

# SUPREME COURT COPY

NO. S222314  
IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA

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**SOLUS INDUSTRIAL INNOVATIONS, LLC, et al.,**  
*Petitioners,*

v.

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,**  
**FOR THE COUNTY OF ORANGE,**  
*Respondent;*

**THE PEOPLE OF THE STATE OF CALIFORNIA,**  
*Real Party in Interest.*

SUPREME COURT  
FILED

JUL 23 2015

Frank A. McGuire Clerk  
Deputy

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Petition for Review of a Decision of the Court of Appeal,  
Fourth Appellate District, Division 3, No. Case No. 0047661

SUPERIOR COURT OF THE COUNTY OF ORANGE  
Civil Case No. 30-2012-00581868-CU-MC-CXC  
THE HONORABLE KIM G. DUNNING

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DIRECTOR OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS,  
CHRISTINE BAKER, AND THE CHIEF OF THE DIVISION OF OCCUPATIONAL  
SAFETY AND HEALTH, JULIANN SUM

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THEIR *AMICUS* BRIEF;  
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF  
SUZANNE P. MARRIA; PROPOSED ORDER**

Filed in support of Appellant/Real Party in Interest  
District of Attorney (Orange County)

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(Service on Attorney General required by Rules of Court 8.29(c)(2)(B))  
*Filing Fee Exempt -- Govt. Code § 6103*

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(Service on Attorney General required by Rules of Court 8.29(c)(2)(B))  
***Filing Fee Exempt – Govt. Code § 6103***

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that pursuant to Rule 8.252(a) of the California Rules of Court, and California Evidence Code Sections 450, 452, 453 and 459, the Director of the California Department of Industrial Relations, Christine Baker (“DIR”), and the Chief of the Division of Occupational Safety and Health, Juliann Sum (“DOSH”), acting in their official capacities, request that this Court take judicial notice of the following documents:<sup>1</sup>

Exhibit A: October 18, 1982 Occupational Safety and Health Administration (“OSHA”) Memorandum regarding Reporting System for DOSH Bureau of Investigations (“BOI”) and Attachment (September 2, 1982 BOI Report to OSHA)

Exhibit B: Relevant excerpts of Annual Report on Activities of DOSH BOI During Calendar Year 1985 (Submitted to OSHA Regional Administrator on April 8, 1986)

Exhibit C: Relevant excerpts of Annual Report on Activities of DOSH BOI During Calendar Year 1986 (Submitted to OSHA Regional Administrator on March 27, 1987)

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<sup>1</sup> Hereafter, the Director of DIR and the Chief of DOSH are jointly referred to as “DIR.”

The documents are described, and indicated, under penalty of perjury, to be true and correct copies of the originals in the Declaration of Suzanne P. Marria, attached hereto.

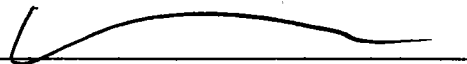
This request is made on the following grounds:

- (1) The Evidence Code authorizes this Court to take judicial notice of the material offered by DIR; and
- (2) The materials offered by DIR are relevant to the issues raised in this appeal and addressed in DIR's *amicus* brief.

This request is based on this Notice, the accompanying Memorandum of Points and Authorities, the supporting Declaration of Suzanne P. Marria, Exhibits A through C attached to the declaration, and such other matters as may properly come before the Court.

Dated: July 14, 2015

Respectfully submitted,

By:   
Amy D. Martin, Chief Counsel  
Suzanne P. Marria, Staff Counsel  
Katherine J. Woods, Staff Counsel  
Christopher G. Jagard, Chief Counsel  
Mi K. Kim, Staff Counsel  
Attorneys for *Amicus Curiae*,  
State of California, Department of  
Industrial Relations

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

DIR hereby requests this Court take judicial notice of materials relied upon by DIR in drafting its *amicus* brief.

The materials include:

- October 18, 1982 OSHA Memorandum regarding Reporting System for DOSH BOI and Attachment (September 2, 1982 BOI Report to OSHA) (Exhibit A, Declaration of Suzanne Marria (Marria Dec.));
- Relevant excerpts of Annual Report on Activities of DOSH BOI During Calendar Year 1985 (submitted to OSHA Regional Administrator on April 8, 1986) (Exhibit B, Marria Dec.); and
- Relevant excerpts of Annual Report on Activities of DOSH BOI During Calendar Year 1986 (submitted to OSHA Regional Administrator on March 27, 1987) (Exhibit C, Marria Dec.).

### II.

#### THE EVIDENCE CODE AND RULES OF COURT PERMIT THIS COURT TO TAKE JUDICIAL NOTICE OF DOCUMENTS REQUESTED BY DIR

Evidence Code section 459 grants appellate courts the same right and power to take judicial notice as the trial court. (*See, e.g., Smith v. Rae- Venter Law Group* (2002) 29 Cal.4th 345, 359.) “Judicial notice is

the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal. App. 4th 875, 882 (citation omitted).) Judicial notice may not be taken of any matter unless authorized or required by law. (Cal. Evid. Code § 450.)

The Evidence Code provides that judicial notice may be taken of various matters, including: “[o]fficial acts of the legislative, executive, and judicial departments ... of any state of the United States[,]” “[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute[,]” and “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Cal. Evid. Code, § 452, subs. (c), (g), and (h).) This Court has the power to take judicial notice of the records and files of a state agency. (*Ibid.*; *see also People v. Gram* (2012) 202 Cal. App. 4th 1125, 1135 [reviewing court taking judicial notice of contract between California Department of Corrections and Rehabilitation and Department of Mental Health under Evid. Code section 452(c)];

*Chas. L. Harney, Inc. v. State* (1963) 217 Cal. App. 2d 77, 85-86 [judicial notice of records and files of State Board of Control and of the office of the State Controller]; *Fowler v. Howell* (1996) 42 Cal.App. 4th 1746, 1750 [judicial notice of records and files of a state administrative board]; *Pearson v. State Social Welfare Board* (1960) 54 Cal.2d 184, 210 [records of Department of Social Welfare and Board of Social Welfare]; *Department of Mental Hygiene v. Rosse* (1960) 187 Cal.App.2d 283, 287-288 [records of Department of Mental Hygiene]; *Watson v. Los Altos School Dist.* (1957) 149 Cal.App.2d 768 [records of State Board of Education]; *Adoption of McDonnell* (1947) 77 Cal.App.2d 805, 808 [files of Department of Social Welfare].)

Exhibits A, B, and C are judicially noticeable as official records and acts of DOSH, a state agency. DOSH was required to prepare and submit these reports concerning its BOI's activities to the U.S. Secretary of Labor and U.S. Occupational Safety and Health Administration (OSHA). (See 29 C.F.R. § 1954.10; 29 C.F.R. § 1902.44(a).) These records are relevant to DIR's *amicus curiae* brief because they demonstrate that since DOSH BOI began referring cases to prosecutors under section 6315(g), the U.S. Secretary of Labor and OSHA have received information concerning prosecutors' attempts to recover civil

penalties under California's unfair competition law from employers based on their violation of state workplace safety standards.

Exhibits A, B, and C are also judicially noticeable under Evidence Code section 452, subdivisions (g) and (h), as they concern matters of common knowledge and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

### III

#### CONCLUSION

For all of the foregoing reasons, appellant respectfully moves that this Court take judicial notice of exhibits herein, pursuant to Evidence Code sections 450, 452, 453 and 459 and Rule 8.252, California Rules of Court, as well as the relevant decisional authority.

Dated: July 17, 2015

Respectfully submitted,

By: \_\_\_\_\_

Amy D. Martin, Chief Counsel  
Suzanne P. Marria, Staff Counsel  
Katherine J. Woods, Staff Counsel  
Christopher G. Jagard, Chief Counsel  
Mi K. Kim, Staff Counsel  
Attorneys for *Amicus Curiae*,  
State of California, Department of  
Industrial Relations



## **DECLARATION OF SUZANNE P. MARRIA**

1. I am an attorney licensed to practice law in the State of California (State Bar No. 120863). I am an attorney employed by the Division of Occupational Safety and Health ("DOSH") in the California Department of Industrial Relations ("DIR").

