OSHA Inspections:
Don’t Let OSHA Be A Pest

Jake Jennings
Director of Risk Control

PestSure
INSURING THE FUTURE OF PEST CONTROL

Arthur J. Gallagher Risk Management Services, Inc.
CAUTION

IF YOU THINK
OSHA IS A
SMALL TOWN
IN WISCONSIN

YOU’RE IN
TROUBLE
The Preventable Accident

- Can accidents be prevented?
- Proactive vs. reactive behavior
- Who’s safety program is it anyway?
- Who gets injured at work?
- When does safety begin for you?
The New OSHA

“For many employers, investing in job safety happens only when they have adequate incentives to comply with OSHA’s requirements,” said Assistant Secretary of Labor for OSHA Dr. David Michaels.

“Higher penalties and more aggressive, targeted enforcement will provide a greater deterrent and further encourage these employers to furnish safe and healthy workplaces for their employees.”
Federal Changes to Administrative Penalty Calculation System

1. History Reduction
2. History Increase
3. Repeat Violations
4. Severe Violator Enforcement Program
5. Gravity-Based Penalty
6. Size Reduction
7. Good Faith
8. Minimum Penalties
9. Additional Administrative Modifications to the Penalty Calculation Policy
State or Federal OSHA?

- Currently, 26 states operate an OSHA plan that covers public employees
Approved State Plans

- Alaska
- Arizona
- California
- Connecticut
- Hawaii
- Illinois
- Indiana
- Iowa
- Kentucky
- Maryland
- Michigan
- Minnesota
- Nevada
- New Jersey
- New Mexico
- North Carolina
- Oregon
- Puerto Rico
- South Carolina
- Tennessee
- Utah
- Vermont
- Virgin Islands
- Virginia
- Washington
- Wyoming
OSHA REGULATIONS

- Government control?
- Burden for employers?
- Inconvenience?
- Effective?
- So where did these regulations come from?
General Duty Clause

a) Each employer --

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

29 USC 654(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.
General Duty Citations

- Conditions are:
  - There must be a hazard.
  - The hazard must be recognized.
  - The hazard causes or is likely to cause serious injury, harm or death.
  - The hazard must be correctable.
How You Get an OSHA Inspection

- Imminent Danger
- Fatality/Catastrophe
- Complaints/Referral
- Follow-up/Monitoring
- Special Emphasis
- General Scheduled
- Construction
  - Plain View - Drive By
  - Tag along
  - Media
SO...WHAT HAPPENS?

- PROPER REPRESENTATIVE & PROCEDURE
  - ASKING FOR TOP MANAGEMENT
  - CREDENTIALS

- OPENING CONFERENCE
  - Scope of Inspection

- RECORDS REVIEW
  - OSHA 300 LOGS
  - SUPPORTING INFORMATION

- WALK-THROUGH
  - EMPLOYER ROLE DURING WALK-THROUGH
  - EMPLOYEE INTERVIEWS

- SAFETY & HEALTH PROGRAM EVALUATION
  - DOCUMENTATION & ORGANIZATION

- CLOSING CONFERENCE
HELPFUL TIPS

- Ask for proper ID
- Have the right company representative
- Understand scope of inspection
- Cooperate but limit inspection
- Take photos
- Document each item addressed
- Answer questions truthfully
- Don’t offer additional information
TO ISSUE A CITATION

- Compliance Officer must have the following:
  - Management Statement about the condition or...
  - Industry Knowledge
  - Employee exposure
  - Standard must be qualified
  - Employee interviews
Looking at some Inspection History ..........
(Thanks to www.osha.gov)

- Date Range - **08/29/2007 - 08/29/2012**
- Total # of inspections - **103**
- What type of inspections?
  - Planned - **37**
  - Complaint - **26**
  - Referrals - **17**
  - Accident - **14**
  - Follow-up - **8**
  - Unprog. Related - **4**
Which States?

