



"The Public Interest"

Health/Safety and Environmental Issues

the PASMA way to shared knowledge

Public Agency Safety Management Association

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The Devil is in the Details...the Informal Conference is **NOT** an Appeal (Editor)

During my 33 years as a CSHO, I've learned to view my activities as an experiment looking to verify commonalities. One conclusion I've noted is that in most cases, the employer lacks the understanding of the inspection and in particular of the Appeals Process. The time to prepare for an Appeal from any inspection starts at the time the CSHO knocks on the door and is not selling Avon. Fast forward and a citation alleging a violative condition is issued and the CSHO attempts to explain the Appeals process. If the employer is lucky they will have been given a publication titled "A Users Guide to Cal/OSHA" at the Opening Conference. If they are not, they will be directed to this publication or worse, they will, during a telephonic closing conference, be lead to believe that they have the right to 1) an Informal Conference and 2) a Formal Appeal.

This, I submit, is where most employers make their first mis-step in understanding the process. The field information I get is that CSHO's tend to emphasize the "Informal Conference" as a first step to reconciling any differences of opinion regarding the issued citations. In fact, the screen shot below would suggest to the average reader that this would be consistent with that belief. Note the "order" of the paragraphs as well as the suspense dates listed in both these paragraphs. Historically, it is a rare circumstance that any District Manager will have the time to actually schedule and grant an Informal Conference within "10 working days of a citation issuance." Typically the District Manager will simply identify a future date, issue a confirmation letter and the employer will be scheduled. The problem is that the scheduled date is usually well past the time for the filing of a formal Appeal and the employer is stuck with the Citation as cited particularly since the Appeals Board is usually reluctant to grant a late filing.

Ergo, a word to the wise...please ask questions and independently verify conditions. File the Appeal First. After all it's your time and money at stake. Caveat Emptor.





See: http://www.dir.ca.gov/dosh/dosh_publications/osha_userguide.pdf

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—Informal conference—

Following receipt of a citation or notice, an employer may request a discussion with the Cal/OSHA district manager. An informal conference is conducted within 10 working days of citation issuance. If an appeal is filed, the conference may be held any time prior to the scheduled date of an appeal.

The employer may discuss requests for extension of abatement dates, and presentation of evidence which indicates that no violation exists, or that the proposed penalties are inappropriate.

—Occupational Safety & Health Appeals Board—

Upon receipt of a citation, the employer may appeal to the Occupational Safety and Health Appeals Board in reference to the violation, proposed penalty or abatement requirement.

Any appeal must be made in writing within 15 working days of receipt of the citation. If an employer fails to notify the Appeals Board of their appeal within the 15 working day limit, and no notice is filed by an employee or employee representative within that time, the citation becomes a final order not subject to review by any court or other agency. The Appeals Board itself may extend the 15-day period for good cause.

Appeals can be resolved by a telephone prehearing conference without the necessity of a hearing. For appeals that require a hearing, the hearing is held in the Cal/OSHA district office as near as practicable to the site where the violation is alleged to have occurred.



**The Eyes are
Useless When
the Mind
is Blind.**

~Unknown



Supervisors; the weakest link in Health and Safety "direction and control" Editor

Management defined, so I've heard, is simply "getting things done through people on time and under budget". As simple as this definition appears to be, operationally we tend to promote for every skill except the one that matters most..."getting things done through people", i.e. people skills. I raise this concept because within the context of the regulatory environment, this is the Achilles Heel of virtually every employer I've inspected. After all, first line supervision is the most familiar with the routines of the work activities. They know what is happening to and with their employees both personally and professionally. They know who is getting married, they know when quinceanera's are scheduled and who's relationship just went south.

Equally, first line supervisors are also the most favorite interview target of every CSHO in California. CSHO's are obligated to ferret out information (evidence) to support their allegations when issuing citations particularly since most citations must consider a recognized hazard, a zone of danger, and most importantly an employee. Supervisors, then, have this type of information and when a supervisor verifies conditions under questioning, it becomes "imputed" knowledge up the chain of command.

To address this reality then, allow me to provide some insights in the hopes that this information will be considered. Understand that I am not an attorney, but I can relay the impact of personal experiences.

1. During those times when a smart consumer (supervisor) declined to discuss anything with me *without the benefit of an attorney present*, I was forced to re-direct my evidence gathering.
2. The following Code Sections might help convince upper management to fund this critical training and educational efforts:

§3200. Purpose....Every employer should provide their supervisory staff with a copy of these orders and assure that each supervisor is familiar with those sections pertaining to the operations under their supervision.

§1510. Safety Instructions for Employees.

(a) When workers are first employed they shall be given instructions regarding the hazards and safety precautions applicable to the type of work in question and directed to read the Code of Safe Practices.

§3203. Injury and Illness Prevention Program. Training

(a)(7)(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

In short, the health and safety activities, hazard recognition, evaluation and control, does require that some technical and personal skills regarding compliance to the code be DEMONSTRATED by supervision.

Lastly, please remember that all CSHO's were born and raised in Missouri, the "Show me State".



Health and Safety News and Meetings

PASMA South

<http://pasmaonline.org/event/south/2015/PASMA%20May%2014%202015%20Meeting%20Flyer.pdf>

May 14th. 2015

9 a.m. to Noon

Speaker: Brian Hopper, Hopper Engineering Associates

"Existing Structures and Equipment: Navigating California's Ever Changing Seismic Code"

Speaker: Judy Yorke, President, Yorke Engineering, LLC

"Understanding and Complying with SCAQMD and CARB Regulations California Joint"

Location: Powers Authority, 8081 Moody Street, La Palma, CA 90623.

ASSE Orange County

<http://orangecounty.asse.org/>

May Joint Meeting with OCRIMS

Tuesday, May 12th, 2015, 12pm-1:30pm

Overview from CalOSHA

- Overview of Cal/OSHA Enforcement and Consultation including what triggers an inspection, citations, penalties and the free consultation services

Meeting Info:

Orange Hill Restaurant in Orange, Ca.

6410 East Chapman Avenue, Orange, CA 92869

Safety Forum of Inland Empire

<http://www.safetyforumie.org/index.htm>

New Heat Illness Standard

Tuesday May 12, 2015 from 8:30 AM to 10:00 AM PDT

Meeting Info:

The Frontier Project

10435 Ashford Street

Rancho Cucamonga, CA 91730



Long Beach ASSE 2015 PDC.

The 2015 Long Beach ASSE Professional Development Conference will be held on

Meeting Info:

Wednesday, May 13, 2015. The Centre At Sycamore Plaza located at 5000 Clark Avenue in Lakewood, California.

