



# Southern Company

## OSHA Update: Effectively Handling OSHA Inspections

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Presented by:

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# AGENDA



- OSHA Current Focus
- Handling An OSHA Inspection
- Q&A

# THANK YOU FOR YOUR COMMITMENT TO SAFETY



*“Winning is not a sometime thing, it is an all-time thing.”*

*~ Vince Lombardi*

So Is Safety!

# SAFETY TIP OF THE DAY #1

*Never take a sleeping pill and  
a laxative at the same time.*

# SAFETY TIP OF THE DAY #2



*If you don't know where you are going,  
you might wind up someplace else.*

*~Yogi Berra*

# WHY BE CONCERNED?



- August, 2016 Penalty Increase
- Recordkeeping Changes in 2015 & 2016
- Continued aggressive enforcement – including more inspectors, higher penalties and unfriendly press releases, especially against restaurant companies
- More employers placed in the Severe Violators Enforcement Program
- Increased focus on whistleblowers with push to find more “cause” determinations
- On-line whistleblower complaint applications
- More emphasis on workers rights, including worker summits

# WHY BE CONCERNED?

- Interpretative letter on third-party representation
- Local, state and national governments look at safety records – bar on submitting bids
- Private sector companies also looking at contractors, vendors and system safety record – may lose clients
- Poor safety results in more injuries and increased costs, which reduce company's profitability – could lose jobs
- Increased reporting requirements
  - Injury and illness
  - Fair Pay and Safe Workplace Executive Order

# TOP 14 MOST FREQUENTLY CITED OSHA STANDARDS

## NAICS 221111 *HYDROELECTRIC POWER GENERATION*

	<u>Standard</u>	<u>Description</u>
1.	1910.0212	Machine guarding: General requirements.
2.	1910.0303	Electrical: General requirements.
3.	1910.0219	Machine Guarding: Mechanical power-transmission.
4.	1910.0023	Guarding floor and wall openings and holes.
5.	1910.0215	Machine guarding: Abrasive wheel.
6.	1910.0305	Electrical: Wiring methods, components, and equipment.
7.	1910.0027	Fixed ladders.
8.	1910.0101	Compressed gases (general requirements).
9.	1910.0144	Safety color code for making physical hazards.
10.	1910.0145	Specifications for accident prevention signs and tags.
11.	1910.0176	Handling materials – general.
12.	1910.0253	Oxygen-fuel gas welding and cutting.
13.	1910.0304	Electrical: Wiring design and protection.
14.	1926.0600	Motor Vehicle: Equipment.



# TOP 11 MOST FREQUENTLY CITED OSHA STANDARDS

## NAICS 221112 FOSSIL FUEL ELECTRIC POWER GENERATION

	Standard	Description
1.	1910.0119	Process safety management of highly hazardous chemicals.
2.	1910.0027	Fixed ladders.
3.	1926.1101	Asbestos.
4.	1910.0023	Guarding floor and wall openings and holes.
5.	1910.0037	Maintenance, safeguards, and operational features for exit routes.
6.	1910.0132	PPE: General requirements.
7.	1910.0147	Control of hazardous energy (lockout/tagout).
8.	1910.0178	Powered industrial trucks.
9.	1910.0269	Electric Power Generation, Transmission, and Distribution.
10.	1910.0307	Electrical: Hazardous (classified) locations.
11.	5A0001	OSH Act General Duty Clause

# Top 4 Most Frequently Cited OSHA Standards

## NAICS 221113 Nuclear Electric Power Generation

	<u>Standard</u>	<u>Description</u>
1.	1910.0269	Electric Power Generation, Transmission, and Distribution.
2.	1904.0007	General recording criteria.
3.	1910.0023	Guarding floor and wall openings and holes.
4.	1910.0147	Control of hazardous energy (lockout/tagout).