2. I have personal knowledge of the contents of this declaration and may competently testify thereto.

3. As an attorney for DOSH, I have access to official records and files of DOSH, including documents that DOSH has provided to, and received from, the U.S. Secretary of Labor and the federal Occupational Safety and Health Administration ("OSHA").

4. Exhibits A, B, and C attached to this declaration are true and correct copies of the original official records of DOSH. These records are also public records and anyone can review these documents by calling DOSH and requesting review. I personally obtained Exhibits A, B, and C.

5. Exhibit A is a true and correct copy of the October 18, 1982 OSHA memorandum in DOSH files regarding the reporting system for DOSH's Bureau of Investigations ("BOI"). Included in Exhibit A is a true and correct copy of the September 2, 1982 BOI Report to OSHA.

6. Exhibit B is a true and correct copy of relevant excerpts of the Annual Report on Activities of DOSH BOI During Calendar Year 1985, submitted to OSHA Regional Administrator on April 8, 1986.

7. Exhibit C is a true and correct copy of relevant excerpts of the Annual Report on Activities of DOSH BOI During Calendar Year 1986, submitted to OSHA Regional Administrator on March 27, 1987.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this <sup>17~~th~~</sup> day of July, 2015 in Oakland, California.

  
SUZANNE P. MARRIA

[Proposed]

ORDER TAKING JUDICIAL NOTICE

Good cause appearing, IT IS HEREBY ORDERED that the request for judicial notice of the Director of the California Department of Industrial Relations, Christine Baker, and the Chief of the Division of Occupational Safety and Health, Juliann Sum is granted. IT IS ORDERED that this Court shall take judicial notice of the Exhibits A through C contained with this request.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Tani Gorre Cantil-Sakauye  
Chief Justice



Reply to the Attention of:

DATE: October 18, 1982

MEMORANDUM FOR: Hamilton Fairburn  
Assistant Regional Administrator

FROM: Maria Barcos-Wallace *MGW*  
California Project Officer

SUBJECT: Reporting System for Bureau of Investigations (BOI)

*INFO COPY*

On October 14, 1982 I met with Vernita Davidson, Cal/OSHA Program Office, and Fran Schreiber, BOI, to discuss and establish a regular, consistent reporting system for BOI activities. The attached pages represent the agreed to frequency of reporting, time of reporting, and information to be reported.

With regard to the data to be reported two issues arose:

1. Disclosability of information

Because we are requesting that the BOI report be submitted to OSHA along with the State Program Quarterly Report a question arose about whether the BOI report would be public information as is the data in the Quarterly Report.

We agreed that the numerical data under Section C, 1 of the attached reporting format would be disclosable but information on open cases (item C, 2, & 3) would be for internal administrative use only and not disclosable.

2. Resource Allocation

Though BOI investigators complete a weekly time report, at the present time an automated data system does not exist to link the weekly time reports to the investigations. It was also not known at the time of our meeting whether hours/investigation are currently tabulated manually.

Fran and Vernita will follow-up on this item and determine whether it would be feasible to input data on BOI investigations and hours/investigation using the same programs utilized for DOSH inspections. They are to advise me of their progress on this matter and will develop some system for this reporting by January 1983.

In addition, I briefly discussed the issue of the need for specific goals, in terms of projected BOI field investigations, in FY 83. Fran indicated that comments on page 5 of the BOI Report to OSHA of September 2, 1982 (copy attached) included these goals. She agreed that these goals (12-15 investigations/investigator/year) would be more clearly noted as a goal in the FY 83 grant revision and in the grant narrative progress reports.

(more)

*A-1*

Should you have any questions, comments, etc., please let me know.

Attachment

cc: ~~G. Gillotti~~  
V. Davidson  
F. Schreiber  
A. Carter

(end)

MBW/cpk

BOI REPORTING FORMAT

- A. FREQUENCY OF REPORTING: Quarterly, Federal Fiscal Year to Date.
- B. REPORTING DUE DATE: 10 calendar days after end of each quarter. To be submitted along with the State Program Quarterly Evaluation Report. To be submitted to OSHA Region IX only.

C. INFORMATION TO BE REPORTED

1. Summary of investigate activity as follows:

Fiscal Year To Date

- a. Cases investigated<sup>1</sup>
- 1) Admin. Investigation<sup>2</sup>
  - 2) Field Investigation<sup>3</sup>
- b. Cases referred by BOI<sup>1</sup>
- c. Cases filed by DAS<sup>1</sup>

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<sup>1</sup>Cases will be logged in each of these sections based on the calendar date when action is initiated (e.g., If a field investigation is initiated in December 1982 it shall be logged in the 1st Quarter of FY 83 regardless of when investigation is completed). Care must be taken to assure that cases are counted only once, as appropriate, in each of these categories.

<sup>2</sup>Administrative Investigation: Review of factual information (Cal/OSHA 4A and/or 4) by BOI Supervising Special Investigator and/or BOI Supervising Attorney. No field investigation, by BOI investigators performed.

<sup>3</sup>Actual field investigation: Assigned to BOI field staff for investigation after review by BOI Supervising Special Investigator and/or BOI Supervising Attorney.

2. Adjudication of Cases<sup>1</sup>

1980      1981      1982      1983

- a. Cases filed by DAs
- b. Cases adjudicated as guilty, nolo contendere and/or civil compromise
- c. Cases adjudicated as not guilty or dismissed on procedural grounds
- d. Cases pending

3. Status Log on each case referred by BOI including:

- Brief description of case
- BOI recommendation on case
- Status of action by DA on case
- If not accepted by DA, reason for non-acceptance

4. Copy of complaint for each case filed by DAs

5. Summary of disposition and copy of sentencing orders for each case filed by DAs.

D. RESOURCE ALLOCATION

- 1. Number of Investigators
- 2. Number of hours for field investigations per case by specific Case ID.
- 3. Number of investigator hours in other Cal/OSHA support activities and description of activities.

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<sup>1</sup>Information on Adjudication shall be logged based on the Fiscal Year when the case was filed by the DA regardless of the date when the adjudication took place.

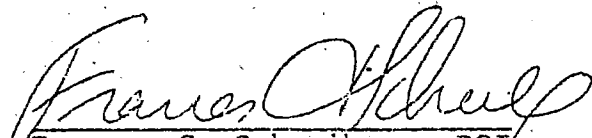
File: Safety + Health, Div. of  
Occupational -- Bureau  
of Investigations

~~BS~~  
~~VD~~  
~~BT~~  
~~ST~~

BUREAU OF INVESTIGATIONS REPORT TO FEDERAL OSHA

September 2, 1982

Prepared by:

  
Frances C. Schreiber, BOI  
Supervising Attorney

With the assistance of  
Gerald E. Lombardo, BOI  
Supervising Special Investigator

Kay Kohler, Cal/OSHA  
Staff Attorney



STATISTICAL SUMMARY OF BOI ACTIVITY

(8 months only -  
from Jan. 1 to  
Aug. 31)

	<u>1980</u>	<u>1981</u>	<u>1982</u>
1. CASES INVESTIGATED	200	281	
A. Admin. Investigation <sup>1</sup>	174	212	80
B. Actual Field Investigation <sup>2</sup>	46	69	43
2. CASES REFERRED BY BOI	10	27	32
3. CASES FILED BY DA'S (including B&P prosecutions)	8	15	13
4. ADJUDICATION OF FILED CASES			
A. Guilty, Nolo Contendere, and Successful Civil Compromise	6	13	5
B. Not Guilty or Dismissed on Procedural Grounds	2	1	0
C. Pending	0	1	8

1. Cases investigated - Administrative Investigation ... review of factual information (Cal/OSHA 4A and/or 4) by BOI Supervising Special Investigator and/or BOI Supervising Attorney in which no amount of field investigation could support a prosecutable case.

