

## **SPECIFIC PROCEDURES FOR DURING AND AFTER AN OSHA INSPECTION**

### **1. Purpose**

To establish uniform procedures to coordinate management involvement at every location in the event of an OSHA inspection.

### **2. Presentation of Credentials and Opening Conference**

- a. When an individual arrives at a plant and presents credentials as an OSHA Compliance Safety and Health Officer, the Company guard or receptionist should direct or escort the Compliance Officer to an appropriate waiting area. The Compliance Officer should be treated courteously at all times. First impressions by the Compliance Officer often dictate the course of the inspection and the characterization of the citations, if any, that result.
- b. The guard or receptionist should immediately contact the Plant Manager and Safety Manager and notify them of the presence of the Compliance Officer at the plant.
- c. The Plant Manager or Safety Manager should then advise the Corporate Safety Department and the General Counsel's Office that there is an OSHA Compliance Officer at the plant. Under no circumstances should the Compliance Officer be kept waiting more than a brief period of time while these persons are being notified.
- d. The Compliance Officer should then be invited to the Plant Manager's office, or another suitable meeting room, to meet with the Plant Manager and the Safety Manager. If the Compliance Officer does not do so on his own, the Plant Manager or Safety Manager should request that the Compliance Officer present his or her credentials. If there is any question about the Compliance Officer's credentials, the Plant Manager may wish to contact the OSHA Area Office for verification.

### **3. Opening Conference**

- a. After the presentation of credentials to the Plant Manager, but before an inspection is actually conducted, the Compliance Officer will conduct an informal opening conference. During the opening conference, which should be attended by both the Plant Manager and the Safety Manager, the Compliance Officer should explain whether the inspection is being conducted:
  - (1) pursuant to a general administrative enforcement plan;
  - (2) in response to a specific safety and/or health complaint by an employee or representative of employees (*e.g.*, labor organization);
  - (3) in response to a specific referral by a non-employee (*e.g.*, an official of another government agency, a member of the media, etc.);
  - (4) in response to a fatality or serious accident; or

- (5) to investigate an employee complaint of employer retaliation against employees for their involvement in safety and health-related activities protected by law (*e.g.*, complaining to company management, OSHA or other government agencies about safety and/or health concerns, refusing to be exposed to an imminent danger of death or serious injury, etc.). OSHA normally begins its investigation of such complaints by providing the employer written notice of the retaliation allegations and requesting that the employer submit a position statement in response. Any on-site visits by OSHA investigators are normally scheduled with employers in advance and usually occur after OSHA has reviewed the employer's position statement. If the OSHA officer has arrived without prior notice to conduct a retaliation investigation, the Plant Manager should consult with the Corporate Safety Director and/or the Director of Human Resources and the General Counsel's Office before allowing the on-site investigation to begin.

The opening conference normally will be held jointly with both the employer and, if the employees are represented, an employee representative in attendance. If employees are not represented, the Compliance Officer will typically conduct the inspection without an employee representative.

- b. Generally, the Compliance Officer will explain the purpose of the visit and will outline the scope of the inspection, including the scope of the physical inspection of the plant, the records to be reviewed, and whether management and/or private employee interviews will be conducted.
- c. The Compliance Officer will also indicate during the opening conference whether the inspection will be primarily safety oriented or health oriented. If it is primarily a health inspection, the Compliance Officer will probably be an industrial hygienist, who will likely seek to review the plant's exposure monitoring records and will typically conduct some form of sampling of workplace environmental conditions. To the extent that it is practical and feasible to do so, it is beneficial in such a situation for the plant to take samples alongside the OSHA industrial hygienist. This ensures that the employer is not unjustly cited because of erroneous laboratory analysis or results that are not representative of actual conditions.
- d. If the proposed inspection is in response to a specific complaint or referral, the Company should seek to obtain a copy of the complaint. Although the identity of the complainant employee is confidential, the Compliance Officer should provide an expurgated copy of the complaint, upon request. The Compliance Officer, however, may decline to provide a copy of a referral.

- e. If the proposed inspection is in response to a specific complaint or referral, the Company should seek to limit the scope of the inspection to the cited condition identified in the complaint/referral. If the Compliance Officer persists in a request to broaden the scope of the inspection, he should be asked to wait until the Company's legal counsel has been consulted. Even if the inspection starts out being limited to the scope of the complaint/referral, it can be broadened if the Compliance Officer sees or hears about any other hazardous conditions during the course of the inspection.
- f. At the beginning of the opening conference, the Plant Manager should identify the company representatives present at the opening conference and offer a brief explanation of why each individual has been asked to attend. Generally, the Compliance Officer will inquire about the Company's safety program. It is essential that those in attendance at the conference have a working knowledge of the plant's safety and health procedures. Specifically, all attendees should have an appreciation of the written programs in effect, how safety and health training programs are implemented, and an understanding of how accidents at the plant are investigated.
- g. If the Company has trade secrets that might be revealed during the inspection, these areas should be identified at the opening conference. Any information obtained by the Compliance Officer in these designated areas will be labeled "confidential-trade secret" and cannot be disclosed outside the proceedings to which the information is relevant.