# MOST FREQUENT GENERAL DUTY CLAUSE CITATION



1. Forklift hazards - 26.9%
  - Lack of seatbelts
  - Improper lifting of personnel
2. Crane hazards - 21.7%
3. Dust Explosions - 12.0%
4. Struck-by Vehicle - 10%
5. Ladder fall - 5.8%
6. PVC Piping Rupture – 5.4%
7. Fire and Explosions – 5.4%
8. Fall Hazards – 5%
9. Automobile Lifts and Jacks – 4.6%
10. Storage Rack Hazards – 3.6%

Source: Tracy Cekada and Christopher Janicak – Indiana University of Pennsylvania 2016

# OSHA'S NEW PENALTY INCREASES

- 11/2/15 Congress Passed Federal Civil Penalties Inflation Adjustment Act
- Allows up to 150% increase based on inflation
- OSHA increase will be 78% starting August 1, 2016
- Serious and other-than-serious from \$7,000 to \$12,471
- Willful and repeated from \$70,000 to \$124,709

# OSHA RECORDKEEPING STANDARD UPDATE



- Final rule published September 18, 2014.
- Major changes
  - From SIC to NAICS
  - 25 new industries covered
  - Employer reporting requirements
    - Fatalities – 8 hour notification
    - Hospitalization of one (1) employee – 24 hour notification
    - Amputation – 24 hour notification
    - Loss of eye – 24 hour notification
- Big surprise!
  - OSHA will make public all reporting on web site
  - On-line posting never mentioned during rulemaking

# RECORDKEEPING REPORTING RULES

- January 2015 new reporting obligations
  - Within 24 hours – single overnight hospitalization for treatment, amputation or eye loss
  - Within 8 hours – fatalities
  - Approx. 10,388 reports first year – about 40% inspected
  - Dr. Michaels: businesses we haven't inspected
  - Expedited inspection process
    - On-line reporting now active
- What triggers attention?

# RECORDKEEPING REPORTING RULES

In-patient hospitalizations: defined as formal admission to in-patient service of a hospital or clinic for care or treatment

*1904.39(b)(10) Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing?*

No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each inpatient hospitalization that involves care or treatment.

But, get it in writing.

# HOW DOES OSHA DEFINE AMPUTATION?

- The traumatic loss of a limb or other external body part
- Includes:
  - A part, such as limb or appendage, that has been severed, cut off, amputated (either completely or partially)
  - Fingertip amputations with or without bone loss
  - Medical amputations resulting from irreparable damage
  - Amputations of body parts that have since been reattached



# OSHA'S NEW ELECTRONIC FILING AND WHISTLEBLOWER/RETALIATION REQUIREMENTS



- Published – May 11, 2016
- Effective dates
  - August 10, 2016 – Whistleblower provision (1904.36) and Injury and Illness reporting procedure (1904.35)
  - January 1, 2017 – Phase in of electronic filing requirements (1904.41) – will post date on OSHA public website ([www.OSHA.gov](http://www.OSHA.gov))

# NEW INJURY AND ILLNESS REPORTING REQUIREMENTS 1904.35)

1. Inform employees of right to report work related injuries and illness free from retaliation.
2. Procedures for reporting work-related injuries and illnesses must be reasonable and not to discourage employees from reporting.
3. Employer cannot retaliate against employees for reporting work-related injuries and illnesses.

Note: Potential impact on safety incentive programs and drug testing.

# NEW WHISTLEBLOWER/RETALIATION PROVISIONS

- 1904.36 modified to reference 1909.35
- Now OSHA can cite employers for whistleblower retaliation claims

# NEW ELECTRONIC FILING REQUIREMENTS

- By July 1, 2017 – Employers (not exempt) with 250 employees or more at an establishment must have filed OSHA 300A Summary
- By July 1, 2018 – Employers (not exempt) with 250 employees or more at an establishment must have filed OSHA 300, 301 and 300A.
- By July 1, 2017 – Employers with 20 to 249 employees in one of the 67 specific industries must have filed OSHA 300A summaries.

