



# OSHA Takes Aim at Poultry Processors: How to Get out of the Line of Fire

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# Today's Speakers



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# Agenda

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- Poultry Industry in the Crosshairs
- Legal Role
- Safety Responsibilities
- Pre-inspection & Inspection
- Citations & Penalties
- OSHA Enforcement Actions: Industry Reaction
- Q & A

# Poultry Industry in the Crosshairs

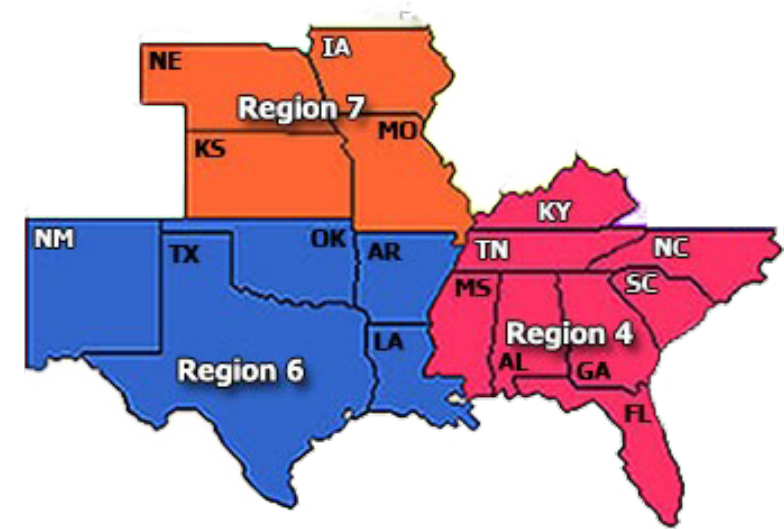


# Thank You for Your Commitment to Safety



# Poultry Industry in the Crosshairs

- Inspection Guidance for Poultry Slaughtering & Processing – 10/28/15
- Regional Emphasis Programs
  - Region IV – 10/26/15
  - Region VI – 10/26/15
  - Region VII – 3/11/16
- Enforcement Weighting System – 10/30/15
  - Significant costs – 8 EUs
  - Process safety management inspections – 7 Eus
  - Ergonomic hazard inspections – 5 Eus
- Northwest Arkansas Workers justice Center Report on wages and working conditions



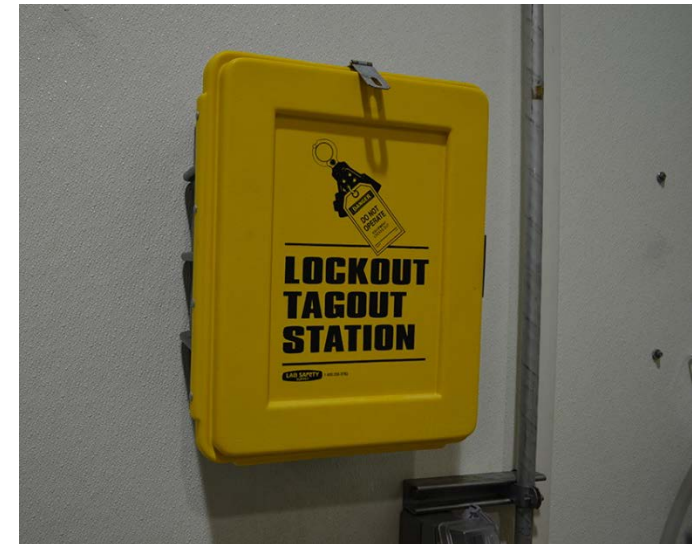
# Poultry Industry in the Crosshairs

- Regional Emphasis Program focus
  - Comprehensive safety and health inspections, including sanitation
  - OSHA recordkeeping
  - Medical records
  - Ergonomics (MSDs)
  - Process safety management
  - Confined spaces
  - Electrical
  - Hazard communications
  - Hexavalent chromium
  - Machine guarding/lockout/tagout
  - Biological hazards – campylobacter and methicillin-resistant staph aureus (MRSA)



# Poultry Industry in the Crosshairs

- Inspection Guidance focused areas
  - Ergonomics (MSDs)
  - Personal protective equipment payment
  - Lockout/tagout
  - Machine guarding
  - Electrical
  - Slips, trips and falls
  - Process safety management – ammonia
  - Chemical hazards
  - Occupational noise
  - Egress and blocked exits
  - Sanitation and cleaning operations





# Supervisor Legal Role in OSHA Citations

To issue a federal OSHA citation, OSHA must prove that an employer knew of a violation, or with exercise of reasonable diligence, could have known of a non-compliant condition.



