



MANAGING THE OSHA INSPECTION

A. GENERAL PREPARATION BEFORE OSHA KNOCKS

1. Ensure that the official OSHA poster is displayed where notices to employees are customarily posted.
2. Make sure that Injury & Illness Logs are up-to-date, correctly completed, signed by a top executive, and posted from February 1 to April 30. Self-audit and correct 300 logs for five (5) years.
3. Conduct routine safety audits and hazard assessments to spot and correct areas of non-compliance.
4. Ensure that at least two (2) managers at the site have been assigned responsibility to meet with OSHA should they arrive.
5. Ensure that each manager understands their specific safety responsibilities. If they are aware of any hazards, untrained employees, or employees not following safety rules, OSHA may take the position that the Company was “on notice” of a hazard or violation.
6. Make sure that managers know how to prevent other companies’ employees, including drivers and contractor employees, from exposing Company employees to hazards, and how to address unacceptable contractor behavior.
7. Never sit still. Determine which OSHA standards apply to the facility and periodically check to confirm that all required written programs, plans, training and recordkeeping are complete and updated as required. Utilize Company-wide best practices, but also ensure that your safety program is customized to your location as needed.
8. Ensure that the facility’s Job Safety Hazard Analysis’s (JSA’s) have been completed and “certified” for all jobs and reflect the specific hazards of your facility.
9. Ensure that all training is completed and documented before an employee is exposed to a hazard, including any on-the-job training by supervisors or co-workers.
10. In particular, as applicable, maintain or satisfy:
 - > Fall protection procedures and proper use of access equipment;

- Annual reviews of LOTO procedures by observation of employees performing each lockout;
- The annual requirements of the respiratory protection program;
- Any required audiometric testing, hearing conservation program, documented efforts to reduce exposure, and appropriate response to any shifts;
- Bloodborne Pathogens training, where appropriate;
- Electrical and 70E training as required;
- Documented powered industrial truck (PIT) and other equipment evaluation and training;
- Documented Haz Com training specific to the hazards of the job;
- Up-to-date complete list of chemicals and file of SDS's;
- Fire Prevention Plan, Hot Work Plan, annual Fire Extinguisher training as needed, and Emergency Action Plan;
- Confined Space Entry program, training, completed permits, and equipment where required;
- Guards in place, including on conveyors; functioning interlocks and e-stops;
- Testing or a documented history on which PPE decisions were made with regard to IH issues (Hexavalent Chromium, silica, etc.);
- Unblocked exits, electric cabinets, extinguishers; and,
- Housekeeping programs are installed and followed.

11. Ensure that supervisors counsel and discipline employees for violating safety rules, failure to use PPE, and unsafe behavior (and document the action).

12. Routinely audit for common issues:

- Housekeeping – a messy plant or job site suggests to OSHA that other safety programs may be lacking;
- Training for operation and use of all tools and equipment;
- Guards removed; open pinch points; caught-in-between hazards; check guards on bench grinders;
- Access blocked to switch panels, damaged wires and boxes, missing punch-outs, well-junction boxes used for homemade extension cord plugs, misused power strips, unsupported electrical wires, and unmarked switches;
- Lack of fall protection such as fall arrest or missing guardrails;
- Holes which could cause a trip or cause an employee to fall;
- Material handling hazards; use of hoisting equipment; unmarked or defective slings, and no procedures for selection, use and disposal;
- Employees not locking out or being unaware of who is “authorized” and who is “affected;”
- Not using PPE, including for routine use;
- Unsafe equipment operation or horseplay;
- Health hazards; noise; toxins; etc.

13. Ensure that employees participate in day-to-day safety efforts. Use employee involvement in the safety process to improve communications with management and to create a sense of involvement.
14. Ensure that injuries and illnesses are properly recorded and that supporting documentation is available.
15. Maintain appropriate equipment for inspections, such as a digital camera or video recorder, and have a list of Industrial Hygiene providers who can do side-by-side air testing, audiometric testing, or other testing conducted by OSHA if they come onsite.
16. Explain to receptionist and others who may greet any third-party, including OSHA Compliance Officers, as to who to contact at the facility and where to politely ask the visitors to wait.
17. Train designated management personnel on how to properly handle and respond to an OSHA inspection. Ensure that at least two (2) managers are trained, so as to ensure that a manager is always available.
- 18. Notify OSHA within eight (8) hours if a fatality occurs or, if one (1) or more employees are hospitalized, or a loss of eye or amputation occurs, notify OSHA within twenty-four (24) hours.** (Some state plans have different rules. MSHA also has different reporting requirements.)
19. Designate who site management must call OSHA when a fatality, amputation or in-patient hospitalization occurs, after the managers summons emergency response. Ensure that in-house counsel is immediately notified. Maintain OSHA counsel who can determine what investigation should be conducted, what accident reports need to be prepared, how to address employee and family needs, and how to respond to emergency responders, law enforcement, OSHA, Insurance Investigators, and others. Know who to contact with insurers. Even if only one (1) employee is hurt, you will probably get a visit from OSHA any time you summon an ambulance or emergency responder, because they responders often notify OSHA.

