

How To Prepare For An OSHA Inspection and Avoid Getting Into OSHA's SVEP

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KNOCK, KNOCK: IT'S OSHA!

Goals

- What to Have in Place Before an Inspection
- Steps for Handling an Inspection
- Post-Inspection Considerations
- Keys to Compliance



OSHA Compliance

- All employers in the United States are covered, including “general industry,” “construction,” “maritime,” and “agriculture”
- General Duty Clause – Section 5(a)(1)
 - Provide place of employment;
 - Free from recognized hazards;
 - That could cause death or serious injury
- Compliance with OSHA safety and health standards

Types of OSHA Standards

Health Standards

- Lead
- Asbestos
- Chromium
- Formaldehyde
- Methylene chloride
- Cadmium
- Bloodborne pathogens
- Z Table

Safety Standards

- Machine guarding
- Powered industrial trucks
- Lockout/tagout
- Walking and working surfaces
- Fall protection
- Personal protective equipment
- Electrical safety
- **29 CFR 1910.272**



Recordkeeping

- OSHA 300 Logs
 - Record work-related injuries and illnesses
- OSHA 301 Forms
 - Incident reports
- Annual Summary
- Reporting of fatalities and catastrophic events
- Survey to OSHA and BLS
- Must not discourage employees from reporting injuries and illnesses
 - Safety incentive programs should not discourage reporting
 - No punishment for reporting injuries



Why Should I Care?

- OSHA enforcement is at historic levels
- More inspections and significant cases
- OSHA specifically interested in grain handling industry
- Enhanced Administrative Penalties Memorandum
- Severe Violator Enforcement Program



SVEP: What is it?

- Enforcement policies to focus resources on employers “who have demonstrated indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations”
- Replaces Enhanced Enforcement Program
- States required to adopt the program or adopt an equivalent program



SVEP: Who gets in it?

- Fatality/Catastrophe Criterion
 - One or more willful or repeated citations or failure-to-abate notices based on a serious violation related to a death of an employee or three or more hospitalizations
- Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards
 - Two or more willful or repeated violations or failure-to-abate notices based on high gravity serious violations related to a High-Emphasis Hazard



SVEP: Who gets in it? (cont.)

- Non-Fatality/Catastrophe Criterion for Hazards Due to the Potential Release of Highly Hazardous Chemical (PSM)
 - Three or more willful or repeated violations or failure-to-abate notices based on high gravity serious violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the PSM standard
- Egregious Criterion
 - All egregious enforcement actions



SVEP: High Emphasis Hazards

- Fall hazards
- Amputation hazards
- Combustible dust hazards
- Crystalline silica hazards
- Lead hazards
- Excavation/trenching hazards
- Shipbreaking hazards
- Hazards due to the potential release of a highly hazardous chemical (process safety management)
- **Grain Handling Hazards!!**



SVEP: What happens if I am in it?

- Enhanced Follow-up Inspections
- Nationwide Inspections of Related Workplaces/Worksites
- Increased Company Awareness of OSHA Enforcement
 - Sending Citation and Notification of Penalty to Headquarters
 - Issuing News Releases
 - Posting on OSHA's Webpage?
- Sending Letters to Corporate Officers
- Enhanced Settlement Provisions
- Section 11(b) Enforcement



Safety and Health Management System

- Tool for creating a safe work environment and ensuring compliance with OSHA standards
- Key elements:
 - Management leadership and employee participation
 - Hazard identification and control
 - Training and education
 - Program evaluation and continuous improvement
- Must know your hazards, applicable OSHA standards, and take corrective actions



The Elements of an OSHA Inspection

- The Knock at the Door
- The Opening Conference
- The Walkaround
- The Closing Conference

The Knock

- No advance knowledge – usually!
- Credentials
- Tip: Ask inspector to explain the purpose of the inspection
 - “Programmed” inspection
 - SST
 - National Emphasis Program
 - Local Emphasis Program
 - Response to fatality or catastrophic event
 - Response to employee complaint
- Have designated area to conduct opening conference and interviews
- Designate certain individuals to interface with OSHA



Question 1

- A compliance officer initiates an unannounced inspection of your facility. For a number of reasons, there are no company representatives available to meet with the compliance officer, can the greeter (e.g., receptionist) request that the compliance officer return at a later time?

Opening Conference

- The CSHO will first conduct an opening conference. During the opening conference, the CSHO will:
 - Describe the purpose of the inspection.
 - If the facility is a union facility, the compliance officer may request that an employee representative participate in the opening conference.
 - Outline in general terms the scope of the inspection, including the need for private employee interviews, physical inspection of the workplace and records, etc.
 - Review personal protective equipment (PPE) hazard assessment.
 - Review OSHA 300 Logs and 300A summary forms.
 - Likely review your entry permits.
- **Must know and be able to readily provide for the compliance officer copies of PPE hazard assessment and OSHA 300 Logs and 300A summary forms.**
- If there is an area in the plant that contains or might reveal trade secrets, inform the CSHO of this during the opening conference.



