

Exit Interview (Rev 6/16/09)

Jack Oudiz – Senior Safety Engineer, California Division of Occupational Safety and Health (Cal/OSHA)

As I approach my retirement from the California Division of Occupational Safety and Health after nearly 23 years as a compliance industrial hygienist, a District Manager, a Regional Senior Industrial Hygienist and Senior Safety Engineer, I wanted to share some thoughts on my experience and on the current state of affairs in the hope that it might contribute to future change. Many leading employers in the private sector have found value in conducting exit interviews with long time employees. In the absence of such efforts by DOSH or the Department of Industrial Relations, I offer these comments as the equivalent of my exit interview.

My statement is compelled by a sense of sadness and disappointment at leaving an organization that is in many ways much less effective than I found it nearly 25 years ago. The Division I leave today has veered so far away from its mission that it has begun to redefine that mission to justify its actions. It has disregarded the health and well being of its internal operation for so long that low workforce morale, lack of adequate resources, inept and poorly trained managers, directionless field staff, low expectations and complete lack of accountability has come to be the accepted norm. In the political realm, the imbalance of power between labor and employers has contributed to this steady deterioration resulting in weaker regulations, weaker enforcement and the abandonment of the advocacy role intended for the Division by the OSHAct.

First, let me be clear that it has been an honor to work alongside many of my dedicated and incredibly committed colleagues in the Division these past many years. They have inspired me and kept me going in the face of neglect, ineptitude and irresponsibility. The disappointment in knowing “what could be” was in part offset by the privilege of their friendship and a job that at times did make a difference. I leave feeling not bitterness or disgruntlement but rather a great deal of pride and gratitude.

I also leave behind a record of accomplishment and achievement I am proud of. In October 2001, I was honored to be asked to lead the Division’s contingent of volunteers that assisted OSHA at the World Trade Center disaster recovery site. Upon my return, I was also responsible for creating, developing and leading the Division’s Emergency Response Program which I subsequently was able to integrate into the California Statewide Emergency Management System.

In 1994, I was asked by Chief John Howard to develop and implement the Division’s Professional Development and Training Unit, the first such professionally coordinated training program in the Division’s history. Since 1994, I have been primarily responsible for the development and delivery of all professional training for all Division enforcement and consultation staff. During fatter budget times, this effort resulted in more than 30,000 person-hours of training given per annum while functioning as essentially a one-person unit.

What is The DOSH Mission?

The history of the enactment of the Occupational Safety and Health Act of 1970 shows that the governmental role in regulating safety and health conditions in workplaces was the direct result of many years of political struggle by workers and their unions. While the Act was far from perfect in its scope and construct, it did establish the fundamental principle, in law, that all workers have the right to a workplace that does not endanger their safety and health, the “General Duty Clause” as the Federal agency calls it. This principle was codified in the California Labor Code as a statement of responsibility of all employers. A national regulatory bureaucracy was created by this Act to assure that this principle was in place and enforced in all workplaces. The Division is the branch of that bureaucracy in California. It derives its mission and reason for being from that principle. That is, to assure, to the best of its ability, that workers in California are afforded the protection required to keep them safe and healthy at work.

That one clear message has never been articulated by anyone in a leadership role while I have worked in the Division. Consequently, each person who comes to work in DOSH is left to define for his or herself what is their role and what is their purpose within this bureaucracy. Since “production” measures have always been given the most outspoken emphasis by Division leadership, some come to see the mission as defined by the number of inspections and citations amassed. Others come to the Division with prejudices and biases regarding workers, unions, employers and, absent any clear guidance and emphasis from above, continue to express those leanings in their daily work. The result, as I have consistently observed it, is a workforce with a wide divergence of commitment to the agency’s mission led by many managers whose success is evaluated and measured by statistics rather than by their level of dedication and ability to create common cause in pursuit of the mission.