#### **4. Warrant Requirement**

Although the U.S. Supreme Court has held that OSHA must obtain a warrant to gain entry to the premises of a company to conduct a general inspection when the employer does not consent to the inspection, it is not difficult to obtain such a warrant. From a practical standpoint, unless there is a known condition that the employer can correct while OSHA is applying for the warrant, consent should be given. While this advice is given as a general proposition, there may well be particular circumstances that would justify requiring OSHA to get a warrant. The decision whether to require OSHA to obtain a search warrant depends on the specific situation presented at the time the Compliance Officer appears at the plant to conduct an inspection. If you think the particular circumstances presented may justify requiring OSHA to obtain a warrant or if you have any questions, contact the General Counsel's Office for guidance. As a general rule, consideration should be given to requiring a warrant when the Compliance Officer indicates during the opening conference that, although the inspection is complaint/referral-based, he intends to expand the scope of the inspection beyond the areas identified in the complaint/referral.

If the Compliance Officer presents an inspection warrant upon his arrival at the plant, photocopy the warrant and any supporting documentation and contact the Corporate

Safety Department and General Counsel's Office for guidance. The warrant should include the exact plant and entity to be inspected as well as the scope of the inspection.

**5. Walkaround Inspection**

- a. Both the Occupational Safety and Health Act and OSHA's regulations provide that a representative of the employer shall be given the opportunity to accompany the Compliance Officer during the inspection. The Plant Manager and/or such persons as the Plant Manager shall designate should accompany the Compliance Officer during the inspection. Depending on the scope of the inspection, a maintenance person (preferably a manager) should be asked to join the designated management representative in order to correct on the spot any minor repair or housekeeping items noted by the Compliance Officer. Do not, however, admit that the Company believes the condition corrected was an OSHA violation. Regardless of the inspection's scope, at least two Company representatives should accompany the Compliance Officer at all times. The Company representatives should be professional and cordial to the Compliance Officer throughout the inspection.
- b. The Company's walkaround representatives should take notes during the inspection, documenting everything about which the Compliance Officer is concerned, including pertinent statements made during the inspection. The walkaround representatives should take the same photographs or measurements that the Compliance Officer takes during the inspection as well as identifying what was measured, the method of measurement, how many samples or measurements were taken, and the duration of the samples and measurements. If the Compliance Officer appears to be photographing conditions from a misleading perspective, the walkaround representatives should photograph such conditions from both the Compliance Officer's perspective and other perspectives that more accurately depict the actual condition. To be prepared for an OSHA inspection, the Company should have a videotape camera and a still camera with an adequate supply of videotape and film ready for immediate use.
- c. During the course of the inspection, the Compliance Officer may conduct private interviews with as many employees as is deemed necessary. The Company representative should make available a place for the Compliance Officer to conduct the interviews. If management employees are to be interviewed, the Company has a right to have a Company representative present during such interviews. The names of any non-management employees who had private conversations with the Compliance Officer should be noted. A Compliance Officer cannot audiotape or videotape the interviews unless the employee being interviewed consents. Similarly, there is no legal obligation for an employee to sign a written statement prepared by a Compliance Officer.

- d. The Compliance Officer may also inspect records required to be maintained under the Occupational Safety and Health Act. The Compliance Officer will typically request that the Company produce its OSHA 300 Log and OSHA Form 301s (or their equivalent), its written Hazard Communication Program, the written Lockout/Tagout Program, exposure monitoring data, and documentation of the training required by various OSHA standards. Except for compliance audit reports, all of the records should be made available to the Compliance Officer upon request. Do not refer to plant audits, and if asked for audit reports, contact the Corporate Safety Department or the General Counsel's Office before providing them for review or copying. The plant should keep a copy of all records provided to OSHA during the inspection.
- e. Compliance Officers must comply with all plant safety and health rules and practices and use personal protective equipment as required by the plant. In the event the Compliance Officers' inspection would require use of respiratory protection, such protection must be provided by OSHA. Compliance Officers using respiratory protection must be trained and fit-tested in accordance with OSHA Instruction CPL 2-2.54.
- f. In the event that violations such as blocked aisles, unsafe floor surfaces, hazardous projections, or other such deficiencies are pointed out by the Compliance Officer, the Company representatives (preferably including a maintenance manager) should take immediate action to correct the violations where immediate correction can be easily accomplished and where such action is appropriate.

