



# Environmental Law Bulletin



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## What an Ohio Oil and Gas Producer or Affiliated Industry Company Needs to Know About an OSHA Inspection

A recent well publicized Ohio fatality highlights the simple truth that the oil and gas industry can be a dangerous business. This has been recognized by the Occupational Safety and Health Administration, better known as OSHA, which is charged with making sure that all workers perform their work in as safe an environment as possible. Historically sporadic enforcement of OSHA standards in the Ohio oil and gas industry may be coming to an end. This bulletin explains the information you need to know to be prepared for your company's next OSHA inspection.

### OSHA Inspections

The Occupational Safety and Health Act of 1970 authorizes OSHA to conduct inspections and otherwise make sure that employers provide a safe and healthy work environment. In most cases, OSHA does not provide advance notice of an inspection – and, even when it does, the notice will typically be less than 24 hours.

During an OSHA inspection, employers must be aware of their rights, and they should develop a set of best practices for handling the inspection. It is essential that you, as an employer, thoroughly train employees about their rights and responsibilities during an OSHA inspection and have an employer representative available to accompany OSHA's compliance officer when he or she comes calling. The following is a short checklist of a few best practices to follow during an OSHA inspection <sup>1</sup>:

- You have the right to ask the OSHA compliance officer to produce his or her credentials;
- You have the right to talk to OSHA with an employer representative present;
- Do not let OSHA put words in your mouth (you have the right to file an administrative complaint if OSHA does so);
- You have the right to refuse to sign a statement OSHA asks you to sign; and
- If you do sign a statement for OSHA, you have a right to receive a copy.

### OSHA and the Oil and Gas Industry

OSHA recognizes the inherent hazards associated with oil and gas well drilling, servicing and storage. OSHA has broken the industry down into four categories: (1) crude petroleum and natural gas; (2) drilling oil and gas wells; (3) oil and gas field exploration services; and (4) oil and gas field services, not elsewhere classified.

Between October 2007 and September 2008, OSHA issued slightly more than 1,407 citations, conducted more than 332 inspections, and imposed penalties in excess of \$1.7 million on oil and gas companies falling within these four categories throughout the United States, including Ohio.

- Always be truthful (i.e. if you do not recall information, say so);

## The Top Ten OSHA Violations by Oil and Gas Companies

In order to better identify areas of concern, OSHA compiles annual statistics by industry. The 10 standards most frequently cited by OSHA in 2008 in the oil and gas industry were as follows:

The General Duty Clause (A catch all category applied by OSHA whenever it cannot identify a more specific standard that has been violated and often used when there has been an injury or fatality.);

- Guarding floor walls and openings;
- Wiring methods, components and equipment for general use;
- Medical services and first aid;
- Hazard communications;
- Portable fire extinguishers;
- General requirements regarding protective equipment;
- General requirements regarding electrical equipment;
- Permit required in confined spaces; and
- Respiratory protection.

## Monetary Penalties

OSHA citations can carry proposed monetary penalties. The penalty structure created by OSHA establishes varying amounts of penalties depending upon the severity of the citations. For example, for willful and/or repeat violations of OSHA standards, the penalty can go up to **\$70,000 per violation**. For “serious” violations, the penalty can reach **\$7,000 per day**.

If your company receives an OSHA citation, all is not lost. Proposed penalties can often be negotiated downwards. Citations can be more formally challenged in a variety of ways. Affirmative defenses such as having a robust safety program that is regularly enforced can defeat a citation. But note, a citation not challenged in the first fifteen days cannot be appealed.

The most important thing to remember is to get your legal counsel involved early. This includes being proactive and developing a safety program for your company before OSHA comes calling. With questions or for additional information, contact one of the Bricker & Eckler attorneys listed below.

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### Foot Notes

<sup>1</sup>Each situation is different and this is not intended to be a complete list or to constitute specific legal advice. You should consult legal counsel with regard to specific legal questions.

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