- Arizona - 2
- California - 21
- Connecticut - 1
- Florida - 7
- Guam - 3
- Hawaii - 2
- Illinois - 1
- Michigan - 3
- Missouri - 1
- Nevada - 6
- New Jersey - 1
- New York - 2
- North Carolina - 6
- Oklahoma - 1
- Oregon - 3
- Puerto Rico - 2
- South Carolina - 3
- Texas - 4
- Virginia - 3
- Washington - 36
Penalties – Assessed & Paid

- Number of Companies inspected – 108
- 67 companies received citations
- 44 companies paid penalties
- 23 companies had OTS citations

- Penalties Assessed - $134,550
- Penalties Paid - $84,076
Top Cited serious violations in Pest Management

- Fall Protection
- Respiratory Protection Programs
  - Written
  - Medical Evaluation
  - Fit testing
- PPE
  - Hazard Assessment
- Hazard Communication
REPORTING & POSTING

- OSHA POSTER
- POSTING & MAINTAINING INJURY & ILLNESS RECORDS
- FATALITIES
- CATASTROPHES
- POSTING CITATIONS
- PENALTIES
Multi-Employer Worksite Citations

- The employer who actually creates the hazard (the creating employer);

- The employer whose own employees are exposed to the hazard (the exposing employer);

- The employer who is responsible, by contract or through actual practice, for safety and health conditions on the worksite; i.e., the employer who has the authority for ensuring that the hazardous condition is corrected (the controlling employer);

- The employer who has the responsibility for actually correcting the hazard (the correcting employer).
Contracts

- Who reviews?
- What verbiage is in the contract?
- Who’s the controlling and the correcting employer
- Evaluate safety programs during bid process
EFFECTIVE SAFETY & HEALTH PROGRAMS

- MANAGEMENT COMMITMENT
- EMPLOYEE PARTICIPATION
- S & H TRAINING
- S & H COMMITTEES
- PREVENTIVE MAINTENANCE
- ACCOUNTABILITY
- DOCUMENTATION
PENALTIES

- SERIOUS
- OTHER THAN SERIOUS
- REPEAT
- WILLFUL
- CRIMINAL/WILLFUL
- QUICK FIX
- REDUCTIONS
SERIOUS

- SEVERITY
- PROBABILITY
- $7000 PER SERIOUS VIOLATION
Gravity Based Penalty (GBP)

- Assess the **severity** of the injury/illness which could result from a hazard
- Assess the **probability** that an injury/illness could occur
- Serious citations with penalties ranging from $3000 to $7000
# Federal Gravity-Based Penalty Chart

<table>
<thead>
<tr>
<th>Severity</th>
<th>Probability</th>
<th>GBP</th>
<th>Gravity</th>
</tr>
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<tbody>
<tr>
<td>High</td>
<td>Greater</td>
<td>$7,000</td>
<td>High</td>
</tr>
<tr>
<td>Medium</td>
<td>Greater</td>
<td>$6,000</td>
<td>Moderate</td>
</tr>
<tr>
<td>Low</td>
<td>Greater</td>
<td>$5,000</td>
<td>Moderate</td>
</tr>
<tr>
<td>High</td>
<td>Lesser</td>
<td>$5,000</td>
<td>Moderate</td>
</tr>
<tr>
<td>Medium</td>
<td>Lesser</td>
<td>$4,000</td>
<td>Moderate</td>
</tr>
<tr>
<td>Low</td>
<td>Lesser</td>
<td>$3,000</td>
<td>Low</td>
</tr>
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</table>
Additional Administrative Modifications

- In the past, all penalty reductions were added and the total percentage of reduction was then multiplied by the GB penalty to get the proposed penalty.

- Now, final penalties are calculated serially.
Sample Moderate Gravity Penalty Comparison: Summed vs. Serially Calculation

<table>
<thead>
<tr>
<th>Sample Data</th>
<th>Summed</th>
<th>Serially*</th>
</tr>
</thead>
<tbody>
<tr>
<td>High/Lesser</td>
<td>$5,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>History (10%)</td>
<td></td>
<td>$4,500 – 10%</td>
</tr>
<tr>
<td>Good Faith (15%)</td>
<td></td>
<td>$3,825 – 15%</td>
</tr>
<tr>
<td>Quick Fix (15%)</td>
<td></td>
<td>$3,251 – 15%</td>
</tr>
<tr>
<td>Size (30%)</td>
<td>$1,500</td>
<td>$2,275 – 30%</td>
</tr>
<tr>
<td>Result</td>
<td>$1,500</td>
<td>$2,275 ^</td>
</tr>
</tbody>
</table>