As lead of the Division’s Professional Development and Training Unit the past 15 years, I developed an Orientation to Enforcement training for all incoming newly hired inspector staff. The content of this training, in addition to a great deal of introduction to the mechanics of performing inspections, has always included segments on the history leading to the passage of the OSHA Act including the history of occupational safety and health struggles in this nation and the point of view of labor on the role of OSHA as expressed by a guest union organizer. This is usually the only exposure to these subjects that DOSH inspectors ever receive in their working lifetime. Only once in these past 15 years has a DOSH Chief made an appearance at this training to welcome new Division employees. This opportunity to inspire, to motivate, to clearly and unequivocally emphasize the mission of the Division has been repeatedly squandered.

In my tenure with the Division, I have served six different DOSH Chiefs. Not one of them ever articulated the mission of the Division to its employees. Not one of them ever made a serious effort to inspire and motivate its employees to understand and excel in furthering that mission. What is the primary mission of the Division? Ask DOSH employees that question and you will very likely receive a variety of diverging responses. Is it to protect and advocate for the safety and health of workers? Is it to

enhance commerce? Is it to assure that there is a “level playing field” for all employers? Is it to be a neutral arbiter between workers and employers?

Now that the financing of DOSH is increasingly coming from levied employer fees, there is already open talk from Division leadership about employers as “our customers” and steps are being taken to implement this latest interpretation of the mission. For the first time, the quality and not simply the quantity of the field work is being scrutinized and addressed by DOSH leadership. However, the justification being given to the workforce is not the goal of greater protection for workers but rather it is that employers deserve a good return on their investment! Is it realistic to expect that aggressive enforcement of protective health and safety regulations is really the return on investment that California employers want and expect?

All of this is not to imply that DOSH leadership has lacked vision all these years. Rather it is to say that that vision has seldom been congruent with the fundamental principle established by the OSHAct. As political appointees, DOSH Chiefs have been selected with certain expectations from the Administrations they serve. Twenty-two of the past 25 years, DOSH Chiefs have been appointed by and served under business-friendly Republican administrations. The impact of that history on the Division’s interpretation of its mission has been incalculable.

John Howard served as Chief of the Division for approximately 10 years. He was a man of enormous personal charm and intellectual power. He received accolades from both labor and employers during his tenure. I was inspired by and honored to work with him. Dr. Howard was also appointed by and served primarily under Republican governors. Dr. Howard fundamentally did not believe in the enforcement paradigm created by the OSHAct. His major accomplishment during his tenure was the revision of the DOSH Policies and Procedures Manual to its present 600+ pages incarnation. This was done as an effort to bring greater consistency in the manner and methods used by each enforcement office within the state. It was a huge undertaking that absorbed a tremendous amount of the Division’s energy and resources, including monthly, week-long training sessions over 14 months. It was carried out, in large part, in response to complaints from California’s employers who felt that inconsistencies in enforcement actions were a detriment to their business practices.

What has this effort done to improve the ability of the Division to more effectively achieve its mission? From my vantage, the answer is very little, particularly when judged against other opportunities that were squandered. In that timeframe very little was done to address the longstanding structural problems affecting the real daily work of DOSH staff. Poorly qualified managers continued to be appointed throughout the Division. Managers continued to struggle to be effective leaders without adequate training, mentoring or guidance. Staff demoralization reached all-time low levels partly in response to the hugely increased bureaucratization of the work and the continued deterioration of resources, support, training and leadership. Most significantly, the Division continued to ignore the glaring truth that far more staff was needed to successfully carry out its mission.

Woefully Inadequate Resources to Get Job Done

California continues to trail both Federal OSHA as well as all other state staffing levels with respect to the proportion of enforcement inspectors to the state workforce. This staffing shortage was the focus of recent legislative oversight scrutiny. When given the chance to affirm the need for more staff, the current DOSH Chief buckled to political pressure and declared that “efficiencies” in operation would counter the need for additional personnel. This statement was so ludicrous and the needs are so glaring that even he has now finally had to publically pronounce that the Division is in sore need of more resources and staffing. In the meantime, the present Chief just created and filled a high level staff service manager position with an “efficiency” expert while a Deputy Chief for Occupational Health position remains unfilled for the 10th consecutive year.

