

# OSHA Isn't Just a Four-Letter Word

by Sean D. Shields

When you ask for an emergency contact on your employment form, it's a bad sign when your employees write, "a very good doctor." Contrary to that attempt at humor, workplace safety is nothing to joke about. Just ask your local Occupational Safety and Health Administration (OSHA) inspector. They are taking inspections and enforcement to a whole new level under the Obama Administration. In 2008 and 2009, OSHA conducted a total of 38,450 and 39,004 inspections respectively. Halfway through 2010, OSHA had already performed 21,522 inspections, an even higher rate of inspections than the previous two record years.<sup>1</sup> With new rules on combustible dust, proposed rules on hearing protection, and suggestions of new rules on forklift operations, the odds you will have an OSHA inspection in the next few years is greater than ever.

The good news is that with a little preparation and communication with your employees, an OSHA inspection doesn't have to be a bad experience. In this article we will explore what OSHA is looking for when they conduct an inspection and what you should expect to happen during one. We will also explore steps you can take to prepare for an inspection (hint: it starts with creating a strong safety culture among your employees). Further, there are several things you can do during an inspection to ensure it goes as smoothly as possible.

## Lions & Tigers & OSHA Inspectors, Oh My!

By federal statute, OSHA is authorized to conduct workplace inspections and investigations to determine whether employers are complying with standards issued by the agency for safe and healthful workplaces.<sup>1</sup> Inspections are generally conducted without advance notice. A recent *SBC One Minute Poll* confirmed as much, ninety percent of the respondents indicated they had little to no notice an inspection would occur.

There are five overriding priorities that determine when and where OSHA inspections occur<sup>3</sup>:

1. imminent danger,
2. catastrophes and/or fatal accidents involving three or more employees,
3. formal complaints filed by employees,
4. programmed inspections aimed at specific high-hazard issues or industries, and
5. follow-up inspections.

History tells us that component manufacturers are more likely to be inspected for item four than any of the others. For example, 63 percent of the inspections conducted in 2009 were the result of OSHA programs that target industries or facilities with high incident rates.<sup>4</sup>

Every OSHA inspection will have three components<sup>5</sup>:

- **Opening Conference:** Before the inspection begins, the OSHA compliance officer/inspector should explain how the company was selected and what the likely scope of the inspection will be. It is a good idea to have one or two representatives who are familiar with both OSHA requirements and your safety record who can attend this meeting and walk around the facility with the inspector.

- **Walkthrough:** The inspector has authority to determine the route and duration of the inspection. While talking with employees, the compliance officer is supposed to make every effort to minimize work interruptions. Be as accommodating as possible. They may start out looking at small things, but if they don't find anything wrong, you may find they soon move through your plant more quickly.
- **Closing Conference:** The inspector should review with the employer all unsafe or unhealthful conditions observed during the inspection and indicate violations for which they may issue or recommend a citation or a proposed penalty. Have your company in-plant safety paperwork available. Giving them a well-organized set of safety-related documents will go a long way in making the case you take safety seriously.

## Know Thine Enemy

Remember that unsafe working conditions are your nemesis—not the OSHA inspector. Not only does it lower morale in the workplace, but it can lead to higher incident rates, more missed days of work, and ultimately, higher workmen's compensation claims and premiums. One Midwestern component manufacturer suggested, "go to the OSHA website. They have a list of the top ten safety issues they are focused on. Make sure your safety program addresses all the applicable issues."

Another approach is to get into the head of the OSHA inspector. Some component manufacturers have gone the route of hiring a third-party OSHA expert to conduct a mock inspection at their facility and point out all the things an OSHA inspector would likely issue a citation on. The problem with this approach is that you may end up paying a lot of money for information that is readily available at no charge.

Many state OSHA offices offer voluntary inspections, with the promise that no citations are issued as a result of the inspection. This approach is at no cost, but be aware you are inviting a regulatory agency into your facility. There is no guarantee they will not come back for an official follow-up inspection.

One component manufacturer in North Dakota had yet another alternative. "We coordinated with Bismarck State University, which had a program to train safety compliance officers," said Chris Lange (Northland Truss). "Their students had an opportunity to conduct a 'real world' inspection, and we benefited by having a list of safety concerns to work on."

## Documentation Is Key

OSHA is placing special importance on posting and record-keeping requirements. After the walkthrough, the inspector is required to inspect records of deaths, injuries, and illnesses that the employer is mandated to keep.<sup>6</sup> It is also likely the inspector will request a copy of your Hazard Communication Program as OSHA requires employers to establish a written, comprehensive communication program that includes provisions for container labeling, material safety data sheets, and an employee training program.<sup>7</sup>

OSHA finds an average of 3.1 violations per inspection, and more than half are related to a lack of documentation or hazard communication. OSHA's focus on the generation, collection and disposal of combustible dust in the workplace is a good example. OSHA conducted 1097 combustible dust inspections from October 2007 to June 2009, and over 25 percent were in woodworking facilities.<sup>8</sup> From those inspections, OSHA cited 4,926 violations<sup>9</sup>; 27 percent of the citations related to inadequate documentation.

Those numbers point to one underlying fact: OSHA wants you to have a formal hazard communication and training program, and they want it documented. A Wisconsin component manufacturer put it succinctly, "One of the outcomes of having a strong safety culture is that you end up documenting the [heck] out of everything. When our OSHA inspector left, he was overwhelmed with the four-inch binder of information we gave him."