2. Actual field investigation ... assigned to investigative field staff for investigation after review by BOI Supervising Special Investigator and/or BOI Supervising Attorney.

Cal/OSHA believes that the effectiveness of the Bureau of Investigations (BOI) program in protecting California workers should be measured not only by statistics, but also by media coverage of BOI cases, and by the ability BOI has to aid the Cal/OSHA field staff with problems that the administrative system cannot solve or with problems that are inappropriate for the field staff. Statistics alone cannot measure BOI's effectiveness. And statistics in a given time frame are affected by a number of other factors such as: a) the time necessary to make substantial administrative program changes including reorganizing BOI; b) the time necessary to educate ourselves and others about effective law enforcement tools such as civil prosecutions pursuant to section 17200 B&P; c) the time necessary to make personnel changes; and d) the time necessary to train existing and new personnel to implement a much expanded program.

Thus, Cal/OSHA is presenting a report to Federal OSHA concerning the BOI program. This report is divided into three sections:

1. Cal/OSHA statistics have significantly improved in 1981, and greater improvement is projected for 1982.
  - A. Statistics
  - B. Factors which impact statistics
    1. BOI has made considerable administrative improvements which will contribute in the future to increased productivity.
    2. In order to provide the most effective enforcement program possible, BOI has referred cases to prosecutors which they have prosecuted civilly pursuant to section 17200 B&P.
2. BOI prosecutions under civil and criminal law are a deterrent as shown by media coverage and reactions by industry, labor, and the community at large.
3. BOI provides valuable assistance to the Cal/OSHA field staff.

## SECTION 1

### CAL/OSHA STATISTICS HAVE SIGNIFICANTLY IMPROVED IN 1981, AND GREATER IMPROVEMENT IS PROJECTED FOR 1982

Adjudication of guilt is not the standard by which a prosecution is judged as successful. Adjudication of guilt has different meanings to different people. When a case is disposed of through a plea of Nolo Contendere, some people may consider this not to be an adjudication of guilt. However, when a plea of Nolo Contendere is taken by the Court, the Court specifically informs the person entering the plea that in so doing s/he is saying that s/he did in fact commit the violation of law. The Court requires a factual basis for a plea whether it is a plea of Nolo Contendere or a plea of guilty. Jan Chatten Brown, Assistant City Attorney with the Office of the City Attorney in Los Angeles, emphasized that, "A plea of Nolo Contendere is exactly the same as a plea of guilty except that it may not be used in civil proceedings. The community and the workers consider this a guilty plea and a successful disposition of a case." When a case is dismissed in the interests of justice after an employer has finally been forced to come into compliance through the threat of criminal prosecution, some people may consider this not to be an adjudication of guilt. However, when a case is disposed of in this fashion, it is a success despite the fact that the question of guilt was not adjudicated. A dismissal in the interests of justice contingent upon an employer coming into compliance does not mean that the defendant was innocent. When a case is disposed of pursuant to Section 1377 of the California Penal Code, some people may consider this not to be an adjudication of guilt. However, when a case is disposed of in this fashion, it is a success despite the fact that the question of guilt is not adjudicated. In such cases, it has usually become clear to the defendant that s/he will either have to enter a plea of guilty or Nolo Contendere or make a substantial civil settlement to compensate the victim(s) of his/her wrongdoing. Often, the local prosecutor feels that adequately compensating the victim is more important than another plea, and thus is willing to dismiss the criminal proceedings in exchange for a substantial civil settlement.

The statistics provided here are a reflection of Cal/OSHA's determination that the case was settled successfully. There never have been and never will be any pleas of guilty in Cal/OSHA cases. If such is a measurement of our success, then we would have to ask the local prosecutor to try each and every case because such will be required of them.

This report shows that there has been a substantial increase in BOI cases investigated, referred, and filed. In 1980 only 8 BOI cases were filed. The BOI has come a long way from that low filing rate.

Before setting forth the statistics, it is necessary to explain the compilation method. To compare activity from one year to the next, we need a uniform statistical presentation. All statistics presented in this report are obtained by simply counting cases in a given calendar year. This is a change from previous statistical presentations.

A. STATISTICS

Cases Investigated \*/

In 1981, the total number of cases actually investigated was approximately 69. This number only reflects cases for which a BOI investigation began in 1981, and is not an accurate reflection of workload carried over from investigations opened in 1980.

In 1982, to date, the total number of cases actually investigated is 43. This number only reflects cases for which a BOI investigation began in 1982, and is not an accurate reflection of workload carried over from investigations opened in 1981.

Cases Referred

In 1981, the BOI referred 27 cases to the local prosecutor. These referrals arose from investigations that began in 1980 or 1981.

In 1982, to date, the BOI has already referred 32 cases to the local prosecutor. Again, these referrals arose from investigations that began in 1981 or 1982. The BOI has closed and declined to refer 13 cases to date. Of the 32 investigations which the BOI has open (1981 and 1982 cases), we expect that at least 20 more will be referred to local prosecutors by the end of 1982.

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\*/ In the past the BOI reported to Federal OSHA the total number of fatals and catastrophes which came to it through a case-tracking process. The BOI next provided the number of cases referred for prosecution. The gap between these numbers was substantial. There was no determination of the number of cases that the BOI actually investigated. The Labor Code requires that all fatalities and catastrophes be investigated. Nevertheless, many of the fatalities and catastrophes logged in the BOI case-tracking system are investigated only to the extent necessary to determine that the case is not prosecutable. A review of the Cal/OSHA 4A, the Preliminary Report of Accident, by the BOI Supervising Special Investigator or by the BOI Supervising Attorney can be sufficient to determine that no amount of investigation can result in a prosecutable case. Thus, in this and in future statistical presentations, the BOI will include the number of cases actually investigated so that Federal OSHA has a realistic evaluation of the person-hours expended in investigation.

Cases Filed \*\*/

In 1981, local prosecutors filed 15 BOI cases. Only one case was rejected. Again, these cases may have been referred in 1980 or 1981, and arose from investigations that began in 1980 or 1981. The 15 cases filed in 1981, to date, have been disposed of in the following fashion: 12 have been settled favorably, 1 was tried and the defendants were found guilty, 1 was dismissed due to pre-trial delay, 1 is pending settlement or trial.

In 1982, to date, local prosecutors filed 13 BOI cases. Five cases have been rejected. Again, these cases may have been referred in 1981 or 1982, and arose from investigations that began in 1981 or 1982. Of the 14 cases that are pending with local prosecutors right now, we expect that at least 10 will be filed before the end of 1982. The 13 cases filed in 1982, to date, have been disposed of in the following fashion: 5 have been settled favorably, and 8 are pending settlement or trial.

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\*\*/ In 1982 more cases will be referred to prosecutors and subsequently rejected than in past years. First, this is due to the BOI's attempt to generate more health and safety referrals from its field staff for criminal or for civil prosecution. Most prosecutors were unfamiliar with Cal/OSHA cases until BOI took the time to educate them, and Cal/OSHA was unfamiliar with the unfair competition law and needed to be educated. A program to do this was conducted in late 1981 and early 1982.

Second, it was necessary for the BOI and prosecutors to work together on cases in order to understand each others needs. Cases ultimately were found to be not appropriate for either civil or criminal prosecution despite expenditure of considerable investigative time.

Third, BOI future statistics may show less of a gap between referrals and filings because the BOI is now committed to contacting the prosecutor as soon as possible after the BOI opens an investigation. In this way the prosecutor will have maximum input in the development of the case before it is referred. Contacting the prosecutor at an early stage, however, will not be counted as a referral. A referral will be counted only after the investigation has been completed and a formal referral of the case is made. Thus, most cases in which the prosecutor shows no interest will, more likely than not, already have been closed by the BOI Supervising Special Investigator or the BOI Supervising Attorney before a formal referral is made.