B. WHAT TO DO WHEN OSHA ARRIVES

1. Initial Contact By OSHA

- a. **Tell management that when OSHA shows up, they should immediately notify the designated corporate contact. You should also alert in-house counsel. Managers should make this call as soon as they learn that OSHA is onsite, and before the OSHA “Opening Conference,” in order to receive any initial instructions.**
- b. Receptionists or other employees should first refer the OSHA Compliance Officer to the Company’s designated manager to manage site OSHA inspection. Have the OSHA

Compliance Officer wait in an area which is comfortable and where you can control what they can see.

- c. Be courteous, hospitable, and professional to the OSHA Compliance Officer.
- d. No employees, other than the facility manager and/or the designated Company coordinator, should confer with the OSHA Compliance Officer prior to the Opening Conference. (*At some point, introduce the Compliance Officer to the facility manager or take other steps to let the Compliance Officer know that the Company takes the visit seriously and is committed to maintaining a safe workplace*).
- e. The designated manager should review the Compliance Officer's credentials as well as obtain his or her business card with an address and phone number.
- f. Ask the Compliance Officer the purpose, "scope," and the circumstances of the visit to the facility. If the inspection is based on a complaint, ask for a copy or description of the complaint.
- g. A warrant is not generally required, but determine if the Compliance Officer has a warrant to conduct the inspection. If yes, find out the scope of the warrant and why OSHA used a warrant.
- h. If employees are represented by a union, notify the designated union representative of OSHA's presence. It is wise to maintain a good relationship with union personnel involved with safety, so as to work cooperatively during an inspection.
- i. If this is a multi-employer site, notify all contractors onsite that OSHA is onsite and ask the OSHA representative if they want to include all employers in an opening conference. Different rules may apply with MSHA inspections.

2. The Opening Conference

- a. Use the Opening Conference with the OSHA Compliance Safety & Health Officer (CSHO) to establish:
 - the areas or subjects of the inspection (this is known as the "scope");
 - the route of the walk-around inspection to get to the complained-of area or accident, or how to approach a "wall-to-wall," "focus-4," or other type of inspection;
 - any designated trade-secret areas or subjects;
 - ask if any tests or monitoring are planned (because you may need to get your own Industrial Hygienist to do side-by-side tests);
 - whether the CSHO plans to conduct interviews or ask for documents (he or she may not yet know at the beginning of the inspection);
 - the role of any union and other Employers or contractors onsite; and,
 - try to find how long OSHA intends to stay (they may not know).

- b. Be professional, honest, and seek to cooperate, but do not be reluctant to politely hold the Compliance Officer to OSHA procedures and to practice your rights and limit the inspection to the agreed upon scope. This is a “balancing act.”
- c. Conduct all Company-required safety and health briefings for OSHA compliance officers prior to access. Ask the CSHO to wear all necessary personal protective equipment and follow all Company safety and health policies, just like anyone else entering the areas.

3. The Walk-Around Inspection

- a. A designated manager or coordinator should stay with each OSHA Compliance Officer at all times during the inspection, except during hourly employee interviews who do not request a manager’s presence. It is a strategy question whether to use the Safety Manager in this role.
- b. The designated manager should take detailed notes, including areas inspected, items discussed, employees interviewed, and any facts which may be relevant.
- c. OSHA has the burden to prove the “elements” of a violation. However, memories may be unclear six or twelve months later. Notes are vital. Notes should focus on “was there a hazard,” “did OSHA establish that employees were exposed or would have been in the normal course of work,” “did any supervisor know of the violation,” “how busy was the area,” etc.
- d. If the Compliance Officer wants to deviate from the area(s) covered by a complaint or agreed upon area at the Opening Conference, the manager should ask the reason for the deviation. It may be necessary to consult with designated management or counsel before expanding the inspection agreed to when OSHA was granted entry.
- e. Photographs should be taken of areas inspected by the OSHA Compliance Officer especially, if the CSHO takes photos or video.
- f. After OSHA leaves the area, conduct your own measurements before carrying out abatement or alteration.
- g. Indicate to the CSHO areas where photos should be designated as Company or customer trade secrets. Ask the CSHO to not broadly sweep a video camera due to trade secret and confidentiality concerns, and to only film what is strictly necessary.
- h. The manager should correct any alleged violation identified by the Compliance Officer as quickly as possible unless the CSHO asks you not to do so. If the hazards are presented, you may need to take alternative measures to protect employees until abatement. You should not “admit” that they are OSHA violation. That legal determination may be made later, but this does not stop you from addressing areas indicated by OSHA as any good employer would do.