# Supervisor Legal Role in OSHA Citations: Learning of OSHA Violations

“Because employers can only obtain knowledge through their agents, the actions and knowledge of supervisory personnel are generally imputed to their employers, and the Secretary can make a prima facie showing of knowledge by providing that a supervisory employee knew of or was responsible for the violation.”

# Safety Responsibility: Discipline – The Key Element

Discipline has a “*pro-employee*” purpose and is the cornerstone of an effective safety management program. Analyze the role of Discipline by the elements of the OSHA “Affirmative Defense” of “Unpreventable Employee Misconduct.”

# Safety Responsibility: Unpreventable Employee Misconduct Defense Elements

- **Establish** work rules designed to ensure safe work and to avoid OSHA violations
- **Communicate** the work rules to employees
- **Train** the employees as needed
- Take appropriate steps to **discover** violations
- Effectively **enforce** the rules and practices when violations are discovered; and
- **Document the above actions**

# OSHA's Top 10 Most Cited Violations NAICS 311615: Poultry Processing

1. Process safety management of highly-hazardous chemicals (1910.0119)
2. Control of hazardous energy (lockout/tagout) (1910.0147)
3. Machine guarding, general requirements (1910.0212)
4. Electrical – wiring methods, components and equipment for general use (1910.0305)
5. Electrical – general requirements (1910.0303)

# OSHA's Top 10 Most Cited Violations NAICS 311615: Poultry Processing

6. Maintenance, safeguards and operational features for exit routes (1910.0037)
7. Guarding floor and wall openings and holes (1910.0023)
8. Machine guarding – mechanical power-transmission apparatus (1910.0219)
9. Hazard communication (1910.1200)
10. OSHA Act General Duty (5A0001)



# Coverage & Exemptions

General rule: applies to all employers

- In all states, territories, & D.C.
- Except as specifically exempted
  - Self-employed
  - Family farm
  - State and local government (except state plans)
  - Workplaces covered by other laws (e.g., mining, railroads, airlines)





# Fundamental Requirements Under the Act

- Report all work-related fatalities to OSHA within 8 hours (including fatal heart attacks if work-related)
- Report an in-patience hospitalization, loss of eye or amputation within 24 hours
- Record most work-related deaths, injuries and illnesses on OSHA 300 log
- Section 11(c) of Act prohibits employers from discharging, retaliating or discriminating against employees executing their protected rights



# Pre-Inspection Action Plan

- OSHA Poster
- Assignment of responsibilities
- Training/recordkeeping
- Hazard assessment and abatement
- Equipment needed during inspection
- Review of previous citations
- **Review of insurance and third-party audits**
- **Periodic audits and reviews**
- If using temporary employees, check 300 logs and training



# Why me?



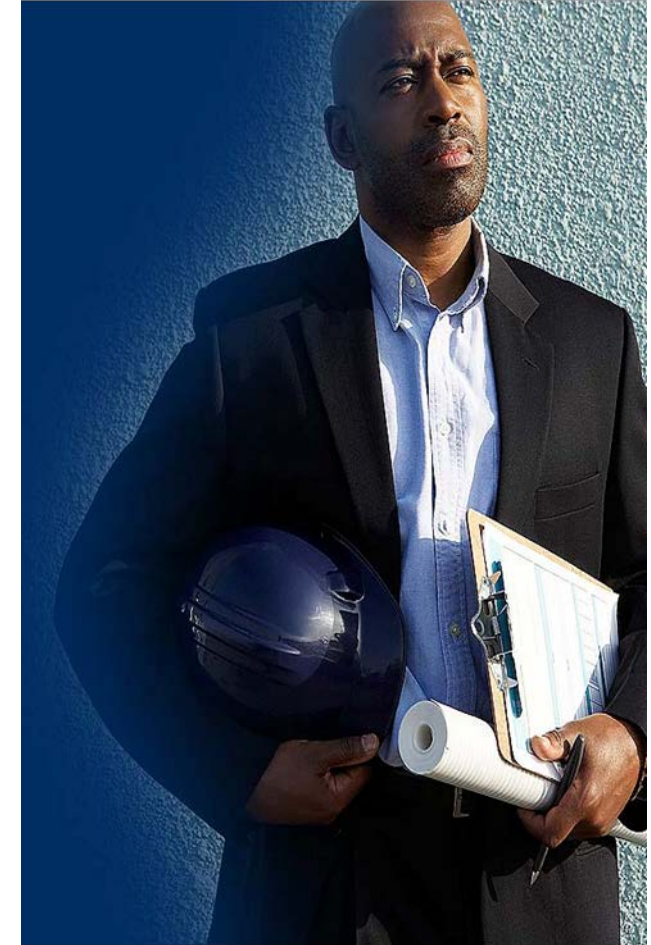
## INSPECTION PRIORITIES

- Imminent danger
- Fatalities/catastrophic accidents
- Employee complaints/referrals
- High-hazard industries &
- Special emphasis programs

NOTE: With new recordkeeping requirements, many new self-referral inspections.