^ - Results in an increase of approximately 50%

* - No proposed penalty shall exceed the statutory limit for a serious violation or $7,000
# Federal - Size Reduction

<table>
<thead>
<tr>
<th>Employees</th>
<th>Percent Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-25</td>
<td>40</td>
</tr>
<tr>
<td>26-100</td>
<td>30</td>
</tr>
<tr>
<td>101-250</td>
<td>10</td>
</tr>
<tr>
<td>251 or more</td>
<td>none</td>
</tr>
<tr>
<td></td>
<td>Size 1-25</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-----------</td>
</tr>
<tr>
<td></td>
<td>60%</td>
</tr>
<tr>
<td>History</td>
<td>10%</td>
</tr>
<tr>
<td>Cooperation</td>
<td>10%</td>
</tr>
<tr>
<td>Safety and Health</td>
<td>0%</td>
</tr>
<tr>
<td>Programs</td>
<td></td>
</tr>
</tbody>
</table>
History Reduction

- Time frame expanding from three years to five
- If inspected by OSHA in the past 5 years and no serious, willful, repeat, or failure-to-abate citations you would receive a 10% reduction for history.
History Increase

- If cited by OSHA for any high gravity serious, willful, repeat, or failure-to-abate violation within the past 5 years - a 10% increase in your penalty

- Employers who have not been inspected and those who have received citations for serious violations that were not high gravity will receive neither a reduction or increase for history
Repeat Violations

- Time period increased from 3 to 5 years
- Original penalty x 2
Safety & Health Programs

- Current Good Faith procedures in FOM will be retained - up to 40%
- Penalty reduction permitted in recognition of an employer’s effort to implement an effective workplace safety and health program
- Programs must be “in place”
- No reductions for HG serious, willful, repeat, or failure-to-abate violations
Additional Penalty Reductions

- Cooperation Reduction – An abatement incentive meant to encourage employers to immediately abate hazards found during an inspection

  - A 10% reduction

  - Also, shows Good Faith/Cooperation
Minimum Penalties

- Minimum proposed penalty for a serious violation – increased to $500

- When a proposed penalty for a serious violation would be less than $500, a $500 penalty will be proposed for that violation

- Posting violation – penalty will increase to $250 if the employer was previously provided an OSHA poster
Maximum Penalties

- Willful – $70,000
- Serious – $7,000 (*exception)
- Repeat – $7,000 (x2, x5, x10)
- Failure to abate – $7,000/day
- Non-serious – may have monetary value
Willful violations causing death.

Giving unauthorized advance notice.

Giving false information.

Killing, assaulting or hampering the work of a CSHO.

Criminal penalties are imposed by the courts after trials and not by the Division or the Review Board.
Criminal/Willful Disparities In the Law

- A worker must die; under **environmental law** for a criminal prosecution, there only needs to be the risk of death or serious bodily injury.

- Employers found violating the OSH Act can only be charged with a misdemeanor with a maximum six-month sentence; an **environmental law** violation carries up to 15 years of prison time.

- The employer must have “willfully” committed the violation; **other criminal statutes require** the defendant to have “knowingly” violated the law.
After You Receive The Citations

- Yes, you have rights as an employer!
- You have 15 days from when you receive the citations to request an Informal Conference
- Currently, penalty reductions of up to 60% can be given over the phone if you agree to take EPO
- If you want to discuss the citations, methods of abatement, and/or the penalty you need to schedule an Informal Conference
Informal Conference

- Schedule if you do not believe you should have been cited due to a lack of exposure, the wrong standard was cited, or you need to discuss abatement.
- With the Federal changes, the area director is now only authorized to offer up to a 30% penalty reduction.
- If you have less than 250 employees and agree to hire an outside consultant you may be offered an additional 20% penalty reduction.
- There is no negative action taken against you for requesting an Informal Conference.

