

DOJ's and OSHA's Worker Endangerment Initiative

Civil and Criminal Enforcement Update

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Safety Conference & Expo
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Worker Endangerment Initiative

- OSH Act Criminal Provisions – Section 17
 - **Willful** violation of OSHA standard and said violation causes death of employee
 - Providing advance notice of an inspection
 - Knowing false statements, representations, or certifications
- Misdemeanor – a fine no more than \$10,000 and/or incarceration for no more than 6 mos.

Worker Endangerment Initiative

- DOJ – December 17, 2015 Memo
 - Prosecutors should charge other felony Title 18 offenses (false statements, obstruction of justice, witness tampering, conspiracy, mail/wire fraud)
 - USAO to work with Environmental Crimes Section
- MOU between DOJ and DOL

Worker Endangerment Initiative

- Endangerment crimes under Clean Air Act, Clean Water Act, and RCRA
- Knowingly commit underlying pollution crime
- Knew that such act(s) put another person in imminent danger of death or serious bodily injury
- CAA also has negligent endangerment

Worker Endangerment Initiative

- Civil Enforcement by DOJ Environmental Enforcement Section
 - Coordination with OSHA on injunctive relief and settlement framework
 - Cross-training EPA and OSHA inspectors
 - Information sharing
 - Worker safety concerns being investigated

Hot Work Violations

- *KTX Limited and
KTX Properties Inc.
– October 2016,
Port Arthur Texas,
16-cr-75 E.D.Tx.*



Hot Work Violations

- Chemical plant owners had contract employees conducting welding on piping connected to a tank
 - Failed to properly drain, isolate and decontaminate the tank and connecting equipment
 - Welding work ignited vapors causing the tank to explode and release hazardous air pollutants to the environment
- Prosecutors used the Clean Air Act
- Criminal - \$3.3 million

Hot Work Violations

- *U.S. v. Black Elk Energy, 15-cr-00197 E.D.La.*



Hot Work Violations

- Nov. 2012 Explosion
 - Three fatalities, 500 bbls into Gulf of Mexico
- Welding being conducted on a hydrocarbon line connected to a tank
- Criminal prosecution based on negligent discharge of oil into the Gulf of Mexico in violation of the Clean Water Act, and violations of the OCSLA

Confined Space Entry

- *U.S. v. Elias, D.Idaho 1999*
- Fertilizer Manufacturing Plant
- Employees ordered to clean inside of 25,000 gallon tank
- <https://www.youtube.com/watch?v=cfv9asREaFw&feature=youtu.be>

Confined Space Entry

- *U.S. v. Elias, D.Idaho 1999*
- EPA prosecutes case as an environmental case because employee did not die and OSH Act could not be used
- The jury convicted Elias of three counts of violating the **federal Resource Conservation and Recovery Act**, including illegal disposal of hazardous waste and knowingly endangering his employees and making false statements under Title 18

LOTO / Confined Space Entry

- *Behr Iron and Steel
July 2016, South
Beloit, Illinois
16-cr-50015, N.D.III*



LOTO / Confined Space Entry

- *Behr Iron and Steel – July 2016, South Beloit, Illinois*
- Scrap metal recycler
- Unguarded conveyor belt
- Criminal – 5 years probation and \$325,000 to victim's estate
- Civil - \$525,000 fine

Fall Protection

- *U.S. v. McCullagh, 2:15-CR-00237 (E.D. Pa)*
- Roofing company owner sentenced to 10 months in prison
- Employee fatality after falling approximately 45 feet from a roof bracket scaffold
- False Statements
- Obstruction of Justice
- OSH Act

OSHA General Duty Clause

- OSH Act Section 5
- (a) Each employer --
 - (1) shall furnish to each of his employees employment and a place of employment **which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;**
 - (2) shall comply with occupational safety and health standards promulgated under this Act.

General Duty Clause – OSHA and EPA

- Barton Solvents
- July 2007 Explosion
- Valley Center,
Kansas



General Duty Clause – OSHA and EPA

- OSHA brought a General Duty Clause Case and 1910.106 (flammable liquids)
 - Failed to test and inspect the pressure relieving and atmospheric vents on the tanks
- OSHA Settlement – January 2008
 - \$3,500 administrative penalty

General Duty Clause – OSHA and EPA

- Barton Solvents
- October 2007 Explosion
- Des Moines, Iowa



General Duty Clause – OSHA and EPA

- Iowa OSHA settlement – January 2008
- 29 CFR 1910.106(f)(3)(iv) regarding static protection
- \$3,500 administrative penalty

General Duty Clause – OSHA and EPA

- EPA involvement in Barton Solvents
- **Clean Air Act General Duty Clause**
- Other civil environmental claims pursued under ECPRA, CWA, and RCRA
- EPA Settlement – 15-cv-00378, D.Kan. October 2015
 - \$1.1 million civil penalty
 - Compliance requirements

Top 10 Most Frequently Cited Standards for Fiscal 2015 (Oct. 1, 2014, to Sept. 30, 2015)

Top 10 Most Frequently Cited

1. Fall protection (construction)
2. HazCom
3. Scaffolding
4. Respiratory Protection
5. Lockout/Tagout
6. Powered industrial trucks
7. Ladders (construction)
8. Electrical, wiring methods
9. Machine Guarding
10. Electrical, general

OSHA Inspection Priorities

- Imminent danger
- Fatalities and catastrophes
- Complaints
- Referrals
- Follow-up
- Planned or Programmed investigations
- Phone/Fax investigations

OSHA Citations

- OSHA has up to 6 months to issue citation
- Request for informal conference may be made (but does not stay 15-business day period)
- 15 business days for Citation Contest
- Must post at or near each location
- Area Director submits to Occupational Safety and Health Review Commission (OSHRC)
- Triggers Issuance of Complaint and administrative hearing process

OSHA Penalties

Type of Violation	Statutory Penalty	New Maximum Penalty as of August 1, 2016*	New Penalty Adjusted for Inflation as of January 13, 2017
Serious Other-than-serious Posting	\$7,000 per violation	\$12,471 per violation	\$12,675 per violation
Failure to abate	\$7,000 per day	\$12,471 per day	\$12,675 per day
Willful or Repeat	\$70,000 per violation	\$124,709 per violation	\$126,749 per violation

*78% increase, last adjusted in 1990, but going forward to be adjusted every year
http://www.spencerfane.com/environmental_law_solutions/blog.aspx?entry=1168

Questions?

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