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SAFETY INSPECTORS ARE HERE: DOES YOUR BUSINESS KNOW HOW TO RESPOND TO AN EPA OR OSHA AUDIT?

Insights
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Does your management team know how to respond if federal workplace safety and health inspectors arrive at your door? If you're not prepared before an enforcement official comes knocking, it could become a costly visit. Whether the visitor is from the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), or a state environmental agency, you should have a written OSHA-inspection protocol, a designated company representative, and organized safety records on hand. Here's everything your business needs to know ahead of a visit from an enforcement agency.

Before an Inspection

Become your own investigator. You should consider establishing a regular internal inspection program before an agency inspector to identifies problems. Depending on the workplace, that might include daily walkthroughs by supervisors or more comprehensive monthly inspections by facility safety or environmental personnel.

Keep in mind, the people conducting internal inspections need to understand what they are looking for. A checklist has limited value if the person completing it doesn't know how to recognize the conditions it describes.

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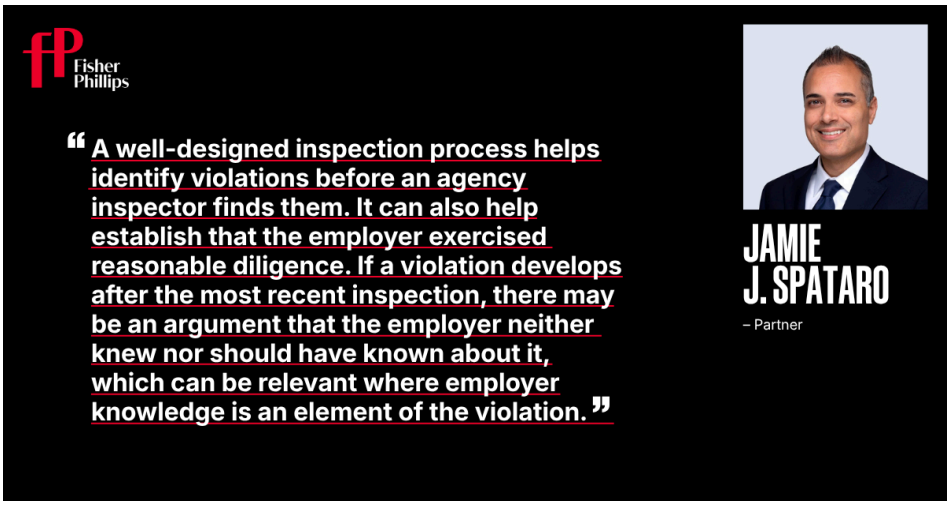

Have a process for correcting problems discovered during internal inspections. An audit that identifies a potential problem without prompting corrective action can establish your knowledge of the violation, creating problems of its own. Ensure your corrective protocols have oversight built in, and timelines for following up on deficiencies. Keep a record of all corrective measures, which may be relevant during an agency investigation.

“A well-designed inspection process helps identify violations before an agency inspector finds them. It can also help establish that the employer exercised reasonable diligence,” said Jamie Spataro, a partner in FP’s Pittsburgh office. “If a violation develops after the most recent inspection, there may be an argument that the employer neither knew nor should have known about it, which can be relevant where employer knowledge is an element of the violation.”

Prepare paperwork. Maintain current, easily retrievable materials. Your files should generally include more than your standard OSHA 300 Log, 300A annual summary, and 301 incident reports.

Have copies of documents that can demonstrate compliance, like:

- Written safety programs;
- Safety Data Sheets and hazardous-chemical inventory;
- Equipment inspection, maintenance, testing, calibration, and repair records;

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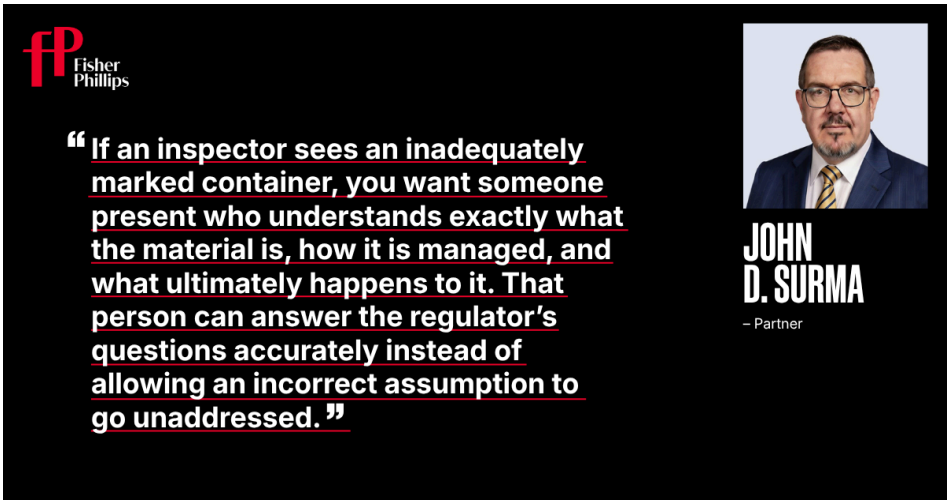
- Contractor safety documents and site-access controls, where contractors are present; and
- Documentation showing completed corrective action, such as work orders, invoices, photographs, or retraining records.

Don't forget: Many employers with more than 10 employees must keep OSHA injury and illness records, subject to industry and other exemptions. Covered employers must also post summaries of annual injuries in the workplace from **February 1 through April 30**.



