

Lessons Learned From an OSHA Compliance Officer

“I am from OSHA and I am here to help.” Starting one’s safety career as compliance officer is an invaluable experience that teaches the basics of safety. Enforcement provides a different perspective from industry because a compliance officer sees a wide variety of bad, good and great employers through the eyes of U.S. Occupational Safety and Health Administration (OSHA) regulations. An OSHA compliance officer has a singular mission: to measure how well companies comply with OSHA standards. A compliance officer has the authority to score companies’ performance and assess fines and penalties. The focus molds how the compliance officer learns to interact with company leaders and employees.

A compliance officer learns to have a “black and white” view of safety, and his/her view is focused on the application of OSHA standards. This article shares how OSHA applies this perspective, and the hope is to answer common questions from employers. To start, the Occupational Safety and Health Act of 1970 established a procedure for inspection of workplaces to ensure that employers:

- Comply with safety and health standards.
- Furnish places of employment free from recognized hazards.

How or When Do Companies Receive Inspections?

Inspections are generally unannounced. OSHA will inspect a facility under one or more of the following justifications:

- **Catastrophe or Fatality.** The employer is required to notify OSHA within eight hours of any accident that involves a fatality or the hospitalization of three or more employees.
- **Employee Complaint.** Employees have the right to file a formal complaint with OSHA about any

unsafe work condition. OSHA prioritizes each complaint and schedules inspections based on their protocol.

- **Target Industry Program (TIP)/Pilot Evaluation Program.** OSHA will select several industries each year for TIP inspections.
- **General Inspections.** General inspections are based on the general frequency of reported injuries for various industrial classifications and are conducted as agency time and personnel permit.
- **Follow-Up Inspections.** OSHA will perform follow-up inspections on some companies to verify that observations were corrected in previous inspections.

What Happens When an OSHA Compliance Officer Visits a Facility?

Upon the arrival of a compliance safety and health officer at a facility, a company representative should ask to see his/her credentials. The inspector will want to see the senior manager on site. When the site management greets the inspector, management should determine the basis for the inspection. Is the inspection a result of a complaint, accident or general inspection? The nature of the inspection will dictate how the inspector proceeds.

What Is the First Step in the Inspection?

Opening Conference — The inspector will conduct an opening conference and explain the nature, scope and purpose of the inspection in detail. The site personnel should verify with the inspector that they understand what the inspector will want to see, including:

- Precise records or programs to be examined (e.g., OSHA 300 and 301 logs; HazCom Program; training documentation).

Hazards are ever-present in the steel plant environment, and a heightened awareness and emphasis on safety is a necessary priority for our industry. This monthly column, coordinated by members of the AIST Safety & Health Technology Committee, focuses on procedures and practices to promote a safe working environment for everyone.

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Comments are welcome. If you have questions about this topic or other safety issues, please contact safetyfirst@aist.org. Please include your full name, company name, mailing address and email in all correspondence.

- Targeted work conditions within a specific area of operation.
- Specific identity of those persons whom the inspector wishes to interview.

How Will OSHA Conduct the Site Tour?

Inspection/Tour Participants — The following individuals should participate in the tour:

- Site manager.
- Site safety personnel.
- Supervisor with general knowledge of the areas to be inspected.
- Supervisor(s) most knowledgeable about the individual areas to be inspected.
- Employee representative.

Tour — Escort the inspector directly to the area to be inspected, bearing in mind that any potential violations in plain view may open the door to further investigation and citations.

Employee Interviews — The inspector has the right to privately interview only those employees who do not have supervisory or management responsibilities.

Records Inspection — OSHA is permitted to inspect records which employers are required to maintain. Such records include:

- OSHA Form 300: Log of Occupational Injury and Illnesses.
- OSHA Form 301: Supplementary Record/Employers First Report of Injury; Annual Summary of Occupational Injuries and Illnesses.

Closing Conference — A closing conference should be held upon completion of an inspection.

Types of Violations — There are six types of OSHA violations: De Minimis, Non-Serious, Serious, Willful, Repeat and Criminal. Each is defined as follows:

- **De Minimis Violation** — A De Minimis Violation is one in which there is no direct or immediate relationship to safety or health (i.e., an employer complies with the clear intent of the standard, but deviates from its particular requirements in a manner that has no direct relationship to safety or health).
- **Non-Serious Violation** — A Non-Serious Violation is more severe than a De Minimis Violation, but less severe than a Serious Violation. There must be a direct and immediate relationship between the violation and safety or health, but no substantial risk of death or serious injury.
- **Serious Violation** — A Serious Violation occurs when there is a substantial probability that death or serious physical harm could result (probability refers to the degree of injury, not the likelihood that the event should occur). The accident need only be possible, and not a probable consequence of the violation.
- **Willful Violation** — If an employer has intentionally disregarded or is plainly indifferent to the Act's

requirements (virtually any time a violation is not negligent or accidental), a Willful Violation has occurred.

- **Repeat Violation** — A Repeat Violation has occurred when a substantially similar violation has previously occurred (usually within the three years prior to the current violation) at the facility or establishment. A Repeat Violation differs from a Willful Violation in that it may result from an inadvertent, accidental or negligent act.
- **Criminal Violation** — Willful Violations resulting in a death and/or knowingly making false statements, representations or certifications are all Criminal Violations.

There is also the Failure to Abate Violation, which is a violation where an employer failed to correct a hazard that was recognized in a previous inspection.

Citation/Violations — The inspector will file a report concerning the inspection, including recommendations, with the OSHA area director. If the area director determines that a citation(s) should be issued, a citation letter will be sent to the employer. The citation will set forth the specific standard or law violated as well as the nature and location of the violation and will set the amount of penalty to be assessed for each violation. A date for abatement of the violation may also be specified. The citation (with penalty section omitted) must be posted upon receipt in a conspicuous location (usually in the work area) and must remain posted for a minimum of three working days or until the violation is abated, whichever is later.

Contesting a Citation Penalty — To contest a citation, a written Notice of Intention to Contest must be filed with the OSHA area director within 15 days of receipt. Unless a citation is properly contested, it will become final within 15 working days after receipt.

In virtually all cases where a citation has been issued, whether or not a facility has decided to contest it, it will probably be appropriate to hold an informal conference with OSHA's assistant regional director to discuss the matter. This conference should be requested and conducted prior to expiration of the 15-day period. Even if the assistant regional director determines that a violation occurred, the class of violation and/or the penalty may be reduced as a result of the conference. If the assistant regional director agrees to a violation/penalty reduction or any change to the citation, a settlement agreement will be forwarded for completion.

Conclusion

Believe it or not, the government is there to help, and statistics show a dramatic improvement in fatality rates since the inception of OSHA. The compliance officer's black and white view of safety protects employees, and the preparation for an inspection improves the overall safety culture of a facility. Dedicate the team's focus to knowing and understanding the rules. Most safety professionals will agree that there is a lot more to managing safety than OSHA compliance, but the ability to comply is one important measure of the commitment to the safety of employees.

References

1. www.osha.gov.
2. www.david-lynn.com. ◆