U.S. Department of Labor

Occupational Safety and Health Administration
Oakland Area Office
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Oakland, CA 94612

June 26, 2015

Jeff Ruch
Executive Director
Public Employees for
Environmental Responsibilities
2000 P Street, NW
Suite 240
Washington, D.C. 20036

RE: CASPA 2014-CA-55

Mr. Ruch:

This is in response to your Complaint About State Program Administration (CASPA) dated February 11, 2014 regarding the California Occupational Safety and Health Administration (Cal/OSHA). The complaint alleges that Cal/OSHA does not have an adequate number of compliance officers to effectively protect California's workforce, which is manifesting in the following areas:

1. Failure to conduct an adequate number of inspections in dangerous workplaces;
2. Failure to conduct follow-up inspections of serious violators;
3. Failure to issue citations in a timely manner, which delays abatement actions and prolongs employee exposure to hazards;
4. Failure to respond in a timely manner to worker complaints of unsafe or unhealthy working conditions; and
5. Failure to conduct an adequate number of health inspections.

In response, OSHA reviewed appropriate Cal/OSHA policies and other documentation, including FAME Reports, and information obtained from interviews with Cal/OSHA management and staff. As a result of this investigation, OSHA found merit in four of the five areas of concern and is therefore issuing recommendations for improvement. The recommendations are as follows:

1. Review existing policies and procedures to determine ways to increase the percentage of programmed inspections in order to increase the number of inspections being conducted in dangerous workplaces.
2. Follow policies and procedures for determining when follow-up inspections should be conducted or, with guidance from OSHA, consider revising the California labor code to establish a follow-up inspection policy that is achievable;
3. Develop or enforce policies and procedures that will allow for improved citation lapse times; and

4. Develop or enforce policies and procedures that will allow for improved complaint response times.

Further, the findings and recommendations related to citation lapse time (allegation 3) and initiating complaint inspections in a timely manner (allegation 4) reflect chronic deficiencies that OSHA has identified in the Cal/OSHA Federal Annual Monitoring and Evaluation (FAME) report since 2011.

Detailed information on the CASPA investigation and OSHA's recommendations are identified below.

Allegation 1: Cal/OSHA conducted an inadequate number of inspections in dangerous workplaces.

Finding 1: Cal/OSHA performs a much lower percentage of programmed inspections (21.6%) than OSHA (56.6%), which inhibits Cal/OSHA's ability to focus resources in dangerous workplaces.

OSHA's Investigation: While OSHA strives to assure safe and healthful working conditions for all workers, resource constraints dictate that OSHA and its State Plan partners must establish policies and procedures that facilitate a greater presence in those industries and establishments deemed to be "dangerous" as a means to effectively focus their limited resources where they can have the greatest impact. To do this, OSHA uses a risk-based approach to target industries, occupations and worksites that are considered to be high hazard, pose serious health hazards, or have a higher likelihood of catastrophic events.

OSHA's main tool for targeting high hazard worksites is its programmed inspection system, which reflects this risk-based approach and makes up a significant component of OSHA's inspection program. All told, in FY2013, 22,172 of OSHA's 39,176 inspections (56.6%) were programmed. Of the programmed inspections, 64% were in the construction industry and 15% were in manufacturing, two industry sectors with a high risk for fatal injuries and that contain sub-sectors with overall injury and illness rates markedly above the national average. OSHA's programmed inspections include 12 national and more than one hundred local emphasis programs designed to focus OSHA's resources in the desired high risk areas. For example, five of OSHA's 12 national emphasis programs target health hazards that result in serious health conditions (e.g. occupational asthma, silicosis) even though these hazards are traditionally found in industries with low injury and illness rates.

While Cal/OSHA does have several good elements within their programmed inspection targeting, their overall approach appears to be less risk-based in nature. One noteworthy element of their targeting system is their emphasis on industries with high injury and illness rates. Cal/OSHA considers "dangerous workplaces" to be those California establishments in industries having a Days Away Restricted or Transferred (DART) rate that is at least twice the current published Bureau of Labor Statistics (BLS) average for California. For FY 2013, the rate was 4.2 or higher based on the Calendar Year (CY) 2010 BLS report. Based on this metric (which does not have a direct parallel within OSHA's targeting scheme), Cal/OSHA does successfully

target industries with high injury and illness rates through their programmed inspections. Two hundred and four of Cal/OSHA's 1,609 programmed inspections (12.7%) were conducted in these industries in FY 2013.

Cal/OSHA also has several areas of emphasis that are in-line with OSHA emphasis areas. For example, Cal/OSHA has a very successful heat illness emphasis area – one that OSHA has subsequently added as a specific area of emphasis for both enforcement and outreach activity. Cal/OSHA also has task forces focusing on process safety management and residential construction, both of which are areas of emphasis within OSHA. Finally, Cal/OSHA also appears to emphasize completing health hazard inspections, which has been a focus for OSHA in recent years. The percent of health inspections conducted by Cal/OSHA (22.3%) exceeded the percent of health inspections conducted by OSHA (18.5%).