## Conclusion

Statistics can be provided on a quarterly basis. The BOI, however, does not accept that statistics alone can be used to measure the deterrent nature of the program. We believe the measure must include statistics, media coverage, and the assistance provided by the BOI to the Cal/OSHA field staff in bringing about compliance. This may be substantiated by clippings, letters and memos, and oral comments.

Raw statistics also may not accurately reflect productivity. Since future productivity is a concern, we have taken personnel actions and are continuing to do so to address productivity problems. We are also continually increasing supervision and training provided to the investigators.

Finally, the BOI's existence cannot depend on ever-increasing statistics. At some point we will reach an acceptable level of productivity. It is not unrealistic to plan that each BOI investigator could produce between 12 and 15 well-investigated cases each year, of which between 7 and 10 are successfully prosecuted. However, these statistics must also account for major catastrophes. Some adjustment or weighting of the cases must be made. In the next year the BOI will attempt to do this.

## B. FACTORS WHICH IMPACT STATISTICS

1. THE BOI HAS MADE CONSIDERABLE ADMINISTRATIVE IMPROVEMENTS WHICH WILL CONTRIBUTE IN THE FUTURE TO INCREASED PRODUCTIVITY.

The BOI has just completed a final draft of a Policy and Procedure which defines the relationship between the BOI and Cal/OSHA. That document is scheduled for discussion by Cal/OSHA management in September. Upon acceptance of the P&P, BOI will complete three other P&P's to delineate the specific roles of the clerical, investigative, and attorney staffs. The need for clarity through P&P's is unquestionable, and although it has taken much time to develop the P&P, the result will be a better program overall. If Federal OSHA only uses cases as a measure of productivity, then there is no room for crediting efforts made to improve the system.

In developing the P&P defining the relationship between BOI and Cal/OSHA, a number of other P&P's were also required to be developed. BOI staff took primary responsibility for developing the P&P concerning case-tracking because it directly impacts the ability of the BOI to gather more cases for review and possible investigation, referral, and prosecution civilly or criminally. The BOI staff also developed other P&P's relevant to making the BOI more effective and productive.

Among other administrative improvements made by BOI which will lead to a greater number of effective prosecutions, BOI expanded and better defined the sources of its cases: referrals from the field, case-tracking, and administration referrals. The BOI, acknowledging the need for uniform statistics, established a record-keeping system. BOI carefully defined the steps in investigating a BOI case so as to co-ordinate its efforts with the field staff and to lessen duplication of efforts. The BOI also addressed decisionmaking regarding the referral of BOI case to local prosecutors, and input regarding the ultimate disposition of BOI cases.

The BOI is ultimately concerned with compliance. Thus the probation conditions or injunction provisions ordered by the Court upon disposition of any BOI case are critical. The BOI has taken two major steps to impact this area. First, BOI representatives are working regularly, through the California District Attorney's Association, Consumer Protection Council, to educate local prosecutors as to our compliance needs. Second, the BOI has established a special working relationship with the Cal/OSHA Consultation Service. The Cal/OSHA Consultation Service has agreed to make its services available to employers who have been civilly or criminally prosecuted, and who are under a probation or injunction order requiring them to develop an effective and comprehensive accident prevention program.

It took time to develop the administrative changes noted above. It will take time to implement fully these changes, and thus we may not see the impact reflected statistically until next year. The BOI program is dynamic and more changes will be made if those now proposed prove ineffective, but we feel that the administrative changes about to be implemented will make a difference.

2. IN ORDER TO PROVIDE THE MOST EFFECTIVE ENFORCEMENT PROGRAM POSSIBLE, BOI HAS REFERRED CASES TO PROSECUTORS WHICH THEY HAVE PROSECUTED CIVILLY PURSUANT TO SECTION 17200 B&P

The BOI expanded its role from criminal investigations only to civil actions under 17200 B&P. There are no other civil procedures within the California Occupational Safety and Health Act which are as effective as prosecutions pursuant to section 17200 B&P. This section will provide specific information about the effectiveness of prosecutions under unfair competition laws.

Before discussing the merit of such prosecutions, however, the BOI must point out that nowhere in Labor Code Section 6315 is it stated that the BOI must prepare cases for criminal prosecution. In fact, it is not within the discretion of a state administrative agency to mandate that a particular case be filed by a local prosecutor as a criminal case or a civil case. The decision regarding filing resides solely with the local prosecutor. The BOI is compelled to prepare cases for prosecution, but the local prosecutor determines the most effective and appropriate way to obtain compliance with the administrative regulations.

As stated in our February 26, 1982, letter to Maria Barcos Wallace, the BOI began to evaluate potential cases for prosecution pursuant to unfair competition laws based upon advice from local prosecutors. The BOI Advisory Committee, which was formed to assist the BOI's efforts to become more effective, consisted primarily of local prosecutors. It was from these men and women, who had the discretion to accept or reject our cases for prosecution, that the BOI received this advice. In response, the BOI developed a training program for middle management of the Division and the local prosecutors in their areas. Cal/OSHA discussed situations where the administrative system had failed to bring an employer into compliance, and in turn, the local prosecutor indicated the extent of his/her interest in that particular case. Prosecutors indicated a consistent interest in those cases where the underlying violations were of a serious nature. The prosecutors also advised Cal/OSHA as to the type of evidence and documentation required for a successful prosecution; and advised as to the need for the BOI to act as a liaison to gather that evidence, prepare a report, and assist the prosecutor in other ways.

Richard Kalustian, Chief of the Consumer & Environmental Protection Division of the Office of the District Attorney of Los Angeles County, states:

"Cases prosecuted under section 17200 B&P are prosecuted in the name of the People of the State of California. These are law enforcement oriented actions despite being filed in civil court. They result in more effective enforcement in certain cases because the burden of proof is lower; discovery is freely available; all kinds of injunctive provisions and extraordinary relief are



available; and much larger civil penalties, larger than equivalent criminal fines, are possible. Since the actions are pursued in Superior Court, where judges are used to imposing large monetary penalties, these cases may have a greater deterrent effect than criminal prosecutions. In some instances this is a better tool against a large corporate defendant who otherwise would not be affected by a \$5000 or \$10,000 fine, particularly when personal responsibility for the criminal activity is diffused."

Section 17200 B&P is an alternative to criminal prosecutions. Certain cases are not well suited for criminal prosecutions, and section 17200 B&P provides an appropriate alternative. There is no equivalent civil procedure within the California Occupational Safety and Health Act.

Section 17200 B&P concerns "unfair competition." It prohibits anything that can properly be called a business practice and that at the same time is a violation of law. Any business practice which violates any state or federal statute or administrative regulation is subject to an action under section 17200 B&P. Thus, even though a specific administrative enforcement scheme exists for occupational safety and health violations, a parallel action for unfair competition is proper pursuant to these provisions of the Business and Professions Code.

The remedies include injunctive relief and civil penalties of up to \$2,500 for each violation. Once an injunction is issued, a violator is then liable for a civil penalty of up to \$6,000 for each violation, and where the conduct is of a continuing nature, each day of such conduct is a separate and distinct violation. Additionally, jail time through a contempt action may be sought for a violation of the injunction.

There are many benefits in bringing a 17200 B&P action against an employer who violates OSHA regulations. Many of these benefits are also available in criminal prosecutions. However, in some situations it is more appropriate to proceed in the civil forum to obtain these goals. The choice of which way to file the case is not ours; it resides with the prosecutor.

Civil prosecutions offer some general advantages over criminal prosecutions. The standard of proof required to obtain the preliminary and permanent injunction is less than that required in criminal proceedings. There, proof beyond a reasonable doubt is necessary. Prosecutorial discovery is more liberal in the civil forum as well.