The consequences of chronic staffing deficiencies in enforcement district offices are numerous and have a huge impact on the work and morale of Division staff. When workloads are too great for offices and inspectors, inspections and accident investigations are rushed, witnesses are not interviewed, evidence is not collected, citations are not issued or are given away to avoid time consuming appeals, inspections are conducted by letter rather than in person, some accidents even fall through the cracks and never get investigated. Mentoring of inexperienced inspectors seldom occurs and they are often left to fend for themselves in complicated inspections or investigations. Who benefits from all of this? Who suffers the consequences? Is it any surprise that inadequate staffing levels has been the one consistent hallmark of the past 25 years?

Lack of Leadership/Lack of Accountability

The Division I leave today is marked by low levels of morale among its workforce. One of the most consistent contributors to this low morale has been the lack of excellence in leadership stemming from the poor process of selection and lack of training of DOSH managers at all levels for the critical role that they play. Excellence in management is not tested for, it is not selected for, it is not rewarded and it definitely is not taught in the Division. The manager selection process that I have observed has usually been either a complete crap-shoot or the rank exercise of favoritism. At least one Regional Manager was selected simply because she was all that was left on the civil service list. She covers her incompetence through belligerence and terror and is currently the subject of grievances by an entire District office. This is common knowledge ignored for years by Division leadership. Once an unfit manager is in place, he or she remains there for years barring the most egregious circumstances.

The combination of my statewide role as the Division’s training coordinator, my longevity on the job and my personal initiatives put me in the somewhat unique position of having recurring contact with nearly all professional staff in the Division. I hear all the rumors, I know all the dirty secrets, and I know where the bodies are buried. I also know which managers are incompetent, which ones are bullies, which ones are liked and which ones are despised. I know which managers try to inspire and which ones lead by coercion and intimidation, which ones are still dedicated to the mission and which ones

were long ago beaten into submission. I know which ones give away citations to avoid the hassle of appeals and which ones are usually prone to take the employer's view on contentious issues.

The impact of an unfit manager on an agency such as DOSH and on the morale of its staff can be devastating and can last for many, many years. This problem has been consistently ignored by every Chief I have served, none more so than the present one. Poor choices in manager selection have been compounded by the lack of accountability at any level of the organization. Accountability is not an easy issue in civil service. It requires clearly defined expectations and a consistent application of well understood consequences. Neither of those exists in DOSH. The lack of accountability eventually also reaches the field level inspector where the slothful or the incompetent persist in their jobs year after year alongside those who choose to work hard and exercise superior skills. One suffers no consequences nor is the other recognized or rewarded. Personal motivation and initiative are the only impetus to good work in the Division. For many years, I tried to convince Division leadership to implement the state's already well established employee recognition program. It fell repeatedly on leadership's deaf ears.

Decline of Labor Influence/Rise of Employer Influence

The historical decline in the strength and influence of the labor movement in California (as well as nationally) in the past 25 years has had a devastating impact on the effectiveness of the Division and its commitment to its mission. It is hard to conceive that at one time the Chairman of the Cal/OSHA Appeals Board was a former union rank and file member and shop steward. The imbalance of power between labor and employers has been reflected in the regulatory process, in the appointments to critical positions on the CalOSHA Appeals and Standards Boards, in the hiring of and decisions rendered by the Appeals Board and its judges and in every other facet of DOSH policies and procedures.

The universal use by the Division of advisory committees and the development of regulation by consent, on its face, may have the appeal of fairness and balance, but in reality it has slanted rulemaking power overwhelmingly to employers. It is not unusual for a regulatory advisory body to have a 10 to 1 ratio of representation in favor of employers. Even when labor representation is present, it is customarily severely outgunned in expertise, experience and assertiveness. The outcome, in the case of landmark regulations such as the ergonomics standard and the heat illness prevention standard, clearly reflects this imbalance of power. These two regulations have given DOSH an undeserved reputation as a leader in progressive health and safety rulemaking. The truth is that these regulations were grudgingly enacted only after vociferous labor action (and heat related worker deaths that drew public outcry) and were weaker versions of what was needed.

