

# Successful Management of OSHA Inspections and Investigations

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# Types of OSHA Inspections

- Programmed – “Site Specific Targeting”
- Based on SIC Codes, company safety record
- May be triggered by “National/Regional Emphasis Programs” (amputations, silica, combustible dust, ergonomics etc.)
- Are “Wall to Wall” and include record audit

# Types of OSHA Inspections

Un-programmed –

Triggered by events:

- Imminent Danger Investigations (often based on an OSHA compliance officer's observations from “outside the gate”);
- Accident, Fatality or Catastrophic Event or
- Employee Complaints
- Compliants from other parties - NEOGAP

## Phases of OSHA Inspections

Inspections have three parts:

- 1) Opening conference and records review;
- 2) The “walkaround,” including employee & management interviews; and
- 3) The closing conference.

# Opening Conference

## **A. OSHA Inspections Unannounced**

- 1) Ask for the compliance officer's credentials
- 2) Ask what precipitated the inspection:
  - a. If an employee complaint request a copy
  - b. If the inspection is because of an administrative plan, ask how it operates and how the company was selected under it

# Opening Conference

- 3) Find out, in as much detail as possible, why the compliance officer is at your worksite and what he/she intends to do.
  - a. What specific areas/operations will be inspected?
  - b. What records will the compliance officer want to review?
  - c. Will photographs or videos be taken?
  - d. Any kind of sampling

# Opening Conference

- 4) While the opening conference is being conducted have supervisors walk through the work site to assure that:
  - a. Guardrails are in place;
  - b. Personal protective equipment is being worn (e.g. hard hats, safety glasses, fall protection, etc.) ; and
  - c. The work site is neat and orderly

# Conduct Of The Inspection

- 1) Develop a protocol regarding how you will deal with an OSHA inspection and who will be involved on behalf of the company. Advance planning is the best way to know and protect your rights.
- 2) A company representative should accompany the compliance officer at all times.

# Conduct Of The Inspection

- 3) The compliance officer will inquire about an employee representative to participate in the “walk around” activity. If you have a union, this will probably involve the union safety person. If you are operating in a state under federal OSHA jurisdiction, employees participating in the “walkaround” activity need not be paid for their time. In Kentucky, employees, when on regular duty time, must be paid their regular rate of pay during the conduct of walk-around inspections.

# Conduct Of The Inspection

- 4) If there are any special safety requirements applicable to the areas the compliance officer wishes to visit, be certain that the compliance officer abides by the company's safety requirements, including wearing appropriate personal protective equipment.
- 5) Take notes of everything the compliance officer does and asks. (This is important because the compliance officer does.)

# Conduct Of The Inspection

- 6) The compliance officer will probably want to take photographs, or more likely videotape the worksite. Generally, courts have upheld OSHA's right to take photographs or video during an inspection. You should take photographs and, if practical, video of the same things that the compliance officer does.
- 7) If the compliance officer measures something, you also should take measurements. However, if the compliance officer estimates, for example, a distance, do not necessarily agree with him or her. (If you agree, your "agreement" will appear in the compliance officer's notes.)

# Conduct Of The Inspection

- 8) If any confidential/trade secret process will be viewed or inspected, identify these before any photograph/video is taken, and confirm in writing that the compliance officer will treat the material as trade secret information. The same rule applies to requested documents.
- 9) You have no obligation to demonstrate the operation of any equipment that is not currently operating. But the compliance officer may return at a later time if he/she is unable initially to observe an operation.

# Conduct Of The Inspection

- 10) If the compliance officer conducts sampling or air monitoring, watch how the sampling is conducted and how the employee is performing the task being sampled. (One issue regarding the validity of a action based upon sampling is whether it is representative). Note anything questionable or out of the ordinary. If you have sampling or air monitoring equipment, you should consider taking side-by-side samples.
  
- 11) OSHA may conduct interviews of hourly employees in private. if possible, before an employee is interviewed, let him/her know that he/she can ask for a copy of any written or recorded statement given. (Generally, it is unlikely that you will ever see copy of such a statement, unless the employee gets one and agrees to give a copy to the Company.) After an interview, you can meet (on a voluntary basis) with hourly employees interviewed by the compliance officer and determine what they were asked and what they told the compliance officer. Ask whether the interview was taped. Take notes of your discussion.

# Conduct Of The Inspection

- 12) Supervisor interviews or statements. Supervisors are agents of the Company, and OSHA may treat any statement made by a supervisor as an "admission."
- a. One element That OSHA must prove to establish a violation is "employer knowledge." Supervisors should be instructed privately before their interviews to answer only the question that is asked. They should be told not to volunteer information and not to guess or speculate (e.g., don't speculate on whether employees were exposed to hazards in the past or how long a claimed volatile condition has existed),

# Conduct Of The Inspection

- b. Anything a supervisor says may be used against the Company. So they should not agree with the compliance officer that there is a violation.
- c. You have a right to have counsel or another management representative present during any supervisory interview.
- d. If OSHA wants to tape the interview, the Company should consult with **legal** counsel about whether it will permit the interview to be taped. If a statement is taken, the supervisor should ask to have a copy.

# Conduct Of The Inspection

- 13) Avoid engaging in idle chatter or volunteering any information about general OSHA or safety issues with the compliance officer. What you say may prompt a broader investigation. Answer the compliance officer's questions, but do not guess. If you do not know, simply tell the compliance officer. Depending on the situation, you can offer to look into the question presented and to provide a follow-up response.
- 14) Attempt to maintain a good relationship with the compliance officer, but do not concede that he is entitled to everything that he desires. If you sense **overreaching**, ask why the compliance officer needs to inspect the area in question and, if questions remain, explain that you need to consider that request further. Call legal counsel to discuss the issue.