Civil and criminal prosecutions both offer a wide range of innovative relief, but in section 17200 B&P prosecutions, when the situation so merits, a temporary restraining order may be obtained, ex parte, immediately upon filing the civil complaint, and such may be used immediately to prohibit the employer from violating the law pending the preliminary and permanent injunction. Such relief is not available when an action is handled administratively or criminally.

In both civil and criminal actions, fines or penalties can be obtained, but in section 17200 B&P actions, there is a potential for

greater monetary sanctions. The employer may be required to pay up to \$2,500 for each OSHA violation, and such is not subject to limitations imposed by section 654 of the California Penal Code concerning multiple punishment. If a preliminary or permanent injunction is obtained, the employer may be required to pay up to \$6,000 for each subsequent OSHA violation. These amounts are far greater than those available through administrative or criminal proceedings. And as noted by Kalustian, the judge in Superior Court is more likely to require a large corporate defendant to pay a substantial amount.

In criminal proceedings, a judge may sentence the defendant to jail upon conviction, while in the civil proceeding, it is necessary to have an injunction before a contempt action and jail time may be imposed. However, in reality no judge is likely to impose jail time for a first offender, and most of the BOI cases involve first offenders. Thus, in both criminal and civil proceedings, generally it is necessary for a subsequent violation of the Court Order to occur (either the probation order or the injunction) before jail time is imposed.

In civil prosecutions under section 17200 B&P, the BOI may be reimbursed for costs. The BOI is negotiating agreements with the local prosecutors to compensate the BOI for costs incurred in investigating a section 17200 B&P case. Such compensation would not cover normal compliance efforts, but rather would reimburse Cal/OSHA for the extra time expended by the BOI and field staff in gathering evidence for a successful prosecution. Such is not available in criminal or administrative proceedings.

Finally, both civil and criminal prosecutions by BOI result in publicity which aids the enforcement program. See Section Two below.

The BOI has just begun to utilize this effective civil prosecution tool. Three 17200 actions have been filed in 1982 against recalcitrant employers: A.Z. Decasing, Inc. in Los Angeles County; Certified Garment and Linen Supply, Inc. in Contra Costa County; and Precision Founders, Inc. in Alameda County. The total possible penalties are \$242,500. The actions in A.Z. Decasing and Certified Garment and Linen Supply are pending. A final judgment has been entered in Precision Founders, and the company is now enjoined and subject to substantial penalties and possible contempt if it violates any of 42 specific Cal/OSHA regulations involving exposure to such toxic substances as cobalt, cristobalite, nickel, chromium; anhydrous ammonia and PCB's.

The discussion above has addressed the merits of prosecutions under section 17200 B&P. Specifically, we have attempted to cover the benefits and impact on the program that use of this law provides. We have also tried to compare civil and criminal prosecutions, but the prosecutor to whom we refer our cases makes the decision as to how the case is filed. Some cases are simply better suited for civil and others better suited for criminal prosecutions.

## SECTION 2

### BOI PROSECUTIONS UNDER CIVIL AND CRIMINAL LAW ARE A DETERRENT AS SHOWN BY MEDIA COVERAGE, AND REACTION BY INDUSTRY, LABOR, AND THE COMMUNITY AT LARGE.

Statistics may reflect many things. Statistics, however, are not able to reflect the deterrent nature of the cases prosecuted by BOI. Just as the deterrent effect of the presence of the highway patrol car visibly stationed at the side of a roadway is difficult to reflect in tangible statistics, all drivers on that roadway experience firsthand its deterrent effect. The BOI can show an overall increase in the number of cases investigated, referred to local prosecutors, and successfully prosecuted, but it is impossible to prove by statistics the deterrent effect of the BOI program.

Reaction to BOI cases from labor, management, and the community at large is substantial. Many of those reacting receive information through the media. Media coverage increases the effectiveness of Cal/OSHA as a whole by making it clear that our enforcement efforts can and will be backed up by serious criminal and civil prosecutions. Others receive information through their unions or trade associations. Cal/OSHA has received phone calls requesting more information regarding specific BOI cases in many instances, and has been asked to provide speakers to numerous industry and union groups to elaborate on the powers of BOI. The uniform response has been that BOI prosecutions are an effective deterrent.

In this section are some examples of responses by labor, management, and the community at large. Also attached are copies of some of the media coverage received in BOI cases.

#### EXAMPLES

Polyresins. This case involved the criminal prosecution of the company and its management for total disregard of worker health and safety which resulted in exposing workers to TDI and causing serious injuries after a spill. Jan Chatten-Brown, Assistant City Attorney in the Office of the City Attorney in Los Angeles, stated:

"For years the Los Angeles City Attorney's Office urged Cal/OSHA to refer worker health and safety case for prosecution. Only during the last year and a half, have cases finally begun to flow. Fran Schreiber and other BOI team members believe in aggressive enforcement. Through their efforts, better investigated and serious cases have been referred to our office. Cases have been successfully prosecuted, both civilly and criminally. The appropriate choice between civil or criminal prosecution is made by our office based upon a variety of factors."

"After completion of the Polyresins prosecution, I spoke with numerous labor union leaders and health professionals. Their opinion consistently was that the cooperative program developed between BOI and local prosecutors is making a difference:

"Development of a strong enforcement program has been a long time in coming. Now that we have it, it should not be dismantled. Cal/OSHA inspectors are not by background or training in a position to recognize a prosecutable case. And once a case is identified, persons with experience in preparing the matter for prosecution must assure all of the necessary evidence is ready. Eliminating the BOI will eliminate the prosecutor's ability to continue enforcing Cal/OSHA laws."

Certified Garment and Linen Supply and A&H Underground Construction.  
Sam Mesnick, Assistant District Attorney of Contra Costa County, former head of that office's homicide and trial division and past board member of the California District Attorneys Association, stated:

"This office is currently prosecuting two cases referred by Cal/OSHA's BOI, Certified Garment and Linen Supply, and A & H Underground Construction. In Certified Garment Linen Supply, we have an explosive sweatshop situation which has exposed workers to hazardous conditions and injuries. Certified Garment was repeatedly cited by Cal/OSHA over the years but failed to abate unsafe conditions. Both a criminal and a civil complaint pursuant to Business and Professions Code Section 17200 have been filed against the company. The civil complaint asks the Court to appoint a receiver to take control of the business and bring its operations into compliance. A & H Underground involves a trenching fatality and we are prosecuting both the corporation and its president. The role of the Bureau of Investigations has been crucial in preparing both of these cases. These are complex cases and need the thorough investigation and research provided by the BOI's trained investigators and attorneys."

Exxon Corporation. Following the filing of a criminal action against Exxon, and despite the fact that no conviction resulted, the company moved to tighten up their safety program. They accomplished this by giving more authority to their safety inspectors and changing other procedures. Among other things they assigned a safety inspector to every shift during turnarounds (maintenance/repair operations), and gave their safety inspectors the ability to shut down a job. This information was gathered in the course of confidential discussions between BOI personnel and Exxon safety inspectors. They are extremely happy with the changes that have taken place and feel that increased concern for safety is the direct result of the criminal prosecution.

West Coast Scaffolding. This case involved the criminal prosecution of a scaffold erecting company in the City of San Francisco. Following the successful completion of this case, an article appeared in a trade association newsletter. During subsequent conversations with other scaffold erectors in the area, the BOI learned that this segment of industry was aware for the first time that failure to comply with the law could result in criminal prosecution.

Louisiana Pacific Corporation. This case involved a criminal prosecution following a fatal accident in a northern California mill. Following the successful completion of the criminal case, this employer underwent a compliance inspection at another mill. As a result of the inspection numerous violations of safety standards were cited. The employer dispatched two corporate officers from its headquarters to the mill subsequently cited. Following the corporate officers' inspection of the site, the company fired the mill superintendent and forced the early retirement of the mill manager because they had not heeded the lesson learned from the initial criminal prosecution.

