

You should have a plan of action that tells you...

What To Do When OSHA Comes Knocking

Editor's Note: The following information contains suggestions you may want to use in working with personnel from the federal Department of Labor's Occupational Safety and Health Administration, and is not presented as legal advice. As appropriate, consult with legal counsel.

Under the Occupational Safety and Health Act of 1970, OSHA may conduct workplace inspections to determine if an employer is complying with OSHA standards.

Inspections are generally conducted without much prior notice. There are a few exceptions, but notice will generally be less than 24 hours in advance.

If an employer refuses to admit an OSHA compliance officer, or if an employer attempts to interfere with the inspection, legal action may be initiated. For example, the compliance officer is obligated to obtain a search warrant, if requested. Your right to request a warrant is not supposed to have any negative impact on the subsequent inspection, and your company should not receive any additional or undue citations.

REASONS FOR & TYPES OF OSHA INSPECTIONS

There are four primary reasons that inspections are made:

1. Programmed inspections are the most common type. Construction companies are selected for inspections based on random selection criteria that have been established by OSHA. Dodge reports, newspaper articles, and other sources of information are frequently used to determine job-site locations for random selection.

Currently, utility contractors are part of a high-emphasis program to inspect excavations, including trenches. The program for excavations requires all

OSHA compliance personnel to inspect any and all excavation's they observe. Compliance officers who are not qualified to inspect excavations are required to notify the OSHA area office of job sites involving excavations and trenching.

2. Employee complaints to OSHA of alleged violations or unsafe conditions will generate an inspection. The Occupational Safety and Health Act gives each employee the right to request an OSHA inspection when an employee feels he or she is in imminent danger, or when he or she feels there is a violation of an OSHA standard.
3. Catastrophes and fatal accidents will result in an OSHA investigation and inspection. Also, contractors must report to OSHA within 8 hours any accidents that result in hospitalization of three (3) or more employees, or a fatality.
4. A visit from OSHA could also be for a follow-up inspection to confirm that a previously cited violation has been corrected.

HOW TO HANDLE OSHA INSPECTIONS

Much like you, OSHA compliance officers have a job to do. Also, they appreciate common courtesy, and they respond in a positive manner when they see a sincere commitment to safety. Following are a few suggestions that may prove helpful in handling an OSHA inspection:

- Courteously greet the Compliance Officer and introduce yourself.
- Request, and examine, the officer's credentials, and ask the reason for the visit.
- Advise the officer that company policy regarding



See "OSHA Inspections" on page 2...

“OSHA Inspections” from page 1

OSHA inspections requires that you contact your main office (before doing this make sure that is your company’s policy). Immediately contact your main office and, if necessary, ask how you should proceed. Your company’s safety director



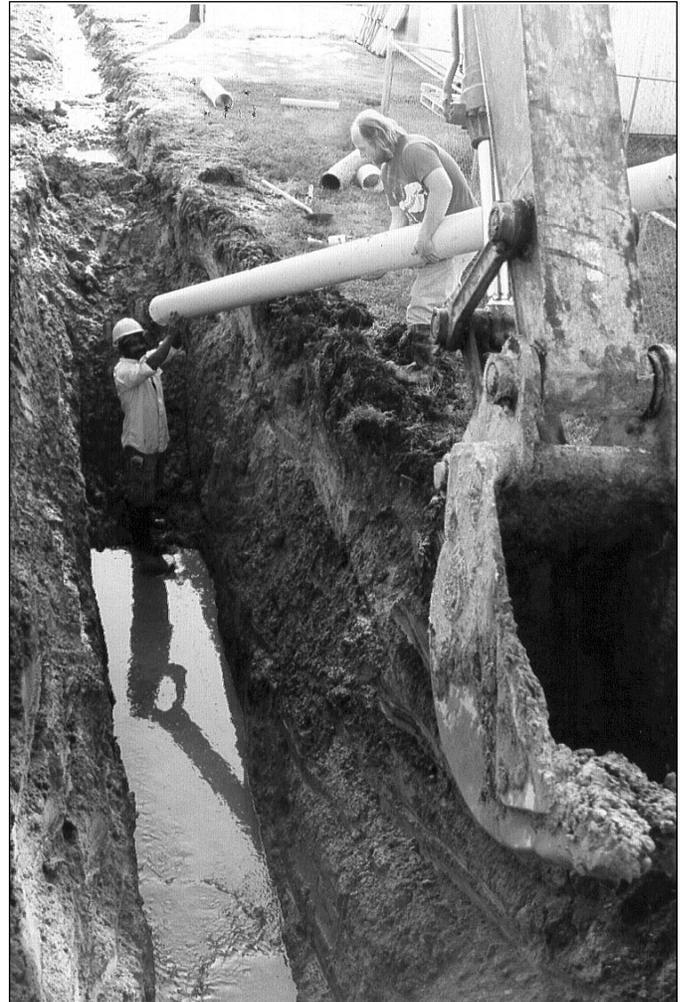
or coordinator may want to be present during the inspection, in which case you may request that