# Inspections “Dont’s”

- Lie
- Admit knowledge of violations
- Tell workers not to talk to OSHA
- Sign statements or be audiotape
- Agree that a violation exists
- Provide non-statutorily required documents
- Guess or speculate
- Demonstrate how to operate equipment or perform specific tasks

# Inspection “Do’s”

- Tell the Truth
- Promptly provide statutorily required documents/records
- Take notes on everything the inspector says or examines
- Take measurements and make drawings, or photograph them (if OSHA does) – in way that is exculpatory
- Keep a record of employee interviews
- Ask the inspector to explain received violations and look up applicable standard

# What Documents Does The Compliance Officer Have A Right To Review?

- A. Generally, only provide records required by the Act or regulations (e.g., the Log of Work-Related Injuries and Illnesses - OSHA 300, the Summary of Work-Related Injuries and Illnesses -- OSHA 300-A, and the Injury and Illness Incident Report -- OSHA 301. Do not give the compliance officer free reign over all Company files.
- B. Typically, a compliance officer also will ask for, and you should provide, copies of program/policy type documents (e.g., Hazard Communication., Lockout/Tagout, Confined Space, Hearing Conservation, Bloodborne Pathogens).

# What Documents Does The Compliance Officer Have A Right To Review?

- C. Do not turn over original files.
- D. Keep confidential documents separate, and labeled as such. This includes proprietary/trade secret information. Communications from the Company's lawyers are privileged and confidential, and should never be provided to OSHA or anyone else, or the privilege will be lost. If any doubt exists, have legal counsel review the documents before providing them to OSHA.
- E. Medical records require special consideration, because of potential employee, privacy issues. Medical records with personal identifiers that are requested by OSHA are subject to detailed protections and procedures.
- F. Make sure you have copies of the same documents and records given to the compliance officer. Keep a list of all documents provided to OSHA.

# POST INSPECTION ACTIVITIES

- A. Create A Written report directed to legal counsel that documents the inspection in detail.
- B. Recommendation: When an OSHA inspection begins, consult with legal counsel. Find out what your rights are and discuss documenting the inspection (i.e., attorney-client privilege).

# CLOSING CONFERENCE

- A. OSHA generally holds a closing conference at the conclusion of an inspection. (If the compliance officer fails to conduct a closing conference, ask for one.) The closing conference provides an opportunity to hear the compliance officer's concerns, and to get an idea about the types of citations the Company is likely to receive.
- B. Ask questions at the closing conference, but do not make any admissions (i.e., don't acknowledge there is a violation) Take the opportunity to find out what the compliance officer believes are problem areas, why the compliance officer believes there is a problem, and what his/her next step will be.
- C. Ask the compliance officer to explain specific abatement methods. You should not volunteer solutions or commit to any abatement method.
- D. Ask the compliance officer when you can expect to receive any OSHA citations. Inform the compliance officer to whom the citations should be sent.

# TYPES OF VIOLATIONS AND PENALTIES

- A. Classification of Violations

1. Serious Violation. One that creates a substantial probability that death or serious physical harm to an employee could result from the cited condition or practice.
2. Non-Serious Violation. A non-serious or other than-serious violation also presents a risk of injury to employees, but the expected injury is less than death or serious physical harm, (Usually listed on a citation as "Other").

# TYPES OF VIOLATIONS AND PENALTIES

- A. Classification of Violations

3. Repeat Violation. OSHA will classify a violation as "Repeat" or "Repeated" when the employer was previously cited under the same standard or for a substantially similar condition or practice and the earlier citation has become a final order, OSHA's policy is to cite violations as a repeat violation if they occur within three years of the date the previous citation became final or within three years of the final abatement date established in the prior citation, whichever is later.
4. Willful Violation. When the employer either intentionally violates the requirements of a standard or shows plain indifference to its requirements.
5. Failure to Abate. If the employer has been found to fail to correct an earlier citation that has become a final order.
6. Egregious Policy. OSHA cites on an instance-by-instance basis.

# TYPES OF VIOLATIONS AND PENALTIES

## OSHA Penalty Schedule Maximum Civil Penalty

- Other	\$7,000
- Serious	\$7,000
- Repeat	\$70,000
- Willful	\$70,000, minimum \$5,000
- Failure to Abuse	\$7,000/day

# REPORTING OBLIGATIONS

- A. Work-Related Fatality. Any work-related accident that results in the death of an employee must be reported to OSHA within eight hours. The report must be made by telephone or in person. New heart attack rule.
- B. Multiple Hospitalization. Any work-related accident that results in the hospitalization of three or more employees must be reported to OSHA within eight hours. The term "hospitalization" means admission to a hospital as an in-patient.

# POST- CITATION PROCEDURES

- A. Notice of Contest
- B. Information Conference
- C. Contested Citations
- D. Discovery
- E. Settlements
- F. Hearings

# Most Common OSHA Citations – 2005 - 2009 for Drilling / OHIO

Note: Violation out of 1910

1. Haz Com - Training
2. Hand Tool
3. Machine Guard
4. Elevated Platform/Work Surface

# Most Common OSHA Citations Oil & Gas General

1. Haz Com - Training
2. Personal Protective Equipment
3. Confined Space
4. Fire Extinguisher

**Helpful Information Links:**

[www.osha.gov](http://www.osha.gov)

[www.epa.gov](http://www.epa.gov)

[www.cvsa.org](http://www.cvsa.org)

For additional Publications, [www.mancomm.com](http://www.mancomm.com)

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