## **6. Closing Conference**

- a. After the inspection is concluded, the Compliance Officer will hold a closing conference with the Company during which any safety or health violations that have been observed will be reviewed. Generally, the Compliance Officer will identify the standards that have been violated. The Compliance Officer typically will not reveal, however, which of these items, if any, will result in the issuance of citations or penalties. Statements made at the conference do not bar the Compliance Officer from subsequently issuing a citation for a violation that the Officer did not specifically raise at the closing conference. Statements made by Company representatives during the closing conference may affect the decision whether to issue a citation, the characterization of the citation, as well as the extent of the proposed penalty. It is, therefore, important to maintain a professional and courteous demeanor throughout the closing conference, even if there is strong disagreement with the Compliance Officer's findings and conclusions. However, if the Compliance Officer makes any factual misstatements, Company representatives should politely correct those misstatements. The closing conference is also a time to ask the Compliance Officer questions and ensure that Company representatives fully understand the Compliance Officer's position.

- b. Separate closing conferences may be held with plant management and the employees' representative if requested by either party. Under routine circumstances, it shall be McWane's policy to request a joint conference. The plant's management representative shall take detailed notes about items discussed during the closing conference.
- c. It is sometimes helpful to abate non-controversial violations immediately (during the inspection, if possible) as a demonstration of good faith. Caution should be used in estimating the time necessary to correct more complex violations because the Company's estimate is likely to become the abatement date required in the citation.
- d. The Company representatives in attendance should not admit to any violations, and should not offer any suggestions about how long it would take to complete abatement. If absolutely forced to give an estimate, it should be remembered that OSHA may later require the Company to adhere to that time estimate.
- e. The Plant Manager should promptly advise the Corporate Safety Department and General Counsel's Office about the matters discussed during the closing conference.

**7. Post-Inspection Procedures**

Immediately after the Compliance Officer leaves the plant site, the Plant Manager should meet with all appropriate management representatives concerned with the inspection to discuss both the OSHA inspection and the Compliance Officer's observations and findings. The Plant Manager is responsible for formulating a plan to respond to the Compliance Officer's observations and findings. The attached "Report of OSHA Inspection" must be completed within 24 hours of the conclusion of each day's OSHA on-site inspection and faxed to the Corporate Safety Department. See Attachment 1.

**8. The Decision Whether To Contest The Citation**

Upon receipt of a citation, the Company has fifteen (15) working days within which to notify OSHA in writing that it wishes to contest the citation and/or proposed notification of penalty. If the Company does not agree with the citation, OSHA encourages employers to ask for an informal conference, usually with the OSHA Area Director, during this fifteen (15) working day period. This is almost always a good idea. It provides an opportunity for further discussion with the Compliance Officer and his or her supervisor, and the amount of penalty is often reduced as a result of these informal conferences. It is important to remember that the informal conference does not extend the fifteen (15) working day requirement for the filing of a written notice of contest.

If the outcome of the informal conference is not satisfactory, the Company may still want to contest the citation. The Company can contest all or any part of the alleged violations

(including their characterization as willful, repeat, serious, or other-than-serious), the proposed assessment of penalties, the proposed abatement periods, or the entire citation. If a notice of contest is filed contesting an alleged violation, then as long as the allegedly violative condition is under contest, there is no duty to correct the condition. If the

citation and/or penalty is not contested within fifteen (15) working days from receipt, the citation and assessment become a final order of the Occupational Safety and Health Review Commission which cannot later be reviewed by any court or agency.

The Notice of Contest shall be sent to the Area Director via certified or registered mail. A copy of the Notice of Contest must be posted adjacent to the citation.

Although sometimes there is no question that a hazardous condition exists and that it can be corrected without the expenditure of substantial sums of money, the Company should be aware that once a citation becomes a final order, it may be used as the basis for a repeat or willful violation. Thus, in determining the cost of whether or not to contest a citation, the implications of being cited for a repeat violation sometime in the future also should be considered.

The decision whether to contest an OSHA citation is to be made only after input from the Corporate Safety Department and the General Counsel's office.