Lone Star Industries. This case involved a criminal prosecution resulting from serious injuries to an employee. This employer tried almost every pressure tactic known, including the filing of a CASPA against Cal/OSHA, to avoid criminal prosecution. The company utilized three attorneys, one of whom was a labor specialist headquartered in Washington, D.C. He made numerous trips to California to confer with Cal/OSHA personnel and the District Attorney's Office. When charges were filed, the employer raised as a defense that Cal/OSHA lacked jurisdiction. When that course of action failed, the employer immediately entered into negotiations with the District Attorney's Office and entered a plea of Nolo Contendere to avoid further unfavorable publicity which a trial would bring. The vigorous attempt by this employer to avoid criminal prosecution clearly indicates its view concerning the seriousness of such an action. The successful prosecution of this employer should act to deter future unlawful acts.

City of Burbank. This case involved a criminal prosecution following the death of two workers in a confined space with a toxic atmosphere. The case received widespread publicity because it was the first case involving the criminal prosecution of public employees. Following the successful completion of that case, the results were disseminated throughout the state via association newsletters and publications. One defendant was even sentenced to lecture others in his trade of the consequences of his criminal acts. Faced with concerns on the part of management, the City of Burbank took steps to come into compliance. In addition, this case is a topic of conversation whenever Cal/OSHA personnel attend industry conferences and meetings. The widespread publicity given this case can only act as a deterrent to future unlawful/unsafe practices, particularly regarding confined spaces, and ultimately

result in a safer place of employment for workers in this industry. Mike, Mason, Chief Counsel of the Legal Unit, made two presentations to sanitary and pollution control associations to discuss the impact of this case. He stated:

"I was profoundly impressed by the impact that the City of Burbank prosecution had upon responsible management officials. Never before in my experience in the Cal/OSHA program has the deterrent effect of a single prosecution led to such positive expressions by employers to assure compliance with safety and health requirements."

W. R. Thomason. This case involved a criminal prosecution of a project superintendent, corporate officers and the corporation following a trench cave-in fatality. The successful prosecution of the project superintendent has received widespread publicity in the industry. This publicity has emphasized that individual management can be held criminally liable for unsafe working conditions. This can only act as a deterrent to other managers in the industry.

Joe Adam, Director of Safety and Health, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, commented:

"We are most grateful to Cal/OSHA's Bureau of Investigations for the prosecution of W. R. Thomason for the needless trenching death of one of our members, a father of five children. This employer had been cited for years by Cal/OSHA for trenching violations but had never changed its practices. Now, because of the criminal investigation and prosecution brought by the BOI, W. R. Thomason has started to pay more attention to safety rules. This change of attitude shows the need for the BOI and criminal prosecutions against employers like W. R. Thomason."

Empire Plastering. This case involved the successful prosecution of a plastering contractor for multiple safety violations which did not result in either an accident or injury. Following the successful completion of this case, the results were publicized in a northern California plastering industry newsletter. Subsequently, while meeting with another plastering contractor, a representative of Cal/OSHA was shown a number of copies of the article. At the top, the employer had hand written "To All Employees", and at the bottom, "I do not want to go to jail for your violations". The employer was distributing copies of the article to all his employees.

Golden Gate Transit. This case involved an accident where a bus mechanic received fatal injuries while attempting to change the tire on a transit bus. J. B. Martin, Area Director of Machinists Local 1305, stated:

"This union fully supports Cal/OSHA's Bureau of Investigations. Recently, one of our members was killed while on the job. A BOI investigator came to the accident scene promptly and conducted a very professional, complete and thorough investigation. I felt confident that all possible causes of the accident were explored."

Granite-Ball-Groves. This case involved an accident where seven employees received fatal injuries when a work platform fell in excess of 200 feet down a vertical shaft. Thomas Dalzell, Attorney, International Brotherhood of Electrical Workers, Local 1245, stated:

"Due to the BOI's investigation and the criminal prosecution in the Helms case where 7 workers were killed, the working conditions for our members have improved."

Juliann Sum, Business Representative/Industrial Hygienist, International Brotherhood of Electrical Workers, Local 1245, stated:

"Our union feels that the Bureau of Investigations is important as a deterrent against employers who violate health and safety requirements. The impact of the BOI can't be evaluated by the number of prosecutions. Just the existence of the BOI and the threat of criminal or civil prosecutions has a widespread deterrent effect."

### SECTION 3

#### BOI PROVIDES VALUABLE ASSISTANCE TO THE CAL/OSHA FIELD STAFF

BOI provides a variety of essential services to the Division field staff:

1. BOI acts as a liaison between peace officers and compliance personnel when entry with the assistance of a peace officer is required to effectuate an inspection warrant.
2. BOI conducts investigations of violations of orders prohibiting use (Labor Code §6325) issued by compliance personnel and submits the case to local prosecutors and peace officers for immediate action pursuant to Labor Code §6326. BOI personnel accompany compliance personnel and peace officers to the scene and insure that operations cease until the required safeguards or safety devices are provided.
3. BOI personnel have expertise to collect evidence, preserve the chain of custody, and interview witnesses to ensure that all elements of the violation are provable should a case be referred to a local prosecutor.
4. BOI personnel locate and interview non-cooperative witnesses whose testimony is important for the successful resolution of an administrative case.
5. BOI investigates and refers for prosecution cases pursuant to Labor Code Section 6426 which are referred by field personnel in which false statements have been made in documents required to be maintained by the Division.
6. BOI investigates and refers for prosecution cases referred by compliance personnel which involve the fraudulent use of the Division's name, image or alleged authority.
7. BOI investigates and prosecutes cases pursuant to Labor Code Sections 6509, 7691, and 7266, referred by field personnel involving violations of Division regulations concerning permits, pressure vessels, and structural steel constructions.

The attached letters from Division Regional Managers are concrete examples of the valuable assistance provided by the Bureau to field compliance personnel.



- CAL/OSHA Program Office

April 8, 1986

Mr. Russell B. Swanson  
Regional Administrator  
Occupational Safety and Health Administration  
U. S. Department of Labor  
450 Golden Gate Avenue, Box 36017  
San Francisco, CA 94102

Attention: Ham Fairburn

Dear Mr. Swanson:

In accordance with a discussion with Ray Owen, we are enclosing a copy of the annual report on activities of the DOSH Bureau of Investigations during calendar year 1985. The report is prepared to meet the requirements of Labor Code section 6315.3.

Sincerely,

Dorothy H. Fowler  
Assistant Program Manager

enclosure

bcc: Ron Rinaldi )  
Bob Simpson )  
Dave Valoff ) w/o enc.  
Mike Mason )

## INTRODUCTION

This report provides a summary of all information required to be reported by the Bureau of Investigations (BOI) to the Division of Occupational Safety and Health pursuant to California Labor Code section 6315.3.

The report begins with a summary describing the allocation of Bureau resources in accomplishing its mission as required by Labor Code 6315.3(e).

Sections IA and IB of the report provide charts depicting comprehensive summaries of activity in Northern and Southern California, respectively. The charts delineate the status of each case required to be summarized by Labor Code section 6315.3(c), and (d), i.e., Cases Referred for Prosecution during the Calendar Year, Cases Investigated but Not Referred for Prosecution, and Cases involving a Final Court Disposition during the Calendar Year. Also included are Court Cases in Progress 1-1-85, Investigations Completed during the 1985 Calendar Year, and Court Cases in Progress 12-31-85. Section IC provides a statistical overview of the information contained in the charts found in sections IA and IB as well as statistics on the number of Investigations in Progress on 1-1-85 and on 12-31-85, as required by Labor Code section 6315.3(b).

Sections IIA through IID contain case-tracking forms for all cases referred for prosecution during the calendar year. The case-tracking form provides the information required pursuant to Labor Code section 6315.3(c), such as the violation, statute for which the case was referred for prosecution, date of referral to the Bureau, date of referral for prosecution and final court action if the case was prosecuted. The subsections have been organized to parallel the categories used in the IA and IB summaries. Thus, IIA contains fatalities, IIB, catastrophies, IIC, Cal/OSHA Requests for Prosecution, and IID, Discretionary cases.