DOSH's role is intended as an advocate for worker health and safety. The OSHAct did not intend nor require consensus or agreement between the regulated community and those that the agency is intended to protect. The OSHAct did not intend nor require the balancing of worker safety and health with industry profits. Rather, the law requires the agency to

protect a worker, to the extent feasible, from “material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life.” When the Division assumes the role of an impartial party in the development of regulation, it abdicates its responsibilities as an advocate for worker health and safety.

Because of emphatic employer opposition to the ergonomics standard, the compromise regulation that was passed ignored much of the scientific evidence and has remained essentially unenforceable. The “Noah’s Ark” approach that requires a minimum of two of each type of injury to trigger the requirements of the regulation has meant that many exposed or injured workers lack any protection simply because there may not be any injured co-workers. Consequently, the negligible incidence of cited DOSH ergonomics cases does not begin to reflect the scope of the actual hazard in workplaces.

The heat illness standard recently enacted also faced stiff employer opposition. Compromises were made by the Division that omitted key elements demanded by labor such as the inclusion of indoor work places within the scope of the regulation. It also put the onus of requesting rest periods on workers. Anyone familiar with the realities of the workplace understands that workers, particularly low wage workers, are not likely to ask their employers for relief because they fear they will lose their job and California's regulations on piecework, which permit the employer to pay only minimum wage for a 40 hour work week, create a significant financial penalty for any worker who takes a break.

Enforcement Sabotaged By Appeals Board

In recent years, perhaps nothing has had a more deleterious impact on the daily activities and morale of the Division’s enforcement staff than the practices of the Cal/OSHA Appeals Board. The attitudes and decisions of many of the Board’s administrative law judges have been widely perceived by enforcement inspectors and many of their managers as anti-Division and strongly biased in favor of employers.

The Board itself has reinforced this perception by capriciously dismissing important citations based on frivolous technicalities such as partially inaccurate company names or downgrading citation classifications without reasonable cause. These decisions and actions have a widespread chilling effect on Division’s staff. Both managers and inspectors are more reluctant to classify serious citations in the expectation of a negative outcome on appeal. “Why bother?” is how many feel. In other cases, staff has begun to reinterpret DOSH regulations based on what they have seen in ALJ decisions. This negative impact has been compounded by practices of the Appeals Board such as overbooking of hearings, arbitrary denial of continuances and expecting worker witnesses to travel great distances for hearings. In an unprecedented recent move, 47 Division staff, including eight District Managers and nine Senior Safety and Industrial Hygiene staff, signed a letter to the Appeals Board demanding that it cease and desist its practices which have prevented the Division from effectively carrying out its mission.

The Division leadership has done little to protest or challenge these actions by the Board. In recent Senate oversight hearings, the Division Chief was effusive in his praise of the Chairwoman of the Board. Only because of pressure from labor advocates has

the Board begun an advisory process which itself is, not surprisingly, overwhelmingly stacked in favor of employers and their representatives.

Lack of Political Will for Change

Until there is the political will in California to take seriously the principle established in law by the OSHAct, I don't expect that the Division will become any more effective in carrying out its mission. We will continue to have leadership beholden to the Chamber of Commerce rather than the working men and women of California and unwilling to address the structural deficiencies of the Division. Those deficiencies have the net result of less effective enforcement of ever weaker regulations and a dispirited workforce in search of inspiration and leadership.

Without pressure from below, there is little incentive for change. The OSHAct was in many ways a revolutionary act. For the first time, the dictatorial power of the employer over the workplace was challenged. Government inspectors were given the unprecedented power to not only inspect all workplaces but to shut workplaces or work activities down. It is not surprising that employers and their elected representatives fought the Act tooth and nail. It is also not surprising that these same forces have continued to fight at every opportunity to diminish the Act and the effective enforcement of its intent. What has not been achieved through legislation has been essentially accomplished through sabotage, undermining, and resource starvation. If there has to be an OSHA bureaucracy, then every measure has been taken to see that it cannot effectively function. The more demoralized the workforce, the more complacent the leadership, the less accountability in the organization, the less competent the managers and inspectors, the better for those opposed to the achievement of the Act's goals.

Only a grassroots effort by workers, unions and those who support social justice and human rights can exert the political pressure necessary to correct the institutional problems that have overwhelmed the agency given the duty and responsibility to protect worker safety and health rights.