit and Monitoring Evaluation report (FAME) – was issued in 2017 and covers the period of October 2015 to September 2016. This FAME report was a follow-up to the comprehensive evaluation report issued in 2016.

Fed OSHA still noted several significant deficiencies:

- Cal/OSHA conducted 344 "high hazard" inspections during the federal fiscal year, which was 14 percent short of the federal benchmark of 400 inspections. The report stated the shortfall was due to "staffing vacancies;"
- Cal/OSHA's "case lapse time" needed to close an inspection and issue citations is still more than 20 percent longer than the national average. California has an average lapse time of 68.5 days for safety inspections and 73.9 days for health inspections, compared to the national average of 45.2 days and 57.3 days, respectively; and
- California's fatality rate in construction and agriculture rose between 2013 and 2015, increasing from 6.5 deaths per 100,000 workers to 6.8 in construction, and from 9.2 to 17.1 in agriculture, forestry and fishing;

Fed OSHA's FAME report continued to document California's abysmal performance in investigating worker complaints of employer retaliation and reprisals for raising health and safety concerns. These investigations are not done by Cal/OSHA, but rather by the Division of Labor Standards Enforcement (DLSE), which is also overseen by DIR.

The report noted that the number of retaliation complaint investigations completed within 90 days – the federal benchmark – was only 7 percent. The average number of days taken by DLSE to complete an investigation was 462 days – a year and three months! And in only 20 percent of these investigations were the worker complaints of retaliation found to be "meritorious."

In June 2017, the National Safety Council (NSC) released its [first annual report](#) on safety performance in the 50 states in the areas of roadway, home, community and workplace safety. The report had four levels of performance: "on track," "developing," "off track" and "not graded."

The NSC gave California a grade of “C” for the five workplace safety criteria in the report. According to the NSC, workplace prevention, preparedness and enforcement in California is at the “developing” level; worker health and wellbeing is also at the “developing” level; and California’s workers’ compensation system is “off track.”

Conclusion

In the last two years, the California Legislature has provided DIR with significantly increased financial resources to enhance the effectiveness of Cal/OSHA and better protect the state’s 19 million workers. DIR has failed to take full advantage of these resources to strengthen Cal/OSHA, and at the same time has provided refunds to employers who have paid the fees that generate these unused resources.

The Governor, his Labor Secretary, and DIR director are putting the interests of employers, building operators, and refineries ahead of worker and public protection.

The net effect is a Cal/OSHA that is weaker and much less effective than it could be if all available resources were put to work. The people who pay the cost of these resources “left on the table” are the workers of California and their families and communities.

Garrett Brown is a certified industrial hygienist who worked for Cal/OSHA for 20 years as a field Compliance Safety and Health Officer and then served as Special Assistant to the Chief of the Division before retiring in 2014. Since retiring, Brown continues to follow Cal/OSHA issues and established the [“Inside Cal/OSHA”](#) website. Brown also has been the volunteer Coordinator of the Maquiladora Health & Safety Support Network since 1993 and has coordinated projects in Bangladesh, Central America, China, Dominican Republic, Indonesia, Mexico and Vietnam.

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The most recent annual Federal OSHA evaluation report of Cal/OSHA highlights progress made in some areas, but continuing failure to meet several minimum federal benchmarks as well as requirements of California law. The underlying In "Cal/OSHA"

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Dozens of safety inspector positions in California are vacant while workplace fatalities and injuries in the state are on the rise. Cal/OSHA has had an average of 34 vacant field enforcement positions a month since July 2015, which means that more than \$10 million In "Cal/OSHA"

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A closer look at the latest available data from the Bureau of Labor Statistics shows that injury and illness stats for California show the state has worse, not better, rates of worker injuries and illnesses than national levels or the performance of other major In "Cal/OSHA"

Keywords: [Cal/OSHA](#), [Christine Baker](#)

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