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<table>
<thead>
<tr>
<th>North Carolina Department of Labor</th>
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<tbody>
<tr>
<td>Division of Occupational Safety and Health</td>
</tr>
<tr>
<td>991 Points Creek Parkway</td>
</tr>
<tr>
<td>Winston-Salem, North Carolina 27107-0051</td>
</tr>
</tbody>
</table>

**Employer Name**

**Employer and Employee Rights and Responsibilities**

This guide is provided to assist you, the employer or the authorized employee representative, in understanding your rights and responsibilities.

**Issuance of Citation**—A citation for alleged violations may or may not be issued. If issued, the employer and/or authorized employee representative will receive copies of all citations issued to the company.

**Penalty**—Each citation may or may not impose a monetary penalty. Penalties must be paid within 15 working days after receipt of citation and notification of penalty unless a written request is made either for an informal conference or a continuance of the citation or proposed penalty. Failure to pay any penalty by the abatement date may result in a notice of failure to correct violation(s) and of proposed additional penalty based on number of days the violation goes uncorrected.

**Abatement of Violation**—For violations which you do not contest, you are required to return the OSHA Form 2D (Confirmation of Abatement) within ten (10) calendar days after the abatement date, to indicate that appropriate corrective action has been taken within the time frame set forth in this citation. If the employer does not agree to the penalty or any issue indicated on the citation, the citation is contestable.

In addition to recall, willful, and other serious violations as indicated, additional documents demonstrating that abatement is complete are required. Additional documentation may include, but not limited to, evidence of the purchase or repair of equipment, photograph or video evidence of abatement, or other written records.

If indicated in the citation, you may be required to submit an abatement plan for each cited violation when there is a penalty proposed for abatement in more than 90 calendar days. Failure to submit verification of abatement within the required time period could result in additional citations and penalties.

**Posting of Citations and Employee Notification of Corrective Action**—The employer must post each citation in a conspicuous place at or near the location of the violation for a period of at least three working days or until the hazard is corrected (whichever is longer). Failure to post a citation may result in a monetary penalty.

Additionally, the employer must inform affected employees and their representatives about abatement activities covered by the citations and post a copy of each document submitted to the North Carolina Department of Labor or a summary of the document near the place where the violation occurred or where it will be readily observable. The employer must inform employees of their right to examine and copy all abatement documents submitted. Additional documents must remain posted for three working days after submission to the department.

**Informal Conference**—The employer may request an informal conference by notifying the Division of Occupational Safety and Health (OSHA) in writing within 15 working days of receipt of a citation. Upon completion of the informal conference, the OSHA Division will send the employer certified mail the results of the informal conference. The results will be an amended citation, a notice of no change, or a settlement agreement. The employer has 15 working days from receipt of either the amended citation or notice of no change to notify the OSHA Division that the employer wishes to contest the citation and/or penalty, whether or not amended. At the discretion of the director, employee representatives may be afforded the opportunity to participate in the informal conference.

**Contestment of Citation and/or Penalty**—The employer may contest the citation by notifying the Division of Occupational Safety and Health in writing within 15 working days following receipt of citation. If the employer contests, the Safety and Health Review Board will assign the case a hearing examiner who will schedule a hearing on the case.

The employees or their authorized representative(s) will be afforded the opportunity to participate in these proceedings pursuant to the rules of the posting of a citation by an employer.

**Follow-Up Inspections**—Follow-up inspections may be conducted to verify that the employer has corrected the violation or has taken steps to correct the violation. The employer must provide copies of all documents submitted to the OSHA Division.

**Discrimination**—It is unlawful to discriminate against employees who make safety or health complaints or request an OSHA inspection.

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**Employer Representative**

**Employee Representative**

**Signature**

**Date**

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**Safety/Health Compliance Officer**

**Date**
www.osha.gov / PestSure.com

- OSHA FORMS
- STANDARDS
- CHECKLISTS
- STANDARDS INTERPRETATION
- STATISTICS
- UPDATES
- LINKS
- TRAINING MATERIALS
- SAMPLE PROGRAMS
Any questions or discussion?