# Throughout the Entire Inspection Always Remember:

- It is your facility
- You have rights:
  - Inspection conducted in a reasonable manner
  - Inspection conducted during a reasonable time
- Completion of inspection within 6 months
- Be cooperative and responsive **but maintain control of the inspection**



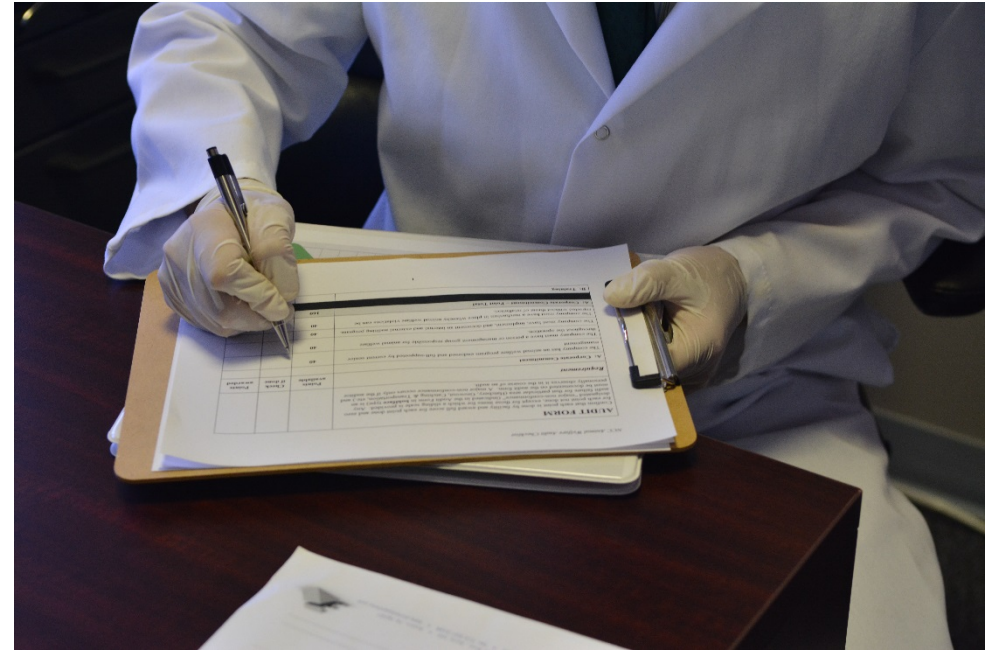
# Maintaining Control

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- Includes determining before an inspection:
  - What OSHA standards are applicable – do you comply?
  - Assure support staff (receptionists, secretaries, guards) are trained
  - Know what to say when government is at your door
  - Who is the right company person to contact, including your OSHA Counsel?

# The Knock

- **No advance knowledge**
- Will not “come back later” – 1-hour rule
- Credentials – if unsure, call Area Director to confirm



# Should You Demand a Warrant?

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- A policy call
- Few employers routinely require warrants
- May be necessary to gain time, such as when a manager or counsel needs to be present
- An “ex parte” procedure



# Opening Conference

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- Ascertain purpose of the inspection
- Establish “scope” of the Inspection – get copy of complaint if applicable
- Set ground rules for inspection
- **Don’t volunteer information**
- Treat the Inspector in a professional fashion
- Notification of corporate officials and counsel
- Coordination with on-site contractors and vendors
- Trade secret issues

# The Walkaround

- Inspection may last several hours or several months
- **Employer – right to accompany Compliance Officer (“CO”)**
- An Employee Representative, if any, must be permitted to attend entire inspection
- Limit the area seen by the CO



# The Walkaround

- Require CO to comply with all company safety and health rules, including training, where applicable
- Take accurate notes on areas reviewed and all discussions and comments from CO
- Do everything the CO does (photos, video, air monitoring, etc.)
- Maintain control
- **No staging of event or accident**
- **No destruction of evidence or misrepresentations – even if inadvertently**

# The Inspection

- CO will usually take photographs
  - Video equipment
  - Right to protect proprietary trade secrets
- CO may perform relevant tests
  - e.g., air sampling, noise monitoring
- **Advise CO that only side-by-side sampling or monitoring will be allowed**



# The Inspection

- Hourly employee interviews
  - OSHA takes position no management present
  - Up to employee – can have Employee Representative
  - **Advise employee of his/her rights, appreciation of cooperation, and to tell the truth**
- Warning: employees have whistleblower rights
- Make sure employees know their rights

# The Inspection

- Management and supervisor interviews
  - **Always another management/counsel present – agent of Company**
  - Definition of manager?
  - Fatality investigation – attorney always present
  - **No tape-recording**
  - **Signed statement**
  - Always prepare managers for an OSHA interview