Establish an inspection response team with key personnel who can answer inspectors' questions directly during an audit. Depending on the organization, the response team might include:

- Environmental, health and safety personnel;
- Human resources;
- In-house or outside counsel;
- Regional or corporate safety personnel; and
- Communications or crisis-management personnel, when appropriate.

"If an inspector sees an inadequately marked container, you want someone present who understands exactly what the material is, how it is managed, and what ultimately happens to it," said **FP's John D. Surma, a partner in the Houston office**. "That person can answer the regulator's questions

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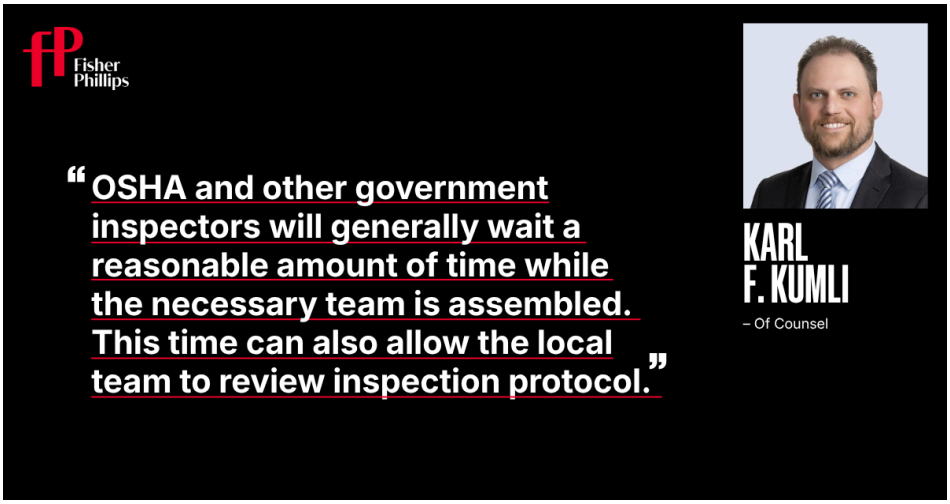
accurately instead of allowing an incorrect assumption to go unaddressed."

The Inspector Is Here

Notify your team. When an inspector arrives, ensure your front desk or security employees know what to do and who to contact. Start by verifying credentials and determining who is present. That can be particularly important if someone accompanying an agency representative is not an agency employee.



Place inspectors in a conference room with a limited view – or ideally no view – of operations while you contact the appropriate people. Anything an inspector can observe in plain view can potentially become part of the inspection. You don't want an inspector sitting somewhere with an unrestricted view of operations while you're trying to assemble your team. Use that waiting period productively.

"OSHA and other government inspectors will generally wait a reasonable amount of time while the necessary team is assembled," said Karl Kumli, Of Counsel at FP's Boston office. "This time can also allow the local team to review inspection protocol."

OSHA generally conducts inspections without advance notice. One idea to stay prepared is an emergency inspection kit. That includes, at a minimum: a digital camera with a dedicated SD card used only for inspections, basic inspection protocol, as well as a list of names and contacts who maintain important documents

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– including counsel, HR, safety personnel, among other relevant people.

Opening conference. Once all relevant personnel are present, the inspector will typically begin the inspection process with an opening conference to kick off the visit. Ensure your team gets key details during this meeting, including:

- The inspection's stated basis: complaint, referral, fatality/catastrophe, programmed inspection, follow-up, or other cause;
- The anticipated scope, locations, shifts, departments, time period, and records requested;
- Whether an employee representative will participate; and
- Logistics for records production, photography, sampling, employee interviews, and site access.

Your response team should determine why the agency is there and the anticipated scope of the inspection. A routine inspection may present different practical considerations than an inspection prompted by a workplace injury, complaint, environmental release, or other incident.

During The Inspection

Create your own record. Accompany the inspector throughout the visit. If an inspector photographs a condition, the employer escort should consider taking their own photograph of the same condition. Keep track of what areas the inspector visits, what questions are asked, what documents are requested or provided, and what potential concerns the inspector identifies.

That record can become particularly important after the inspector leaves. You should also resist the temptation to volunteer unnecessary information. One of the simplest principles for employees participating in an inspection is: **answer the question that was asked.**

Oversharing, whether by providing lengthy explanations or producing documents beyond what was requested, can unnecessarily expand an inspection.

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Try to get information on the compliance officer's preliminary concerns. Request a closing conference if not prompted by inspector at the end of the inspection.

Ask the compliance officer to identify:

- Each apparent violation or unsafe condition;
- The factual basis, including exposure duration, affected employees, and evidence relied on;
- Whether the enforcement agency expects additional documents or information;
- Potential abatement measures and anticipated deadlines; and
- Whether you may provide additional information before OSHA or EPA decide whether to issue citations.

After The Inspection

Immediately afterward, you should promptly debrief everyone who participated and identify any issues the inspector raised. If the inspection revealed a condition that needs correction, begin addressing it.

Timing is key for any type of violation. OSHA may focus heavily on the condition as it existed when the inspector observed it. Correcting the condition afterward does not necessarily erase what was observed, **although prompt abatement remains important.**

On the EPA side, prompt corrective action may play **an especially important role** in the regulator's subsequent enforcement process. You should therefore evaluate whether identified issues can be corrected quickly, including whether engineering controls, equipment changes, or other investments are appropriate.

Conclusion

Fisher Phillips is always monitoring updates related to workplace safety and health compliance. Make sure you are signed up for Fisher Phillips' Insight System to receive updates straight to your inbox. If you have questions about crafting an inspection plan, contact your Fisher Phillips attorney, the author of this Insight, or any member of

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our Workplace Safety and Catastrophe Management Practice Group.

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