Similarly, sections IIIA through IIID contain case-tracking forms for all cases for which a field investigation was completed but the case was not referred for prosecution. The information required by Labor Code section 6315.3(d) as to the violation(s) and the reason(s) for non-referral is contained in the case-tracking form.

Section IV reports the Totals of each Type of Report provided to the Bureau as required by Labor Code section 6315.3(a).

SUMMARY OF ALLOCATION OF BUREAU RESOURCES  
DURING 1985 CALENDAR YEAR

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The year 1985 was one of transition. At the beginning of this calendar year the Bureau's authorized personnel consisted of the administrative chief, supervising attorney and support counsel, supervising special investigator, five field investigators, and office support personnel. Substantial changes in personnel occurred during the year. Two investigators, who had each been employed with the Bureau for more than 6 years, left their positions at mid-year. In addition, the supervising attorney also departed at mid-year. To assure as smooth a transition as possible, a staff counsel assumed immediate responsibility for legal coordination of Bureau functions. As the year concluded, two staff attorneys became responsible for legal matters pertaining to northern and southern Bureau cases respectively. In addition, the Bureau's investigatory staff was operating with its full complement of field investigators with the exception of one vacant position which was in the process of being filled. (The remaining vacancy is still in the process of being filled due to careful consideration by the Department to determine whether changes in the investigator job classification would enhance the Bureau's ability to accomplish its mission.)

The central purpose of the Bureau is to conduct investigations pursuant to law and to refer appropriate cases to prosecuting authorities for appropriate action. However, the Labor Code designates certain categories of mandatory cases which the Bureau is required to investigate. Mandatory investigations are required in cases involving violations of standards, orders, or special orders, in which there is a serious injury to five or more employees, death, or request for prosecution by Division representatives. Labor Code 6315(a). In addition, the Bureau has discretion to investigate serious injuries to one to four employees or a serious exposure in which the Bureau finds criminal violations may have occurred. Before any field investigatory assignment is made, all cases are subject to administrative review. This review process is akin to an administrative investigation and is designed to screen cases for purposes of ultimate field assignment. A substantial number of cases are closed during the administrative investigation because the attorney or supervising special investigator determines, from a review of the factual information available, that further investigation would be unwarranted. Those cases determined to lack the necessary legal or evidentiary elements for criminal or civil charges or which otherwise would have a remote chance of being filed by prosecutorial authorities are closed administratively.

The number of administrative closures for 1985 was 102. From an historical context, administrative investigations resulting in closure of the case have accounted for approximately sixty-seven to seventy-five percent of the total cases referred

to the Bureau during the last five year period. A decision to administratively close a case is at times assisted by the results of a preliminary investigation conducted by a Bureau investigator before a formal case assignment is made.

Those cases which fulfill appropriate criteria during the administrative review process are then assigned to field investigators. The purpose of the field investigation is to determine from an evidentiary perspective whether the case warrants referral to appropriate prosecutorial authorities. During 1985 46 field investigations were completed. Of that number, twenty-nine cases were referred to prosecutorial authorities. In contrast, based upon an analysis of the field investigations during 1985, 25 cases were determined to be not suitable for referral. Given the field investigatory staff, which averaged approximately 4.5 positions during the calendar year, each investigator averaged approximately 6½ field investigations which resulted in referrals. Those field investigations which were found not to be suitable for referral averaged approximately 6 per investigator.

In addition to the central focus of required field investigatory activity, Bureau investigators are also required to undertake substantial training for purposes of maintaining professional standing. This training included required P.O.S.T. (Peace Officers Standard of Training) courses and comprised approximately 10% of total personnel time. (In addition, one Bureau investigator was on loan to the State Personnel Board on special assignment for a two week period.)

To implement the requirement that the Bureau review inspection reports involving a serious violation where there have been serious injuries to one to four employees or a serious exposure, field investigatory staff in the latter part of 1985 were required to review relevant accident investigation reports to ascertain patterns of typical serious injuries, illnesses or exposures, employers repeatedly associated with such incidents, and appropriate cases for discretionary investigation by the Bureau. We anticipate that the review of appropriate 1985 accident investigation reports will be completed for purposes of managerial evaluation in early 1986.

To enhance the Bureau's ability to investigate all mandatory cases, the Department of Industrial Relations has approved immediate augmentation of two additional investigator positions which have been proposed in the Governor's budget for the next fiscal year. With these additional investigatory resources and a close working relationship between attorneys and investigators, the Bureau anticipates a substantially higher degree of investigatory activity in 1986.

N1110-109-84

██████████ Co.

Date referred to BOI: 11-7-84

Date referred to DA by BOI: 12-30-85

Statute/violation:

B&P 17,200, et seq.

8 CAC 341.1(i)(2) - REGULATORY

8 CAC 1540(d) - SERIOUS

8 CAC 6760(a) - SERIOUS

8 CAC 6815(a) - SERIOUS

8 CAC 6793(a) - SERIOUS

8 CAC 6810(b) - SERIOUS

Final disposition:

No filing decision had been made at end of calendar year.

BS

II C

CASES REFERRED TO PROSECUTORS IN 1985 OR  
CASES RESULTING IN FINAL COURT DISPOSITION IN 1985

- Cal/OSHA 42 -  
(Request for Prosecution from Division to BOI)

N12260-063-83

[REDACTED]

Date referred to BOI: 6-1-83

Date referred to DA by BOI: 6-3-83

Statute/violation:

17200 B & P	[REDACTED]	7906LC, 7907LC, 8 CAC 3911, 3908, 3904, 2395, 2530.43, 4070(c), 2340.17(a), 2304.1, 2340.26(a), 2500.9(a), 2500.10, 2395.75, 2340.23(a)
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Final court disposition:

No final court disposition at end of calendar year.

Nordic Saw & Tool Manufacturing

Date referred to BOI: 6-27-84

Date referred to DA by BOI: 3-85

Statute/violation:

6425 LC	NORDIC LARSON HANSON.	8 CAC 5155(c)(1)(A) Toxic exposure to Cadmium
6425 LC	Same	8 CAC 5150(b) No local exhaust system while us cadmium-containing brazing mater
6425 LC	Same	8 CAC 3203(a)(1) Lack of training
6423(a)	Same	8 CAC 5155(c)(1)(A) Exposure to Cadmium
6423(a)	Same	8 CAC 5150(b) No local exhaust system while us cadmium-containing brazing mater
6423(a)	Same	8 CAC 3203(a)(1) Lack of training

*B-8*



Final disposition:

Favorable disposition pretrial:

NOLO plea to Counts I, II, III-36 mo. probation. \$5000 fine.  
LARSEN, DEWEY EUGENE, ET AL

NOLO plea to Counts I, II, III-36 mo. probation. \$10,000 fine  
NORDIC SAW AND TOOL, ET AL

NOLO plea to Counts I, II, III-36 mo. probation. \$5000 fine  
HANSON, HARRY IPSEN, ET AL  
\$2000.00 to be credited against \$10,000 fine if Division imposes  
similar penalty in administrative actions. Defendants to  
institute comprehensive medical surveillance program for affected  
employees as per sentencing order.

S2110-027-84



Date referred to BOI: 4-24-84

Date referred to DA by BOI: 6-19-84 for criminal prosecution  
4-8-85 for civil prosecution

Statuet/violation:

B&P 17200



8 CAC 5208(1) Serious  
5208(1) Serious

Disposition:

DA rejected case. Matter not prosecutable.