A component manufacturer from Minnesota also related this story, "The compliance officer was looking at a safety log, and I was concerned about his reaction to an entry where one of our employees was hurt on the job when he made a mistake. The inspector wasn't concerned about it because the documentation showed we had taken the issue seriously and taken appropriate steps to correct it." In other words, document. Then document your documentation.

## Kill 'Em with Kindness

Every component manufacturer interviewed for this article had a different experience during their inspection, but they all had the same advice: remain calm, treat the inspector with respect and don't try to hide anything from them.

These behavioral guidelines are consistent with the top do's and don'ts compiled by two OSHA inspectors at a recent safety conference<sup>10</sup>:

1. Don't make me wait. It just tells me you're not ready. Nothing you can do at the last minute is going to make much difference anyway.
2. It's best to be open with me.
3. Don't try to block my line of site by bringing a bunch of employees along on the walk-through. I'll wait until I get to see what I want to see.
4. Be prepared to answer questions. Have all required OSHA documents, including those outlining safety plans, ready for me.
5. Don't discourage employees from talking to me. I'll talk to them one way or another. I find ways to slip employees my business card, and once I do, they usually call. If necessary, I'll get a subpoena to talk to your employees.
6. Don't lie to me. That makes me angry.
7. Think about hazards, not just standards, when you evaluate your workplace for safety. I look for hazards, not standard violations.
8. Have your training documents in order. I do look at them.

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**68%** had an OSHA inspector conduct an inspection two or more times in the last five years

**75%** had no advance warning the inspector was coming

**71%** reported no pre-existing reason for the inspection

**64%** said their inspection lasted 1-4 hours

**46%** were fined between \$1 and \$5000 for their citations

### REFERENCES:

<sup>1</sup> Richard Fairfax, OSHA's deputy assistant administrator, Panel Discussion, National Labor College, April 28, 2010.

<sup>2</sup> OSHA Inspections, U.S. Department of Labor, 2002 (Revised). [www.osha.gov/Publications/osha2098.pdf](http://www.osha.gov/Publications/osha2098.pdf)

<sup>3</sup> OSHA Inspections, 2002, pg. 7.

<sup>4</sup> OSHA Inspection Rates, American Society of Safety Engineers (ASSE), 2009.

<sup>5</sup> OSHA Inspections, 2002, pg. 7.

<sup>6</sup> OSHA Inspections, 2002, pg. 8.

<sup>7</sup> OSHA Inspections, 2002, pg. 9.

<sup>8</sup> Status Report on Combustible Dust National Emphasis Program, Office of General Industry Enforcement, October 2009. [www.osha.gov/dep/combustible\\_dust/combustible\\_dust\\_nep\\_rpt\\_102009.html](http://www.osha.gov/dep/combustible_dust/combustible_dust_nep_rpt_102009.html)

<sup>9</sup> Status Report, OSHA, October 2009.

<sup>10</sup> OSHA Seminar, 2010 ASSE Safety Conference, May 2010.

<sup>11</sup> OSHA Inspections, 2002, pg. 10.

<sup>12</sup> OSHA Inspections, 2002, pg. 11.

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The inspector should point out to the employer any unsafe working conditions they observe. At your request, the inspector can simultaneously suggest possible corrective actions.<sup>11</sup> Make sure these conversations are civil. Resist the temptation to argue, become defensive, or attempt to point out how their suggested abatement techniques won't work. Lange explained, "If you attempt to work with the inspector and make their job easier, you will get a lot more leeway than if you point out how they are wrong."

During the closing conference, you are allowed to produce records to show compliance efforts and provide information that can help OSHA determine how much time may be needed to fix any alleged violations.<sup>12</sup> Use this opportunity to showcase how your company has worked to establish a strong safety culture.

### Know Your Rights

All of the above advice is sound, but always remember that OSHA is a governmental entity, and any citations or warnings they issue carry the weight of law. This means that you have important legal rights you should be aware of during an inspection. For example, never verbally or in writing admit to any violations or unsafe working condition. Further, everyone at your company has the right not to speak with an OSHA representa-

tive, unless they have a court-issued subpoena or deposition notice. In addition, everyone has the right to have legal representation of their own choosing if they agree to voluntarily give a statement. Exercising these rights may not have a positive impact on your relationship with the OSHA inspector, but they are important legal protections for you and your employees.

### Conclusion

"The real key is to foster a focus on safety. If employers show that they are committed to a safe work environment, it improves morale by showing you care about their well-being," said Lange. "Getting your employees to buy in to a safety culture is important because ultimately they are the ones responsible for maintaining it in the plant."

Whether it's through regularly scheduled safety meetings (on pay day, for example) or through a formal safety program like SBCA's Operation Safety, now is the time to renew your commitment to workplace safety. The numbers don't lie, OSHA inspections are at an all-time high, and the component manufacturing industry is a target. Not to mention, as things begin to pick up, and you find yourself hiring several new employees, maintaining a safe working environment will become a greater challenge without an active program in place.

If you are doing all you can to foster a safe work environment, you won't have to dread the appearance of an OSHA inspector. Who knows, you might even get to joke around with them. **SBC**

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