# OSHA WEIGHTED INSPECTION PROCESS

- Value of each inspection
  - 8 EUs: significant case (\$100,000-plus fine)
  - 7 EUs: process safety management
  - 5 EUs: ergonomic hazard
  - 4 EUs: heat hazard
  - 3 EUs: fatality or catastrophe
  - 3 EUs: non-permissible exposure level exposure hazards
  - 3 EUs: workplace violence
  - 2 EUs: combustible dust
  - 2 EUs: federal agency
  - 2 EUs: personal exposure sampling

# EXAMPLE: TEMPORARY EMPLOYEE ISSUES

Imagine the possibilities if an employer doesn't even know the number of temps on site and has not focused on this issue.

Temporary employees:

- Don't receive same training as full time employees performing same duties
- Aren't included in Hearing Conservation or Respiratory Protection Programs
- Are not included in safety meetings
- Have no documentation of on-the-job training
- Are not aware of emergency response plans
- Supervisory roles may be unclear

# SEVERE VIOLATORS ENFORCEMENT PROGRAM



The following circumstances will be reviewed as a possible SVEP case:

- Fatality or catastrophe situation with willful or repeat
- Industry operations or processes that expose employees to the most severe occupational hazards and those identified as “High-Emphasis Hazards”
- Exposing employees to hazards related to the potential release of a highly hazardous chemical
- All egregious enforcement actions.

# SEVERE VIOLATORS ENFORCEMENT PROGRAM



The SVEP also includes the following action elements for employers who meet the SVEP criteria:

- Enhanced follow-up inspections
- Nationwide referrals, which will include State Plan states
- Increased company awareness, which will include issuing news releases
- Enhanced settlement provisions
- Increased use of Federal court enforcement action (contempt of court) under Sec. 11(b) of the OSH Act
- Memorandum on how to get off SVEP list



# OSHA'S BURDEN OF PROOF TO ISSUE CITATION OF "VERTICAL" STANDARD

- Vertical standard – specific only to particular industry
- OSHA has the burden to prove:
  - A hazard
  - Applicable standard
  - Exposure
  - And that the employer knew of the citation or should have known of it with the exercise of due diligence

# WHAT MUST OSHA PROVE TO ISSUE 5(A)(1) GENERAL DUTY CITATION?

- Condition or activity in the workplace presented a hazard
- Employer or its industry recognized the hazard
- Hazard was likely to cause death or serious physical harm a feasible means existed to eliminate or materially reduce the hazard

# SAFETY TIP OF THE DAY #3



*Skydiving without a parachute  
is a once in a lifetime experience.*

# EFFECTIVELY HANDLING AN OSHA INSPECTION: HOW TO LEGALLY PROTECT YOUR RIGHTS



"...a guy from  
**OSHA's** here  
and wants to  
see our  
safety manuals."

# SUPERVISOR ROLE IN OSHA CITATIONS: LEARNING OF OSHA VIOLATIONS

“Because employers can only obtain knowledge through their agents, the actions and knowledge of supervisory personnel are generally imputed to their employers, and the Secretary can make a prima facie showing of knowledge by providing that a supervisory employee knew of or was responsible for the violation.”

# SAFETY RESPONSIBILITY: UNPREVENTABLE EMPLOYEE MISCONDUCT DEFENSE ELEMENTS



- Establish work rules designed to ensure safe work and to avoid OSHA violations
- Communicate the work rules to employees
- Train the employees as needed
- Take appropriate steps to discover violations
- Effectively enforce the rules and practices when violations are discovered; and
- **Document the above actions**

# PRE-INSPECTION ACTION PLAN



- OSHA Poster
- Assignment of responsibilities
- Training/recordkeeping
- Equipment needed during inspection
- Review of previous citations
- **Review of insurance and third-party audits**
- **Periodic audits and reviews**

# WHY ME?

## INSPECTION PRIORITIES

- Imminent danger
- Fatalities/catastrophic accidents
- Employee complaints/referrals
- High-hazard industries &
- Special emphasis programs

NOTE: With new OSHA recordkeeping reporting requirements, many new self-referral inspections





# THROUGHOUT THE ENTIRE INSPECTION ALWAYS REMEMBER

- It is your facility
- You have rights. . .
  - Inspection conducted in a reasonable manner
  - Inspection conducted during a reasonable time
- Completion of inspection within 6 months
- Be cooperative and responsive  
**but maintain control of the inspection**