the officer wait until he/she arrives.

- If the OSHA Compliance Officer has a warrant, or insists upon proceeding with the inspection before your safety director/coordinator arrives, you should accompany the officer. Answer all questions truthfully, but do not volunteer information. Take written notes of any defects or deficiencies the officer points out. If possible, have someone correct alleged problems immediately. Explain items that the Compliance Officer doesn’t understand or misinterprets, but do not argue.
- All job-site records must be available. If requested, allow the Compliance Officer to see safety program materials, accident records, inspection reports, etc.
- When possible, take pictures of everything the Compliance Officer photographs. Because things may not actually be what they appear to be in a photograph, be sure to take additional photographs from different angles.
- Make a list of the names of employees the Compliance Officer interviews.
- If the officer takes any measurements, take the same measurements yourself.
- Immediately shut down machinery or equipment that the officer says does not meet the standards.
- Generally, upon completion of the inspection, the Compliance Officer will hold a brief closing conference. He/she will review the alleged violations with you. Take written notes so that you can inform your safety director/coordinator of the results.

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What is wrong with this picture?



This picture recently appeared in a Mid-South newspaper. Can you spot all the safety problems? See our list at the bottom of page 4.

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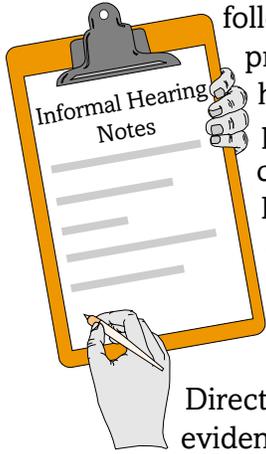
This newsletter provides a brief overview of safety regulations and systems. It is not intended to provide specific legal or engineering advice. Please refer to OSHA CFR 29, Part 1926, Subpart P, “Excavation and Trenches,” to other governmental regulations, and to manufacturers’ instructions for specific information.

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EMPLOYER’S RIGHTS FOLLOWING AN OSHA INSPECTION

Informal Hearings—Employers have the right to an informal hearing with the OSHA Area Director



following receipt of a citation and proposed penalties. At this informal hearing the alleged violations, any penalties, and/or an abatement can be discussed. The OSHA Area Director has the authority to enter into a settlement agreement that could revise the citation and/or penalty.

Generally, the OSHA Area Director will show the contractor the evidence, including pictures. Reviewing the evidence may help the contractor make a more informed decision regarding settlement of the case.

Informal hearings frequently result in revised citations and reduced penalties. However, contractors should clearly understand that if an agreement to settle the case is made, the contractor gives up the right to contest the citation and the proposed penalty. The violation will also be placed on the contractor’s record, and could be used as the basis for a repeat violation, if a similar violation is cited within a three-year period following the settlement.