**9. Receipt of OSHA Citations**

OSHA citation and proposed penalties shall be received by certified or registered mail. A copy of the citation(s) shall be posted on the plant bulletin board or in the vicinity of the OSHA poster. Citations shall be posted for a minimum of 3 days or until the condition noted is abated, regardless of whether abatement was completed prior to receipt of the citation(s). A copy of the citation(s) shall be immediately faxed to the Corporate Safety Department and General Counsel's office.





was prompted by a complaint, secure a copy of the complaint. If the inspection was prompted by a referral, the Compliance Officer may be unwilling to provide a copy of the referral document, in which case the designated management representative should ask the Compliance Officer what condition(s) are identified in the referral. If the OSHA officer has arrived without prior notice to conduct a retaliation investigation, the Plant Manager should consult with the Corporate Safety Director and the Director of Human Resources before allowing an on-site investigation to begin.

\_\_\_\_\_ b. Take notes on the reason for the inspection.

\_\_\_\_\_ c. Take notes on the scope of the inspection including:

- 1. Whether employee and/or manager interviews will be held, and from which departments or work areas;
- 2. Which records, programs, or procedures will be reviewed;
- 3. How long the inspection will last; and
- 4. The actual areas to be inspected.

\_\_\_\_\_ d. Notify the Compliance Officer if any trade secrets exist which might be revealed during the inspection.

\_\_\_\_\_ e. Promote the Company as committed both to the safety and health of its employees and to complying with all OSHA requirements (If possible, it is important to identify the Company as a “good guy” and establish rapport with the Compliance Officer).

\_\_\_\_\_ 4. If the Compliance Officer is present in response to an employee complaint or a referral from a governmental entity or some other source, limit the scope of the inspection to the identified condition(s).

\_\_\_\_\_ 5. Notify the employee representative, if any, about the right to accompany the Compliance Officer during the inspection.

\_\_\_\_\_ 6. The designated management representative and at least one other Company

representative should accompany the Compliance Officer during the inspection. Depending on the scope of the inspection, a maintenance person (preferably a manager) should join the designated management representative in order to correct on the spot any minor repair or housekeeping items noted by the Compliance Officer.

- \_\_\_\_\_ 7. During the inspection, the designated management representative should:
  - \_\_\_\_\_ a. If a complaint or referral inspection, direct the Compliance Officer to the referenced machine, structure or area via the route least likely to pass conditions that might catch the Compliance Officers interest (*i.e.*, the shortest route with the least potential for violations).
  - \_\_\_\_\_ b. If during a complaint or referral inspection the Compliance Officer asks or begins to inspect other conditions not referenced in the complaint/referral, then the designated management representative should politely remind the Compliance Officer that the understood purpose of the inspection (based on the boundaries set in the opening conference) is to investigate the complaint/referral condition(s). The designated management representative might emphasize that the Company will assist in every way with investigation of the complaint/referral, but politely insist that a broader general inspection is not appropriate. If the Compliance Officer nevertheless insists on broadening the scope of the inspection, the designated management representative should politely ask the Compliance Officer to identify the cause for his request and then contact the Corporate Safety Department or the General Counsel's Office before allowing a broadened inspection.
  - \_\_\_\_\_ c. Take written notes on all the Compliance Officer's actions and statements.
  - \_\_\_\_\_ d. Measure all items measured by the Compliance Officer.
  - \_\_\_\_\_ e. Take photographs of all items photographed by the Compliance Officer, and, if possible, videotape all operations videotaped by the Compliance Officer (If it is not possible to take photographs or videotape, identify the object photographed or the operation videotaped and the location from which the photograph or videotape was taken, and request copies from the Compliance Officer.)
  - \_\_\_\_\_ f. If samples are taken, take the same samples and note the duration, etc., of the samples.

- \_\_\_\_\_ g. If interviews are conducted in the presence of the management representative, then all observations should be recorded.
- \_\_\_\_\_ h. If interviews are conducted outside the presence of the management representative, then the name of the interviewed employee, location of the interview, and time and duration of the interview should be noted.
- \_\_\_\_\_ i. If records, reports, programs, or procedures are reviewed by or copied for the Compliance Officer, a copy of these items should be made (A separate copy of any items copied for the Compliance Officer should be made and a file created).
- \_\_\_\_\_ j. Do not refer to plant audits, and if asked for audit reports contact the Corporate Safety Department or the General Counsel's Office before providing them for review or copying.
- \_\_\_\_\_ k. Promote the Company's best practices and refrain from statements that might be construed as admissions.
  
- \_\_\_\_\_ 8. At the closing conference, the management representative should note all statements made by the Compliance Officer, including any apparent violations identified by the Compliance Officer and any statements concerning the issuance or characterization of citations, penalties, and any proposed abatement methods and/or dates.
  