# The Inspection

- Documentation – watch out for the checklist
  - Recordkeeping
  - Training
  - Safety and health policies
  - Monitoring results
  - Medical surveillance
  - Medical access orders
  - **Previous safety audits**
  - **Standard required documents**





# Closing Conference

- **Employer's opportunity for free discovery**
- Advise of observed unsafe conditions
- Usually, brief description as to possible violations – no discussion of penalties, classification and abatement dates
- Note any abatement made during the inspection
- Suggest possible corrections
- Request photos and monitoring results
- Discuss appeal rights
- **Not a time for debate**

# Citations

- In writing
- Violation described “with particularity”
- Timely – citation must issue within 6 months of the violation
- Proposed penalty specified
- Served by certified mail
- Post for 3 days or until abatement, whichever is longer



# Penalties

NOTE: In August 2016 all OSHA penalties will increase **82%**

- Other than serious
  - Up to \$7,000 per violation (\$12,500 Aug. 2016)
- Serious
  - Up to \$7,000 per violation (\$12,500 Aug. 2016)



# Penalties

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- Willful
  - Up to \$70,000 per violation (\$125,000 Aug. 2016)
  - Grouping Permitted
  - \$5,000 Minimum
- Repeat
  - Up to \$70,000 per violation (\$125,000 Aug. 2016)
- Egregious
  - Up to \$70,000 per violation (\$125,000 Aug. 2016)
  - No Grouping
- Failure to abate
  - Up to \$7,000 per day

# Penalties – Criminal Violations

- Willful violation & employee death:
  - \$10,000 or 6 months or both
  - Second conviction: \$20,000 or 12 months or both
- Advance notice of inspection
  - \$1,000 or 6 months or both
- Falsification of required records, etc.
  - \$10,000 or 6 months or both
- Murder or attempted murder of CO
  - Term of years to life

# Citation Options

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- Agree to citations, pay full penalty – **NEVER!**
- Informal conference/informal settlement
- **Notice of Contest – 15 working days (Federal); some state plan states different time period**
- Formal settlement
- Hearing

# Hearings

- Occupational Safety and Health Review Commission
- Formal complaint and answer
- Discovery similar to Federal Court
- Hearing before Administrative Law Judge
- ALJ issues written opinion
- Appeal to three-member Review Commission
- Other options – expedited proceedings



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# Be Safe!

REMEMBER:  
Bad decisions make good  
stories and usually the  
evening news.



# OSHA Enforcement Actions: Industry Reaction



# Voice of the Industry – Recent History

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## Joint Industry Safety & Health Council

- 92 facilities recognized for outstanding safety performance in 2013
- 96 facilities recognized for outstanding safety performance in 2014

## Leaders continuing to improve execution on good practice:

- VPP, LEAN, TPM, High-performing work units
- JSA
- Safety Committee
- Trending in the right direction but “putting more coal in the hopper”

*But let's take measure of the current buzzwords...*

# Voice of the Industry – Current Themes

A quick google search reveals key themes from safety leaders across the industry:

- A “culture of communication”
- “Create a culture of safety engagement”
- “Active associate participation”
- “Correct, control, and prevent workplace hazards”



*We have heard many of these quotes and slogans before...so what has changed and why? How can this impact the “knock at the door”?*

# Voice of the Industry – What's New?

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- Proactive safety culture – broad recognition of benefits
- Company/plant culture – a reset on orientation and onboarding
- Supervisor – Line Worker engagement: on-the-floor communication
- Observation, verification, and coaching of right behaviors
- Supervisor and Team Leaders as Facilitators and Coaches
- Coordinated communication: training/huddles/signage
- Voice of the workforce: perception surveys

*How can Alchemy help?*

# 24/7 Inspection-Ready

## Huddle Guides

Inform and engage workers with practical tools and information

Equip Managers and Supervisors to be safety leaders



## Employee Observations

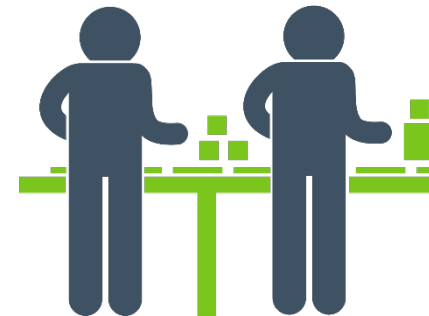
Increase supervisor/employee interaction and communication

Validate employee understanding

## Digital Signage

Reinforce key training topics

Improve control and message quality to entire company



## Mind of the Food Worker

Understand what drives today's frontline workforce

Determine how you can better motivate your employees

# Q&A



# THANK YOU