B-10

II D

CASES REFERRED TO PROSECUTORS IN 1985 OR  
CASES RESULTING IN FINAL COURT DISPOSITION IN 1985

- Discretionary Investigations -  
(Serious Injuries or Serious Exposures of 1 to 4 Employees)

Western Geophysical Company

Date referred to BOI: 12-9-83

Date referred to DA by BOI: 1985

Statute/violation:

B&P 17203 17204 17200 17206	WESTERN GEOPHY- SICAL	Violations:
		California Health & Safety Code 12101(a) 19 CAC 1565.1
		8 CAC 1550(b) 1565(a) 1579(e) 1579(c) 1565(b) 4001
		1565(j) 1567(b) 1567(c)
		California Health and Safety Code 12091 California Vehicle Code 31613 8 CAC 1564(a)

Final disposition:

Favorable pre-trial disposition.

Judgment entered against defendant under B&P 17200, et seq.

Defendant restrained from any violation of Health and Safety Code 12000 and 12725, California Vehicle Code 31600 and 31620, and State Fire Code 1550 and 1584.4. Defendant fined \$20,000.00 and required to establish a safety inspection program.

- CAL/OSHA Program Office

March 27, 1987

Mr. James W. Lake  
Acting Regional Administrator  
Occupational Safety and Health Administration  
U. S. Department of Labor  
450 Golden Gate Avenue, Box 36017  
San Francisco, CA 94102

Attention: Ham Fairburn

Dear Mr. Lake:

We are enclosing a copy of the annual report on activities of the DOSH Bureau of Investigations during calendar year 1986. The report is prepared to meet the requirements of Labor Code section 6315.3. Similar reports or data have been provided the Regional Office in prior years for use in evaluation of the CAL/OSHA program,

Sincerely,

Dorothy H. Fowler  
Assistant Program Manager

enclosure

bcc: Ron Rinaldi )  
Bob Simpson ) w/o enc.  
Bob Stranberg )  
Mike Mason )  
Ray Owen )

C-1

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

BUREAU OF INVESTIGATIONS

525 Golden Gate Avenue, Rm. 616  
San Francisco, CA 94102

ANNUAL REPORT OF ACTIVITY  
DURING 1986

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ALLOCATION  
SUMMARY

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SUMMARY OF ALLOCATION OF BUREAU RESOURCES  
DURING 1986 CALENDAR YEAR



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Whereas the year 1985 was characterized as one of transition, the year 1986 was one of consolidation and accomplishment. As stated in the last annual summary, the Department of Industrial Relations approved immediate augmentation in early 1986 of two additional investigator positions which had been proposed in the Governor's budget for the current fiscal year. During the mid part of the calendar year, all eight authorized investigatory positions, including the Supervising Special Investigator, were filled. In addition, two staff attorneys continued their responsibility for legal matters pertaining to northern and southern Bureau cases respectively. Toward the latter part of the calendar year, one vacant position existed as a result of the departure of an individual on the investigatory staff. In summary, during a substantial part of the calendar year, the Bureau's legal and investigatory staff was operating with a substantial compliment of its authorized personnel. (Unresolved was the issue concerning whether the permanent investigator job classification should be retained or modified).

The central purpose of the Bureau is to conduct investigations pursuant to law and to refer appropriate cases to prosecuting authorities for appropriate action. However, the Labor Code designates certain categories of mandatory cases which the Bureau is required to investigate. Mandatory investigations are required in cases involving violations of standards, orders, or special orders, in which there is a serious injury to five or more employees, death, or request for prosecution by Division representatives. Labor Code 6315(a). In addition, the Bureau has discretion to investigate serious injuries to one to four employees or a serious exposure in which the Bureau finds criminal violations may have occurred. Before any field investigatory assignment is made, all cases are subject to administrative review. This review process is akin to an administrative investigation and is designed to screen cases for purposes of ultimate field assignment. A substantial number of cases are closed during the administrative investigation because the attorney or supervising special investigator determines, from a review of the factual information available, that further investigation would be unwarranted. Those cases determined to lack the necessary legal or evidentiary elements for criminal or civil charges or which otherwise would have a remote chance of being filed by prosecutorial authorities are closed administratively.

Given the increase in authorized personnel and the dedication of the attorneys and investigators working on behalf of the Bureau, substantial increases in productivity occurred in the calendar year 1986. Whereas the number of administrative closures for 1985 was 102, in 1986 there were 216 administrative closures. Whereas in 1985, there were 46 investigations completed during the calendar year, in 1986 there were 80.

Whereas in 1985, 29 cases were referred during the calendar year, in 1986 63 cases were referred. Of the 29 cases referred in 1985, 15 cases were ultimately filed by prosecuting authorities. Of the 63 cases referred during 1986, already 26 cases have been filed by prosecuting authorities. (As this calendar year proceeds, we anticipate that additional cases referred during 1986 will be filed in 1987.)

A substantial accomplishment during calendar year 1986 was the ability of the Bureau to expand the number of counties in which cases were referred for prosecution, thereby increasing the number of prosecutorial authorities who are familiar with occupationally-related misdemeanor and felony charging statutes. We are pleased to report that our anticipation in our last annual summary of a substantially higher degree of investigatory activity during calendar year 1986 was fulfilled.

II A

CASES REFERRED TO PROSECUTORS IN 1986 OR  
CASES RESULTING IN FINAL COURT DISPOSITION IN 1986

- Fatalities -

Cob

CASE NUMBER: N1110-036-85

CASE NAME: [REDACTED]

DATE REFERRED TO BOI: 4-24-85

DATE REFERRED TO D.A. BY BOI: 7-10-86

STATUTE/VIOLATION:

BUSINESS AND PROFESSIONS CODE	AGAINST WHOM	TITLE 8 CAL. ADMIN. CODE
17200	[REDACTED]	341.1(1)2 1509(d) 1510(a) 1540(e)(1) 1540(g)(2) 1540(c)(1) 1540(d) 1540(f)

LABOR CODE	AGAINST WHOM	TITLE 8 CAL. ADMIN. CODE
6423(a) 6425	[REDACTED]	Same as above

FINAL COURT DISPOSITION:

San Joaquin County Deputy District Attorney Stephen E. Taylor did not file criminal charges based on insufficiency of evidence to prove a violation of the law beyond a reasonable doubt. A civil action was filed against [REDACTED] pursuant to Business and Professions Code section 17200 on 8-15-86 for related Title 8 Cal. Admin. Code violations. The matter is still pending.

CASE NUMBER: N1110-081-85

CASE NAME: [REDACTED] Incorporated

DATE REFERRED TO BOI: 8-12-85

DATE REFERRED TO D.A. BY BOI: 8-11-86

STATUTE/VIOLATION:

B & P CODE	AGAINST WHOM	8 CAL. ADMIN. CODE
17200	[REDACTED], Inc.	8 CAC §§ 3210, 3653, 3207(b), 3314(a), 4075, 3203(a)(1), 5174(f), 3328(a), 5174(a), 5174(b), 4070(c), 3661(c), 5021(a), 3664(a), 3999(b), 1515, 1670(a) and 1632(a).

LABOR CODE	AGAINST WHOM	8 CAL. ADMIN. CODE
LC 6425	[REDACTED]	8 CAC 3314(a)
LC 6423(a)	[REDACTED]	"
LC 6423(b)	"	"
LC 6423(a)	"	8 CAC § 3203(a)
LC 6423(a)	[REDACTED]	8 CAC § 4075
LC 6423(a)	"	8 CAC § 5174(f)

FINAL COURT DISPOSITION:

Case still pending as of January 1, 1987.

CS

CASE NUMBER: S1130-023-86

CASE NAME: 

DATE REFERRED TO BOI: 2-26-86

DATE REFERRED TO D.A. BY BOI: Joint investigation

STATUTE/VIOLATION: BPC 17200  
LC 6425  
LC 6423  
8 CAC

4206(a)-Serious/Willful  
4203(b)-Serious  
4208(i)-Serious  
4202(c)-General  
4208(d)-General  
3203(a)-General  
3221(a)-General  
342(a)-General

DISPOSITION: None at end of calendar year.