Because of the severity of injuries and frequency of deaths, trenching and confined space citations are usually classified as “serious.” Repeat violations almost always result in more severe penalties. They can even be classified as “willful/criminal,” and criminal charges can be filed against the contractor.

NOTICE OF CONTEST

Anytime within 15 working days after receipt of citations and proposed penalties, the contractor has the right to file a Notice of Contest.

A copy of the Notice of Contest must be given to the employee’s authorized representative. When an employee bargaining unit does not exist, a copy of the notice must be posted in a prominent location in the workplace or given to each employee.

Upon receipt of the Notice of Contest, the file is given to the Occupational Safety and Health Review Commission. This commission is an independent agency not associated with OSHA or the federal Department of Labor. The commission will assign the case to an Administrative Law Judge who will schedule a hearing.

Contractors should be aware that citations are frequently dismissed. The Administrative Law Judge may uphold, modify, or eliminate any item of the citation or the penalty that the employer has challenged.

And once the judge has ruled, any party to the case may request a further review by the Review Commission. Commission rulings may be appealed to appropriate U.S. Court of Appeals.

“State plan” states, such as Tennessee, have similar systems for the review and appeal of citations, penalties, and abatement periods. TOSHA normally issues a proposed citation. The contractor has 20 days to request an informal hearing, which must be held within 30 days of the date of the proposed citation. Following the hearing, TOSHA has 30 days to issue a final citation. The contractor then has 20 days to file a formal notice of protest.

THE BOTTOM LINE?

The best suggestion is simple: Be pro-active, and keep accidents from occurring in the first place. How?

- Make safety an important part of every job.
- Train your personnel.
- Use appropriate safety equipment and construction techniques.
- If you’re uncertain about how to handle a potentially dangerous situation, seek the help of others who are more familiar with safety procedures.
- Finally, if you have a problem following an inspection, consult a good attorney who is experienced in handling OSHA matters.



An OSHA inspection does not have to be painful. Proper policies and construction safety practices, coupled with a healthy dose of common sense, can see you and your company through the process when OSHA comes knocking.

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SPECIAL ISSUE:
*"How to survive an
OSHA inspection."*

OSHA Means Business

When it comes to providing protective systems, OSHA is not pulling any punches.

- OSHA pursued criminal action against employers of a worker who fell to his death while constructing a telecommunications tower in Florida in 1995. **Two partners were each sentenced to three-month jail terms, and their company was fined \$132,300.** They were found guilty following an investigation that proved that fall protection was not in use when the worker fell.
- In Alburty, Pennsylvania, **\$230,400 in penalties were assessed** for lack of worker protection, improper installation of trench shields, and incorrect traffic control, among others alleged violations.

Remember, OSHA requires that every job site with excavations must have a Competent Person on site who has gone through specific training and is knowledgeable of the requirements of the standard, soils analysis, and the use of protective systems. In addition, the Competent Person must have the authority to take immediate correction action to eliminate any unsafe conditions.

OSHA reports that one of the most frequently cited willful violations is failure to use shoring, shielding, and/or trench boxes to protect workers.

**Answers to
photo quiz
on page 2:**

- No protective system in place.
- No means of access and egress.
- Excessive amount of water in the excavation.
- Spoil pile is not set back at least two feet.
- Upper worker is not wearing a hard hat.
- Competent Person not on the site.

Did You Know...

The National Safety Council has reported that people have been injured or killed when drivers of pickup trucks with bed liners tried to fill a gasoline can or tanks in the back of their truck without removing it.

Pickup truck bed liners prevent the grounding of the static charge generated by gasoline flowing into metal cans, which can cause fumes to ignite.

Instruct your personnel to place all gas cans on the ground away from the truck before filling.

Schedule of NUCA-Approved Training Classes

"Competent Person" Training

- Thursday, March 12— Memphis
- Thursday, April 23— Memphis
- Thursday, May 28— Memphis

"Confined Space" Training

- Call for details regarding schedule.

Call today to register and reserve classes for your staff.

Cost is \$85 per person.

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