However, California is doing a much lower rate of programmed inspections than OSHA, and those programmed inspections are not always in the most dangerous workplaces. Therefore, the programmed inspections achieve a much smaller rate of overall serious, willful, or repeat violations per inspection in Cal/OSHA (0.44) than within OSHA (1.58).

Cal/OSHA should examine current policies and procedures that inhibit increasing the overall programmed inspection percentage. Two examples of where Cal/OSHA's policies differ from OSHA's can be found in the handling of complaints and hospitalizations. At present, Cal/OSHA has a policy to perform onsite investigations for all complaints and hospitalizations, where OSHA has policies in place that allow less serious complaints and hospitalizations to be handled with fewer resources. A revision to these or other Cal/OSHA policies should allow for an increase in programmed inspections and a more proactive approach to reaching dangerous workplaces.

Recommendation 1: In order to increase the number of inspections focused on dangerous workplaces, OSHA recommends that Cal/OSHA review existing policies and procedures to identify and implement mechanisms to increase the percentage of programmed inspections targeting high hazard worksites.

Allegation 2: Cal/OSHA failed to conduct follow-up inspections of companies with serious violations.

Finding 2: Cal/OSHA failed to adhere to their documented follow-up policy.

OSHA's Investigation: Cal/OSHA's follow-up inspection policy is documented in Policy and Procedure Manual (P&P Manual), C-15. Criteria used to determine if a follow-up inspection should be conducted are:

1. For a citation alleging a Serious violation of the Injury and Illness Prevention Program (8 CCR Sec. 3203) not abated during the original inspection, a follow-up inspection shall be conducted at the end of the time fixed for abatement or within thirty (30) days thereafter.

2. For a citation alleging a Willful/Serious or Repeat/Serious violation not abated during the inspection, a follow-up inspection shall be conducted at the end of the time fixed for abatement or within thirty (30) days thereafter.

3. For a citation alleging a serious violation not abated during the original inspection and not otherwise subject to a follow-up inspection, a follow-up inspection shall be conducted in at least twenty percent (20%) of workplaces with such citations at the end of the time fixed for abatement or within a reasonable time thereafter, even though the Division has received the Employer's Signed Statement of Abatement of Serious Violation (Cal/OSHA Form 161).

4. For a citation alleging a serious violation not abated during the original inspection and not otherwise subject to a follow-up inspection, a follow-up inspection shall be conducted within 45 days after the time fixed for abatement has elapsed when the Division has not received the Employer's Signed Statement of Abatement of Serious Violation (Cal/OSHA Form 161).

OSHA's investigation into Cal/OSHA's follow-up policy revealed that the follow-up criteria in the P&P Manual was not being followed. A review of a scan report found that at least 210 inspections had serious citations issued, and no abatement was obtained or entered into OSHA's Integrated Management Information System (IMIS). Per criterion three above, Cal/OSHA should have conducted at least 42 follow-up inspections from that pool of worksites. However Cal/OSHA conducted only six follow-up inspections. Additionally, there were five inspections with repeat violations and five inspections with willful violations that were not abated and follow-up inspections were not conducted per criterion two above.

While it is clear that Cal/OSHA is not adhering to established policy for follow-up inspections, OSHA believes the target established in the policy is aggressive. For example, in FY 2013 approximately 3.3% of OSHA's inspections were follow-up inspections. Rather than conforming to established policy, Cal/OSHA may want to consider revising the policy to be less aggressive.

***Recommendation 2*:** Cal/OSHA shall either comply with their own policies and procedures for determining when follow-up inspections should be conducted or, with guidance from OSHA, Cal/OSHA may consider revising their labor code to establish a follow-up inspection policy that is both meaningful and achievable.

Allegation 3: Cal/OSHA failed to issue citations in a timely manner, which lead to delays in abatement actions and prolonged employee exposure to hazards.

Finding 3: The amount of time Cal/OSHA takes to issue citations is 69% longer than OSHA for safety inspections and 33% longer for health inspections.

OSHA's Investigation: A review of Cal/OSHA IMIS data was completed to determine the average amount of time it took Cal/OSHA investigators to issue citations after opening an investigation (lapse time). At the end of FY 2014, the average citation lapse time for safety

investigations was 70.42 days. While this is a slight decrease from the average lapse time of 72.55 days in FY 2013, it is still 20 days, or 69%, longer than the 43 days lapse time for - OSHA in FY 2013.

At the end of FY 2014, Cal/OSHA's lapse time for health was 75.99 days. In FY 2013, the state's average lapse time was 75.96 days, and OSHA's health lapse time was 57 days, meaning that on average Cal/OSHA took more than 19 additional days (33% longer) to issue health-related violations to employers than OSHA.

OSHA has identified citation lapse time as an area of concern within Cal/OSHA for several years. Citation lapse time was identified as a Finding (13-05) in the FY 2013 FAME and as Observations in FY 2012 and FY 2011 FAMEs (12-02, 11-41).

