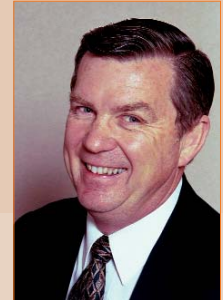


How to Handle an OSHA Inspection



By George Kennedy

Greg Strudwick, president of Strudwick & Associates and NUCA's Crew Leader Program Instructor, points out that today's construction managers, foremen (crew leaders) and supervisors not only have to make sure that the job at hand is done correctly, but also manage the jobsite from a safety standpoint. "They must implement the safety program, control hazards and ensure that workers follow the established safety procedures," says Strudwick. "And, on top of all that, they need to be prepared to handle an OSHA inspection."

Most employers dread the idea of having an OSHA inspection, and who can blame them? The good news is that fear of an inspection can be eliminated. Here's how:

- Make sure that your managers, foremen and supervisors are knowledgeable about the OSHA standards and other safety regulations applicable to all aspects of the work that they manage.
- Comply with all the regulations established by the Occupational Safety and Health Administration, or in the case of State Plan States, comply with the State laws, many of which have been adopted from OSHA.
- Establish a company plan/policy for handling an OSHA inspection.

A few words about training and compliance: The only way field management personnel can comply with the regulations is if they know what they are. And there is a lot to know. There are requirements for excavations, ladders, heavy equipment, personal protective equipment, tools, electrical, fall protection, confined space entry, fire prevention and more. Strudwick therefore recommends that every field manager have readily available a copy of the OSHA Construction Standards and other safety requirements. He also suggests that at minimum they should attend excavation safety and competent person, confined space, and OSHA 10-hour training programs. "How can you hold them accountable if they do not have the training and information necessary to perform their jobs?" asks Strudwick. "It's like sending them out to lay pipe without an excavator."

The Basics of an OSHA Inspection

There will be no advanced warning! A Compliance Safety and Health Officer (CSHO) could show up at your jobsite at any time day or night, on any day of the week, including weekends. That officer will conduct an inspection of your jobsite(s) in accordance with the OSH Act. After the inspection, the CSHO will report his/her findings to the Area Director, who will then evaluate them. If a violation has been found, OSHA will issue a Citation and Notification of Penalty, which informs you of the exact nature of the alleged violation(s), a proposed time period within which to correct the violation (s), and the appropriate dollar penalties.

Note: There are currently 26 states or territories administering OSHA-approved safety and health plans; 23 of these plans cover the private and public (state and local governments) sectors and three cover the public sector only. For more information, employers in these 26 states and territories should check with their state agencies. State plans might include standards, regulations, and procedures that, while at least as effective as their federal equivalents, are not always identical to them.

Handling the Inspection

Company Policy

Although OSHA has the authority to conduct unannounced workplace inspections, your company also has rights. If you know those rights, you can make educated decisions regarding what you will and will not permit during an OSHA visit.

OSHA inspectors are not required to inform employers of their rights at the time of an inspection, including the right to refuse entry unless the compliance officer is authorized by a warrant. A decision on whether to request a warrant should be a matter of company policy, and all managers and crew leaders should be familiar with the policy.

Management should also decide in advance who will take charge of an OSHA visit. Your company policy could be as simple as stating that the corporate safety person must be present for all OSHA inspections. If that is your

policy, it should be readily available to the OSHA inspector. An explanation to the OSHA inspector, with a telephone call to the OSHA inspector's office, that a safety person must be present is corporate policy will usually result in the inspector waiting a reasonable period of time for your representative to arrive. The company representative should first identify himself/herself and then check the inspector's credential. Write down the inspector's name, area office and telephone number, or obtain a business card.

Opening Conference and Jobsite Tour

The next step will be the opening conference, at which time the officer is expected to explain the purpose of the visit. This is the time to call together managers, foremen and supervisors who represent the various companies working at the jobsite because they will probably be involved in the inspection.

As the CSHO tours the jobsite, he/she will take pictures/videos and measurements and might want to talk to employees or their representatives. You must provide reasonable accommodation. To keep the importance of the inspection in proper perspective, remember that the CSHO is looking for any and all workplace hazards and violations of the standards, and that each hazard can result in a citation and penalty. An alleged serious violation could result in a proposed penalty of thousands of dollars.

During the inspection, your company representative should: follow the company inspection policy; make sure the employees know their rights; accompany the inspector at all times while he/she is onsite; answer questions truthfully; document everything that the CHSO says and does, including the taking of notes, pictures and measurements. Company representatives should not: speculate, volunteer information or make any admissions of guilt.

The CSHO does not have the right to give orders to the employer, employer representative, or employees. If you are uncertain about your rights, ask the CSHO to explain them to you and make note of what he/she tells you in response to your questions. The officer too must answer your questions truthfully.

Closing Conference

Following the inspection, there will be a closing conference, generally before the CSHO leaves the jobsite. At this time, your representative will be advised that this is the time for a free and frank discussion of problems. Once again, the representative should be careful of what he/she says because the record is still open and anything that is said could become supporting evidence. Sometimes, it is best to say as little as possible or nothing at all.

During the closing conference the CSHO should tell your representative what he/she observed. For each apparent violation found during the inspection, the

compliance officer will discuss the following with your representative:

- the nature of the violation,
- possible abatement measures you might take to correct the alleged violation,
- possible abatement dates you might be required to meet, and
- any potential penalties the Area Director might issue.

Your representative can disagree with the CSHO, but should never agree that a violation existed, because this would be an admission of guilt. For example, agreeing to abate an alleged hazard could be misconstrued as an admission of a violation. All arguments should be saved for a hearing, where you have a chance to win.

Requesting a Hearing/Contesting a Citation

After the inspection, your company might receive a notice of alleged violations and penalties; in fact, few companies go through an inspection without any citations being issued. After receiving the citation notice, the employer must post it at a location where all employees can see it until the hazard has been corrected.

Your company has a right to request an informal hearing with the area director; it is generally a good idea to make such a request. If you do plan to ask for the hearing, you must do so within 15 working days after receiving the notice. If you wait more than 15 working days, you will lose your ability to contest violations, penalties and abatement periods.

Here's what happens when you file a notice of contest: Your case will be assigned to a Department of Labor attorney and an Administrative Law Judge (ALJ), who is independent of OSHA. The case will either be settled by the attorney and your representative before a scheduled hearing or a hearing will be held and the ALJ may affirm, modify or eliminate any contested items of the citation(s) or penalty(s).

Some experts say you should always file a notice of contest; others suggest that you file a notice of contest only when you believe you can make a case. It is a decision that must be made by executive management after obtaining legal council. You don't have to use an attorney, but if the penalties are high, it will be to your advantage to hire one. If the stakes are low, a well-prepared company official might be able to negotiate with OSHA's attorney or attend a hearing to present your company's defense.

For additional information, NUCA members can download a free copy of "Understanding OSHA: How to Handle an OSHA Inspection" from the NUCA Web site at www.nuca.com; anyone can download a free copy of "Employers Rights and Responsibilities Following an OSHA Inspection" from OSHA's Web site at www.osha.gov.

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