- \_\_\_\_\_ 9. If the management representative is asked for an estimate of an abatement period, there should be no admission that a violation or hazard requiring abatement exists. If there is no dispute about the existence of the hazard, the Compliance Officer should be given a liberal estimate of time within which abatement can be accomplished.

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**APPENDIX C**

**OSHA INSPECTION NOTES**

## **APPENDIX D**

### **PHOTOGRAPHY/VIDEOTAPING POLICY**

It is the policy of [Plant Name] that no photographic equipment be allowed on the premises without the express written permission of appropriate management. Because photographs may reveal confidential information and/or trade secrets to competitors, anyone with photographic equipment on the premises will be escorted off Company premises.

During on-site inspections, OSHA routinely photographs or videotapes conditions that the Agency believes constitute violations of either an OSHA Standard or of the General Duty Clause of the OSH Act.

During the Opening Conference before an OSHA inspector has been allowed to enter the facility to begin the walkaround part of the inspection, the [Plant name] personnel accompanying the OSHA inspector(s) should advise the inspector(s) that the Company considers its equipment and processes to constitute trade secrets and confidential, proprietary information that is protected under Section 15 of the OSH Act and 29 C.F.R. § 1903.9. The inspector(s) should be asked to sign a statement acknowledging that they have been advised that the Company expects these trade secrets and confidential, proprietary information to be protected accordingly. This Acknowledgment Statement is attached hereto.

Should the inspector refuse to sign the Acknowledgment Statement, please provide the inspector with a copy of the Acknowledgment Statement and document on a second copy that the Acknowledgment Statement was provided to the OSHA inspector and that the inspector refused to sign it.



**ACKNOWLEDGMENT OF TRADE SECRETS AND  
CONFIDENTIAL, PROPRIETARY INFORMATION**

(Plant name) advises OSHA by this written notice that this facility considers its equipment and processes to constitute trade secrets and confidential, proprietary information. All photographs and videotape taken by any representative of OSHA, as well as any documentary information provided to OSHA during the course of this inspection, are to be considered trade secrets or confidential, proprietary information consistent with Section 15 of the OSH Act and 29 C.F.R. § 1903.9.

Acknowledged by:

\_\_\_\_\_

OSHA Representative

\_\_\_\_\_

OSHA Representative

\_\_\_\_\_

Date

Witnessed by:

\_\_\_\_\_

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Prepared at the Request of Counsel

**APPENDIX E**

**REPORT OF OSHA INSPECTION**

Instructions: This report covers visits by federal and state OSHA.

Form to be completed and faxed to Corporate Safety within 24 hours after Agency Inspector leaves your premises. A separate form is to be completed for each day an agency official is on the premises. Additional pages may be attached, as necessary, for additional information.

Plant visited: \_\_\_\_\_

Name of Federal/State Inspector: \_\_\_\_\_

Agency Represented: \_\_\_\_\_

Date of visit/opening conference: \_\_\_\_\_

Time of Arrival: \_\_\_\_\_ a.m./p.m.

Time of Departure: \_\_\_\_\_ a.m./p.m.

Purpose of Visit (circle all that are applicable and attach copy of written complaint if applicable)

- a) Formal Complaint
- b) Informal Complaint
- c) Complaint No. \_\_\_\_\_
- d) Programmed Inspection
- e) Nonprogrammed Insp.
- f) Comprehensive Inspection
- g) Partial Inspection
- h) Imminent Danger
- i) Fatality/Catastrophe
- j) Referral
- k) Follow-Up
- l) Records Review
- m) Monitoring/Industrial Hygiene/Health Inspection

Names, job titles, and/or badge numbers and comments (where possible) of all employees interviewed (management and hourly; indicate which employees accompanied the agency inspector during the visit):

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Description of all monitoring devices used (give details of location monitored, manufacturer and model numbers of equipment, serial and lot numbers of sampling media, contaminant and results, if available, whether duplicate Company sampling was performed, etc.): \_\_\_\_\_

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\_\_\_\_\_  
Description of all plant locations visited/reviewed by the agency inspector: \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Comments of agency inspector (associated with visit, other operating conditions, observations, equipment/  
process(es) suggested as hazardous, etc.): \_\_\_\_\_

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\_\_\_\_\_

Date of Closing Conference: \_\_\_\_\_ Time of Closing Conference: \_\_\_\_\_ a.m./p.m.

Citation(s) anticipated (give details): \_\_\_\_\_

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Corrective Actions to be Taken (be specific and give target closure dates for each): \_\_\_\_\_

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\_\_\_\_\_  
(Signature of Plant Manager or  
Designee)

\_\_\_\_\_  
(Signature of Safety Mgr. or Designee) (Date)