

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

Abigail 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
Jan Hami, District Manager, EEEEC Unit/North
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 Trombetta, 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