- i. All management or supervisory employees are “agents of the Company” and should not volunteer information or make statements to the Compliance Officer without coordination with the designated manager or the Company’s OSHA counsel. Advise them to answer the questions asked; to think about the question before answering, and to not volunteer information. Tell them to always be honest, and to not fear Company retaliation.
- j. OSHA may ask to interview employees and has this right if the Company agrees. Explain to employees that the interview is routine, that “they are not in trouble,” the Company appreciates their cooperation, and that they should be honest with the Compliance Officer. OSHA counsel can explain in detail how to handle employee interviews. Counsel can also explain lawful means of prepping, debriefing or following up with employee (*this is a sensitive area*).
- k. Neither managers nor employees are required to sign statements. Consult counsel on this question.
- l. The Company has a right to have another manager or counsel present for manager or supervisory interviews. Consult with counsel about who is treated as a manager and supervisor and how to handle the interview. Also, in some circumstance, you may want to treat a close call as a supervisor or employee depending on strategy questions.
- m. For efficiency, ask the Compliance Officer to put all requests for Company Information and/or documents in writing or maintain a list to give to you when you finish the walk-around.
- n. Other than certain documents such as Injury Logs, which OSHA has a right to obtain within no more than 4-hours, and SDS’s, there may be legal reasons, such as trade secrets or privilege concerns, for the Company to review documents before giving them to OSHA. Designated management or the Company’s Counsel should review or at least approve all request for documents and information as well as all information and documents provided.
- o. Document all samples or monitoring carried out by the Compliance Officer and request copies of all sampling and monitoring results, as well as all photographs and videos taken (OSHA may not provide them or may not provide them until later, but it does not hurt to ask).
- p. The Company will generally want to do its own side-by-side tests. Therefore, the Company may request the OSHA Compliance Officer to schedule sampling and monitoring at a time when the Company can conduct its own side-by-side sampling and monitoring, or to cause less disruption.
- q. If you conduct side-by-side testing, have your IH observe the Compliance Officer’s calibrations and set-up.

- r. Generally do not volunteer copies of outside or self-audits during the inspection; these can be later provided if not privileged or protected. Consult with counsel.
- s. OSHA inspections are focused on one site, so generally do not bring up other facilities without guidance from counsel.
- t. Because of additional civil and regulatory issues, special rules apply to handling fatalities and catastrophes or incidents involving members or the public, other company's employees, or customer property damage or contract issues.
- u. Always be mindful not to destroy or improperly handle evidence.

4. Closing Conference

- a. At the Closing Conference, the CSHO will provide a description of possible citations, but not the penalties or classification of alleged violations. The CSHO will not debate the alleged violation and this is not the time for the Company to add more information.
- b. Request copies of all OSHA samples and monitoring reports from the Compliance Officer.
- c. As the CSHO describes the proposed citation areas, start thinking about any additional information and documentation supportive of the Company's position, as well as any information which shows abatement of any alleged violations. Review this material with the designated Manager or counsel.
- d. Take detailed notes on the alleged violations and the problem areas indicated by the Compliance Officers, along with the referenced standards and suggested abatement procedures.
- e. Provide the OSHA Compliance Officer with the name, title, full addresses, and phone and fax numbers of the person to whom Citations and all OSHA correspondence should be directed.

C. AFTER THE INSPECTION

- a. Try to obtain all sample and monitoring reports from OSHA, which you may need for abatement, as well as discussion of the alleged violations.
- b. Review all areas noted by the Compliance Officer, make appropriate abatement, and be prepared to document abatement or improvements by photos, training rosters, copies of revised procedures, etc.
- c. Provide the Corporate EHS Manager and/or the Company's Counsel with copies of all of the documents provided to OSHA and all of the notes, photographs, videos, etc., taken during the inspection.

- d. The Corporate EHS Manager and/or Counsel should make a written follow-up confirmation to OSHA to ensure that all trade secrets and proprietary information disclosed during the inspection are marked as confidential and trade secret materials, or may direct the facility coordinator to do so.

D. UPON RECEIPT OF OSHA CITATIONS

1. If the facility is issued Citations by OSHA, the following should be done:
 - Post the Citation in an area or on a bulletin board where employee notices normally are posted. Provide a copy to any involved union. Different time periods apply to different documents.
 - **Immediately notify the designated Corporate Manager and Counsel that you received the Citation, and the exact date that the Company received the Citation. Send a copy of the Citation to the Corporate Manager. Confirm the “Contest Date,” which is important and cannot be waived by OSHA. If you miss the contest date, which is normally fifteen (15) working days, you lose it! Some state OSHA plans, such as North Carolina and California, have different procedures.**
 - With the advice of the Corporate Management and counsel, schedule an Informal Conference with OSHA.
 - Post the “Notice to Employees” of the Informal Conference where you posted the Citation.
 - If you do not reach settlement at the Informal Conference, the employer must accept the violations or file a Notice of Contest within fifteen (15) working days of the employer’s receipt of citations in most states. Coordinate this filing with the designated Corporate Manager and counsel. Do not accept a citation without their approval.
 - Once a Notice of Contest is filed, you must coordinate with the Corporate Manager and counsel before any further meetings with OSHA or OSHA’s counsel.
 - Immediately provide to the Corporate EHS Manager and counsel, any document received after contest from OSHA or any other party about the inspection or any related accident or investigation.