

OSHA INSPECTION CHECKLIST/GUIDELINES

I. INTRODUCTION

Company participation in safety procedures under the Occupational Safety & Health Act (“OSHA”) can increase productivity and profitability as well as the reduction in costs associated with workplace injuries, safety complaints, and disgruntled employees. This policy outlines the procedures to be followed by management personnel in the event of an OSHA inspection.

II. FACILITY-SPECIFIC POLICY ON PREPARATION FOR OSHA INSPECTIONS

Each facility shall develop site-specific procedures to prepare and handle an OSHA inspection. The site-specific procedure shall include the following:

- i. Designation of one or more management and safety personnel to meet with OSHA upon their arrival at the facility, participate in the Opening Conference, Walk-Around, and Closing Conference;
- ii. Office and cell phone numbers of the designated management and safety personnel as set forth above;
- iii. Training of the facility receptionist to call management and safety personnel designated to participate in the OSHA inspection upon arrival of OSHA at the facility;
- iv. Corporate notification procedures (how and when the facility will notify corporate and legal counsel of the OSHA inspection);
- v. Designation of the management and safety personnel to collect OSHA 300 logs, Safety Data Sheets, as well as other documents requested by OSHA during the inspection;
- vi. Designation of the management and safety personnel to photograph OSHA’s inspection, including taking photographs of each item photographed by the OSHA inspection (the OSHA inspector may also video portions of the facility during the inspection); these employees should also conduct any testing at the facility completed by OSHA (e.g. noise testing);
- vii. Development of training for management and safety personnel designated to participate in the OSHA inspection; and
- viii. Designation of management employees and procedure for receiving and handling notices sent by OSHA relating to the inspection, including document subpoenas and any citations that may be issued.

III. GENERAL OSHA INSPECTION PROCEDURES

A. Purpose of Visit

- i. Depending upon the location of the facility, the OSHA Compliance Safety & Health Officer (“CSHO”) is a federal or state law enforcement officer. The purpose of his or her visit will be to determine whether the company is in compliance with the various standards of the Occupational Safety and Health Act. **The procedures set forth below are established to**

reflect timelines and other matters as if the facility at issue is located in a Federal OSHA state (e.g., WV, PA, GA, TX, AL).

- ii. The job of the inspector is to identify violations and recommend, if warranted, citations with their associated penalties.

B. Inspection Procedures

- i. **Presentation of Credentials.** At the beginning of the inspection the CSHO shall present his/her credentials. At this time the facility's receptionist will contact the safety manager and/or any other management employee specifically designated to participate in an OSHA inspection.
- ii. **Warrant Requirement.** An OSHA inspection is a Fourth Amendment search; the company has the right to require OSHA to obtain a warrant prior to conducting the inspection in any area except for places open to the general public. However, the company will require a warrant only under very limited circumstances. If the CSHO already has a warrant, access is required, but only to the limited portions of the facility outlined in the warrant. If there is an issue as to whether a warrant should be required, the company will contact its legal counsel.

PLEASE NOTE: Allowing a warrantless search, if a designated management or safety employee is available to lead it, may actually result in an advantage to the facility because it allows the company to control the portions of the site inspected. It also acts as a good faith effort to demonstrate to OSHA that the company wishes to create a safe workplace.

- iii. **Opening Conference.** The CSHO will hold an opening conference. In facilities where there is a collective bargaining agreement, the CSHO will ask for the designated employee representative to attend the opening conference.

During the opening conference, the CSHO will likely:

- a. explain the purpose of the visit, and what prompted it (e.g., complaint, accident, emphasis program);
- b. inform the company whether photographs, videos, or samples will be taken;
- c. outline the scope of the inspection;
- d. ask if the facility's employees are represented by a union and ask that a union representative participate in the inspection;
- e. likely provide those attending with handouts outlining the company's responsibilities and rights under the OSH Act;
- f. provide a copy of the complaint lodged by an employee (if applicable);
- g. gather site information such as the legal name and address of the business; the average number of employees at the site; other locations under the same management structure and SIC or NAICS code; and a general description of the facility's operations process;

- h. the CSHO will review the facility's current and past OSHA 300 Logs to determine the site's current injury and illness rates. He/she will request past years OSHA 300A summary pages and total hours worked for the current year;
 - i. also be prepared to provide the CSHO with Safety Data Sheets for hazardous chemicals used at the facility;
 - j. if applicable, have the CSHO complete a confidentiality form if he or she will view or observe any confidential or proprietary documents or processes during the facility.
 - k. The CSHO will likely request additional records. Take a list of these documents; this list will be provided to our company's legal team. **There is no requirement that the documents listed below be provided at the time the CSHO is present at the facility.** The additional site-specific documentation that may be requested by the CSHO includes, but is not limited to, the following:
 - a. Hazard Communication Program, and associated training records;
 - b. Bloodborne Pathogen Program, including written exposure plan, and hepatitis B declination forms;
 - c. Process Safety Management training and maintenance program, as well as P&IDs;
 - d. Lockout/Tagout Program, associated training records, records of periodic inspection, list of authorized employees, and equipment specific lockout/tagout procedures;
 - e. Emergency Response Program, associated evacuation training records, associated Hazwoper training records, records of evacuation drills, records of Haz-Mat training drills and posted evacuation routes and assembly areas;
 - f. Personal Protective Equipment Program, associated training records and PPE Hazard Assessments; and
 - g. Powered Industrial Truck Program, associated operator training records and operator Powered Industrial Truck Inspection Forms.
- ii. **Walk-Around Inspection.** Upon completing the review of the facility's injury and illness logs, the CSHO will conduct an inspection of the facility; this is popularly known as a "walk-around." During this inspection, the CSHO may:
 - a. use testing and/or monitoring equipment (e.g., noise, PEL, testing);
 - b. take photographs or video footage;
 - c. enter any area within the facility (unless directed not to do so because doing so improperly broadens the scope of the inspection); and,
 - d. request the presence of an employee representative at facilities with a collective bargaining agreement.