# THE KNOCK

- **No advance knowledge**
- Will not “come back later” – 1-hour rule
- Credentials – if unsure, call Area Director to confirm



# OPENING CONFERENCE



- Ascertain purpose of the inspection
- Establish “scope” of the Inspection – get copy of complaint if applicable
- Set ground rules for inspection
- **Don't volunteer information**
- Treat the Inspector in a professional fashion
- Notification of corporate officials and counsel
- Coordination with on-site contractors and vendors

# THE WALKAROUND



- **Employer – right to accompany Compliance Officer (“CO”)**
- Require CO to comply with all company safety and health rules, including training, where applicable
- Take accurate notes on areas reviewed and all discussions and comments from CO
- Do everything the CO does (photos, video, air monitoring, etc.)
- Maintain control - Limit the area seen by the CO
- Side-by-side monitoring
- **No staging of event or accident**
- **No destruction of evidence or misrepresentations – even if inadvertently**

# THE INSPECTION



- Hourly employee interviews
  - OSHA takes position no management present
  - Up to employee – can have Employee Representative
  - **Advise employee of his/her rights, appreciation of cooperation, and to tell the truth**
- Warning: Employees have whistleblower rights

# THE INSPECTION



- Management and supervisor interviews
  - **Always another management/counsel present – agent of Company**
  - Definition of manager?
  - Fatality investigation – attorney always present
  - **No tape-recording**
  - **Signed statement**

# THE INSPECTION



- Documentation
  - Recordkeeping
  - Training
  - Safety and health policies
  - Monitoring results
  - Medical surveillance
  - Medical access orders
  - **Previous safety audits**
  - **Standard required documents**

# CLOSING CONFERENCE



- **Employer's opportunity for free discovery**
- Advise of observed unsafe conditions
- Usually, brief description as to possible violations – no discussion of penalties, classification and abatement dates
- Note any abatement made during the inspection
- Suggest possible corrections
- Request photos and monitoring results
- Discuss appeal rights
- **Not a time for debate**
- **All document requests from OSHA need to be reviewed and approved by Risk Management prior to being provided to OSHA**



# CITATIONS



- In writing
- Violation described “with particularity”
- Timely – citation must issue within 6 months of the violation
- Proposed penalty specified
- Served by certified mail
- Post for 3 days or until abatement, whichever is longer

# CURRENT PENALTIES



- Other than serious
  - Up to \$7,000 per violation
- Serious
  - Up to \$7,000 per violation

# CURRENT PENALTIES



- Willful
  - Up to \$70,000 per violation
  - Grouping Permitted
  - \$5,000 Minimum
- Repeat
  - Up to \$70,000 per violation
- Egregious
  - Up to \$70,000 per violation
  - No Grouping
- Failure to abate
  - Up to \$7,000 per day

# PENALTIES – CRIMINAL VIOLATIONS



- Willful violation & employee death:  
    \$10,000 or 6 months or both  
    Second conviction:  
    \$20,000 or 12 months or both
- Advance notice of inspection  
    \$1,000 or 6 months or both
- Falsification of required records, etc.  
    \$10,000 or 6 months or both
- Murder or attempted murder of CO  
    Term of years to life

# CITATION OPTIONS



- Agree to citations, pay full penalty
- Informal conference/informal settlement
- **Notice of Contest – 15 working days (Federal); some state plan states different time period**
- Formal settlement
- Hearing



## Final Questions

“Judge a man by his questions, rather than his answers.”

~ Voltaire



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and related litigation.

**THESE MATERIALS AND THE INFORMATION PROVIDED DURING THE PROGRAM  
SHOULD NOT BE CONSTRUED AS LEGAL ADVICE OR AS CRITICAL OF THE  
CURRENT OR PAST ADMINISTRATIONS.**

# Be Safe!



## REMEMBER:

Bad decisions make good stories and usually the evening news.





# Thank You

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