



NPCE

National Precast Concrete Association

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Strategies for Navigating an OSHA Inspection



Failing to plan is planning to fail...

- Precasters should have in place an OSHA Response Plan.
- The plan should, at minimum, lay out:
 - Who the first persons to make contact with OSHA (guard, receptionist, etc.) are to contact within the Company (plant manager, EHS, etc.).
 - Where OSHA is to be taken (i.e. a conference room in the administrative building).
 - Who is to be contacted from corporate (if anyone) and who will participate from the Company in the opening conference and walkaround portions of the inspection.

Failing to plan is planning to fail (cont.)

- Additionally, Precasters should have their OSHA 300 logs, 300A summaries, and 301 forms readily available for a minimum of the last 5 years.
- Precasters should delineate a responsive person who has access to these, and someone who has access to them in that person's absence.
- This is because an employer has 4 business hours from OSHA's request to provide the OSHA 300 logs, 300A summaries, and 301 forms to provide them or face penalty.

Failing to Plan is Planning to Fail....(cont.)

- Designate a knowledgeable person to report an OSHA reportable event. This person will be trained and know when to report them. (a late report results in a citation).
- Have a plan to consult EHS and/or legal to determine whether and when to create an incident report if the injury is significant, if there is an amputation, or if there is a fatality.
- Reports done at the direction of legal counsel may be privileged and protected. Otherwise, run-of-the-mill reports are fair game to OSHA and to plaintiff's attorneys (if there is a third-party lawsuit).

So, OSHA Is Here – Now What?

- Step #1: Determine the Reason OSHA is at the Worksite and the Scope of their Inspection.
 - OSHA needs to inform you of the reason they are at the Worksite. It could be because of an injury report, a complaint, a referral, or a programmed inspection.
 - More often than not, OSHA is at your place of business because of an injury report or an employee complaint.



of the Inspection

- If OSHA responded to an amputation on a particular machine – the scope of their inspection should be limited to that particular machine and work process that was performed at the time of the accident.
- Likewise, if OSHA has a Complaint that alleges the employer does not have a guard on a particular machine, that machine's guard and surrounding area are the scope of the inspection.
- Typically, OSHA gains entry to inspect worksites through employer consent. Absent employer consent, OSHA must have a warrant, or they are trespassing.

Scope and Document Requests

- Scope doesn't just apply to the geographic area of the walkaround. It also applies to the documents requested by OSHA.
- If the injury involves guarding/LOTO, OSHA should not be requesting ladder-safety, powered-industrial truck, heat-illness, etc. But often they will try to obtain all of these documents from unwitting employers.
- Anything OSHA obtains, it will review, and if there is a deficiency the agency can cite the employer under applicable standards.

Handling Document Requests

- Very few documents are required to be provided to OSHA upon request or within a specified timeframe.
 - OSHA 300 logs, 300A summaries, 301 forms are required within 4 business hours of request.
 - SDS that are within the scope of the inspection are required to be readily available upon request.
- Take a written list of documents requested. Tell OSHA you will get back to them in reasonable time.
- Do not be bullied into providing documents during the on-site inspection. OSHA has six months to complete its investigation.

Why Wait to Provide Documents?

- Gives the employer an opportunity to evaluate what is within the scope and what is not, as well as to review for accuracy.
- Gives the employer time to evaluate other potential privileges (attorney-client, work-product, etc.).
- Gives the employer time to transmit the documents electronically so there is a record of what has been provided and when. Handing paper copies makes it difficult to determine a timeline of what was provided to the agency and when.

Opening Conference – Laying Ground Rules

- During the opening, after setting the scope, lay out the ground rules. Employer is entitled to take side-by-side photos, videos, and measurements, so let OSHA know you want to be informed of anything that is being done so you can do the same.
- Tell OSHA that if they intend to test anything (air sampling, noise, etc.) that this will have to be scheduled in the future so that the Company can have side-by-side testing by its own Industrial Hygienist.
- Inform OSHA of any trade secrets so they can be protected and separated in the investigatory. This way they are not released in future FOIA requests.

Interviews of Non-Managers and Managers

- OSHA will likely want to interview workers and members of management.
- Supervisors and managers “speak for” and bind the Company. So, any admission that a supervisor, manager, lead, or foreman may make to OSHA is as if the company had that knowledge and made that particular statement.
- If, for example, OSHA asks a manager how long he knew a guard was off of a machine and he responds 4 weeks, OSHA will take it as an admission that the Company as a whole knew of that hazard and violation for 4 weeks.

Critical Steps with Manager Interviews

- Do not permit managers and supervisors to be interviewed during the initial inspection. Schedule those interviews in the future. This permits time for them to have them understand the inspection and the types of questions they will be asked.
- OSHA cannot force an interview to occur that day if they do not have a subpoena. Do not have a subpoena 99% of the time, and subpoenas also must permit reasonable time for compliance.

Possibility of Criminal Liability Under OSH Act

- Under the Federal OSH Act, a Company and its managers can be held criminally and civilly liable when there is a willful violation resulting in a death.
- In these fatality cases, it is imperative that managers and supervisors not speak to OSHA right after the traumatic event. They need time to process and prepare before making statements to government officials.
- It wise to consult with experienced EHS professionals and/or legal counsel in such situations.

Non-Manager Interviews

- Usually permit in-scope non-management interviews (do they work on the machine at issue? Did they witness anything with the incident/complaint? If not, may not be within the scope).
- Advise Hourly Workers of their rights and obligations:
 - Obligation to tell the truth to OSHA.
 - Right to a private interview but can also have anyone they choose in the interview if they desire.
 - Do not have to sign anything if they do not want to but can agree to sign if they choose. Recommend they read whatever they sign carefully and that it is accurate.

Non-Manager Interviews (Cont.)

- Same with recording. Can choose to permit audio or video recording or interview or can decline.
- Inform them that the Company will not retaliate against the worker for talking with OSHA or cooperating in the investigation. This is illegal, and we should remind the employee no retaliation will occur or be tolerated.

Best Practices For Walkaround Inspection

- Take the most direct route to the area of the accident/complaint.
- Walk the route prior to taking OSHA, if possible, and fix any low-hanging fruit or housekeeping issues (do not alter the accident scene if it has been previously preserved).
- Shut down any forklifts, motorized pallet jacks, mobile cranes, and other mobile equipment on the route or within plain view if at all possible.
- OSHA can cite the employer for any violation that is in plain view and can also try to expand the inspection based on plain view violations.