Be prepared to immediately abate hazards, if possible, during the walk-around inspection. The company representative shall also photograph all items inspected by the CSHO, and take contemporaneous samples of any samples taken by OSHA.

- iii. **Interviews.** The CSHO may choose to interview hourly employees and/or management personnel. Management employees (but not hourly employees) are allowed to have another member of management present at the interview. It is our company's policy to have another management member at all such interviews. No employee is required to give OSHA a signed written statement.
- iv. **Closing Conference.** An inspection can be kept open by OSHA for up to six (6) months. At the conclusion of the inspection, the CSHO shall conduct a closing conference with the employer and the employee representatives, jointly or separately, as circumstances allow. The closing conference may be conducted on site or by telephone as deemed appropriate by the CSHO.

During this closing conference the CSHO will:

- a. discuss any actual or potential safety violations his or her inspection has disclosed;
- b. request any follow-up information which he/she deems necessary to conclude the inspection;
- c. inform those present if there is a possibility that a referral inspection is to be conducted;
- d. advise those present that an informal conference with the OSHA Area Director may be requested in order to obtain a more complete understanding of the specific standards which apply; to discuss ways to correct violations; discuss questions concerning proposed penalties; discuss problems with abatement dates; and obtain answers to any other related questions;
- e. identify potential violations where insufficient information is available at the time of the closing conference to make a firm determination;
- f. answer any questions posed by either the employer or employee representatives; and,
- g. advise both employer and employee representatives of their rights to participate in any subsequent conferences, meetings or discussions, and their contest rights.

IV. POST INSPECTION PROCEDURES

A. Issuance of Citations. Once the OSHA inspection and closing conference is complete, OSHA may or may not issue citations. Any citations will typically be issued within six (6) months from the time the inspection began. The most prevalent types of citations are other than serious; serious; willful; and repeat. The penalties for citations range from \$0 to over \$129,000. If an employer fails to properly abate a citation, OSHA may cite the employer over \$12,500 each day the violation goes unabated.

B. Posting the Citations. A copy of the citation must be posted for three days or until the violation is abated, whichever is longer. This posting must be at or near the location of the violation. A copy of any notice of contest must also be posted. A copy of both the citation and notice of contest should be given to any employee representative (e.g., union steward).

C. Employer Options. Once a citation has been received, the company may:

- i. Respond to the citation by correcting all identified violations within the prescribed abatement period and paying the financial penalty;
- ii. requesting an informal conference; and/or,
- iii. filing a Notice of Intent to Contest within **fifteen (15) working days** from the date the Citations are received.

D. Informal Conference. During the informal conference, the company representatives have the opportunity to:

1. Discuss the citations and ideas for abatement;
2. Request clarification of the cited violations or an explanation of the related standard;
3. Attempt to resolve disputed citations and penalties; and,
4. Negotiate and enter an informal settlement agreement.

In most states, requesting an informal conference will not extend the deadline for filing a “Notice of Intent to Contest.” If the company misses the fifteen (15) day deadline, the citation will become a final order not subject to review by any court or agency.

E. Notice of Contest. If the decision is made to contest the citation(s), the company may file a “Notice of Intent to Contest.” This must be done in writing within 15 working days of receiving the Notice of Citation and Penalty. The company can object to the citation, the proposed penalty, and/or the abatement date. The Notice of Intent to Contest should clearly identify which parts of the citation(s) are being disputed. If written contest is properly filed, the facility’s legal obligation to abate the item under dispute is suspended. Any citations not specifically disputed must, however, be corrected within the abatement period. In addition, if the penalty amount is the only point of contention, the violations must still be corrected by the abatement date.

F. Litigation. Once a “Notice of Intent to Contest” is filed, the case is officially in litigation, and the matter proceeds in accordance with the rules and procedures of the Occupational Safety & Health Review Commission. A hearing before an administrative law judge will then be scheduled. Any decision of the administrative law judge may be appealed to the OSHA Review Commission. However, the filing of a notice of contest does not end the company’s opportunity to resolve the matter without proceeding to trial. Many cases are resolved through negotiations with OSHA prior to trial.