The Walkaround

- The scope will depend upon the nature and purpose of the inspection. OSHA may have authority to perform a comprehensive inspection, which may involve a full facility walkaround, along with hygiene sampling.
- Management should accompany the compliance officer during the inspection. The compliance officer is permitted to take photographs or videotapes whenever the compliance officer determines that it is necessary to do so. Any photographs or videotapes taken by the compliance officer should be replicated by the company.
- During the walkaround, the compliance officer may recommend that certain alleged hazards be corrected and suggest possible means of correction. It is OK to correct alleged hazards identified.
- An employee representative must be given the opportunity to accompany the CSHO in the physical inspection of the plant.
- **The Company representative must require that the compliance officer abide by all company safety rules.**



Question 2

- The compliance officer informs you at the opening conference that he/she is investigating an employee complaint regarding noise exposure in Area A of the facility. The compliance officer then requests to view the worksite in Area B of the facility, which is adjacent to Area A. Is this allowable?

Question 3

- A compliance officer informs you that he/she is only at the location to visit Area A of the facility. While walking to Area A, the compliance officer notices a machine without a guard on it, in Area C. Can the compliance officer head towards Area C to investigate?

Manager and Employee Interviews

- In the course of the inspection, the compliance officer may wish to interview management representatives and other employees. Determine your approach to this.
- Management should arrange for the interviews to take place in the office/room discussed above.
- Management should sit in on all interviews of management personnel and take notes of the interviews. The CSHO has the right to interview non-management employees in private.
- If it would unduly hinder production for an employee to leave his/her post to be interviewed, management can request the CSHO schedule an alternative time to interview the employee.



Question 4

- A compliance officer asks to interview Employee A. Employee A comes to his/her supervisor and says that he/she does not feel comfortable speaking to OSHA and does not want to speak with the compliance officer. How should this be handled?

Closing Conference

- Upon completion of the inspection, the CSHO will conduct a closing conference. Typically, the compliance officer will not indicate how the proposed violations will be characterized (serious, other than serious, etc.) or the proposed penalty amounts.
- At the closing conference, management should :
 - Bring to the CSHO's attention any information regarding conditions in the plant that will present the company in a favorable light and, in particular, any information that has not previously been brought to the CSHO's attention.
 - Take detailed notes.
 - Ask the CSHO what the characterization of the citations will be and the proposed penalty amounts. (As noted above, the CSHO will likely not provide this information. Even so, the Company representative should attempt to ascertain this information.)
 - Discuss with the CSHO how much time the company will need to make any necessary corrections or repairs of violations that the inspection turned up.



Hopefully no citations, but ...

- *De Minimis*
- Other Than Serious
- Serious
- Willful
- Repeat
- Egregious
- Criminal

Citation Options

- Informal conference/Informal settlement
 - 15 working days from receipt of citation
 - Provide information on abatement
 - Explain why citations are not justified
 - Could result in penalty reduction, classification reduction, or withdrawal
 - Expedited Informal Settlement – do not have to take it



Citation Options (cont'd)

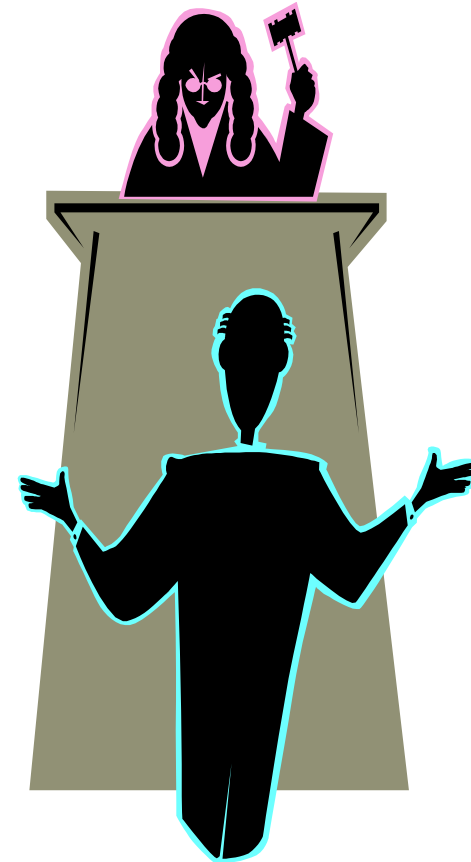
- Notice of Contest
 - File within 15 working days
 - Short letter
 - Contest everything – all citation items, abatement dates, and proposed penalties
 - Moves you into conversations with “Solicitor”

Citation Options (cont'd)

- Settlement discussions with Solicitor
 - Fresh look at citations
 - In most instances, Solicitor will not have previously been involved in case
- Tip: Engage Solicitor early in the process to discuss why citations are unwarranted or inappropriate

Hearings

- Before the Occupational Safety and Health Review Commission
- Citation is the “Complaint”
- Very much like a “trial,” except before an Administrative Law Judge



Key Considerations Post Citation

- Do you believe the citations are warranted?
- How high are the penalties?
- Is the required abatement clear?
- How extensive would abatement be?
- How would this impact other establishments?
- Could there be a “repeat” in the future?

What Should I be Doing Now?

- ✓ Strengthen (or establish) your safety and health management system
- ✓ Check your entry permits, lockout/tagout procedures, etc.
- ✓ Review your policies on bin sweep augers
- ✓ Know applicable OSHA emphasis programs and how they will be conducted
- ✓ Check your recordkeeping logs
- ✓ Review third-party consultation reports – OSHA can, and might, subpoena them
- ✓ Prepare your establishments for an OSHA inspection!



Thank You!

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