***Recommendation 3*:** In order to complete investigations in a more timely manner, Cal/OSHA should develop and enforce policies and procedures that will allow for improved citation lapse times, and work with District and Regional Managers to affect the desired outcome. OSHA has identified this issue in several previous evaluations of Cal/OSHA and strongly recommends that Cal/OSHA leadership take immediate steps to address the issue.

Allegation 4: Cal/OSHA failed to respond to worker complaints of unsafe or unhealthy working conditions in a timely manner.

Finding 4: In FY 2013, Cal/OSHA averaged almost working four days to initiate investigations for complaints alleging serious hazards; the longest time between receiving a complaint of a serious hazard and initiating an inspection was 106 days. The average time to initiate investigations for complaints alleging non-serious hazards was 15.25 days, with the longest period being 300 days.

OSHA's Investigation: OSHA routinely monitors State Plans' ability to respond to worker complaints through the SAMM using metrics negotiated between OSHA and each State Plan. The established SAMM metrics for complaint response time is the average number of working or calendar days that Cal/OSHA has to respond to for a serious or non-serious complaint. The complaint response time is established by Labor Code 6309. The SAMM metric established for Cal/OSHA is an average of three working days to respond to a formal, serious complaint and an average of 14 calendar days to respond to a formal, non-serious complaint. (It is also noteworthy that California law dictates that Cal/OSHA response to complaints alleging hazards that are "serious" in nature within three working days and complaints alleging hazards that are "non-serious" in nature within 14 days, which is similar but not identical to the established SAMM.)

In FY 2013, Cal/OSHA received a total of 2,634 complaints that resulted in an inspection. Data for FY 2013 shows that, on average, Cal/OSHA responded to the formal serious complaints within 3.89 working days and formal non-serious complaints within 15.25 calendar days. Cal/OSHA did not meet their goal of a 3-day average response to serious complaints and a 14-day average response to non-serious complaints. Response time for inspections is measured as an average and there are potential outliers in either direction. Results ranged from zero to one-

hundred six days for serious complaints and from zero to three-hundred days for non-serious complaints.

OSHA has identified complaint response time as a concern within Cal/OSHA for a number of years. Complaint response time was identified as a finding in each of the FY2011-2013 FAMEs (Finding 10-01, 12-01 and 13-01).

Recommendation 4: Develop or enforce policies and procedures that will result in Cal/OSHA responding more quickly to complaints, especially those alleging serious hazards. OSHA has identified this issue in several previous evaluations of Cal/OSHA and strongly recommends that Cal/OSHA leadership take immediate steps to address the issue.

Allegation 5: Cal/OSHA has failed to conduct an adequate number of health inspections.

Finding 5: While the overall number of enforcement inspections has decreased from FY 2012 to FY 2014, the percent of health inspections (22.3%) conducted by Cal/OSHA exceeded the percent of health inspections conducted by OSHA (18.5%). There is no recommendation for this finding.

OSHA's Investigation: The number of Cal/OSHA health inspections decreased from 1,731 health inspections in FY 2012 to 1,531 health inspections in FY 2014. However, even with the drop in overall numbers of health inspections, Cal/OSHA maintained a higher ratio of health inspections to safety inspections than OSHA maintained. In FY 2013, OSHA conducted a total of 39,124 inspections of which 7,237 (18.5%) were health, and Cal/OSHA conducted 7,459 total inspections of which 1,663 (22.3%) were health. In FY 2013, Cal/OSHA conducted 3.8 health inspections/100 health inspection hours. During that same time period, OSHA health compliance officers conducted 2.58 inspections/100 health inspection hours.

In FY 2012, Cal/OSHA exceeded their projected number of health inspections by 46%. In FY 2013, they exceeded their projected number of health inspections by almost 21%. For FY 2014, Cal/OSHA exceeded the projected number of health inspections by 17.7%.

Conclusion

OSHA's investigation has substantiated most of the allegations raised through this CASPA. OSHA has identified Cal/OSHA staffing levels as an issue of major concern in both the FY 2012 and 2013 FAME reports (12-15, 13-22). OSHA believes that inadequate staffing levels can at least partially account for some of the deficiencies identified in this report. The state was placed under a hiring freeze in FY 2011 that was not lifted until July 2013. OSHA understands that recovering from staffing adjustments can take time, and has also offered policy solutions for the identified deficiencies to help meet the needs of workers in California. This report underscores the need for Cal/OSHA to move as quickly as possible to improve staffing levels.

Part 29 of the Code of Federal Regulations 1902.4 establishes that State Plans are required to maintain standards, procedures, criteria and rules that are either identical to the federal program or, if different, are at least as effective as the federal program. If deficiencies are discovered in a

state program as a result of an evaluation such as an onsite review or the investigation of a CASPA, OSHA identifies such deficiencies to the State Plan and the State Plan is required to remedy those deficiencies. Cal/OSHA's response to the above listed recommendations is requested within 30 days of receipt of their letter. Any new or revised procedures should be submitted to OSHA as a State Plan change.

Thank you for your interest in occupational safety and health.

Sincerely,

for David Moore

DAVID SHIRAISHI
Area Director