



507:What You Should Know About Reducing Exposure Under OSHA

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Faculty Biographies

Thomas M. Giller

Thomas M. Giller is chief environmental and safety counsel at Kraft, working with the company's environmental and safety departments to provide counseling and guidance on environmental and safety issues at the company's facilities throughout North America. He also cochairs the company's Environmental Policy Core Team, which prioritizes, defines positions, and tracks state and federal legislative and regulatory issues for the company.

Prior to joining Kraft, Mr. Giller held a number of positions, as an environmental associate and partner in a Chicago law firm, a trial attorney for the U.S. Department of Justice Environmental Enforcement Section, and, immediately before coming to Kraft, as Environmental, Safety and Litigation Counsel for Safety-Kleen Corp., an environmental services company.

Mr. Giller has been active in a number of community and charitable organizations, including the National MS Society and American Youth Soccer Organization.

He received his a bachelors degree from Haverford College, law degree from the University of California—Hastings College of Law, and also holds a Masters in Energy & Resources from UC—Berkeley.

Neil H. Wasser

Neil H. Wasser is a managing member (partner) with Constangy, Brooks & Smith, a law firm representing management, exclusively, in labor and employment law matters. Mr. Wasser is based out of the firm's Atlanta office. He specializes in assisting companies with OSHA compliance obligations and establishing safety and health programs. He also represents client companies during OSHA inspections, defends them against OSHA citations, and is widely regarded as a top national expert in OSHA recordkeeping training.

Assisting global companies is another area where Mr. Wasser has expertise. He has guided them through their compliance obligations in the United States and in establishing and improving employee safety and health programs in Europe and Latin America.

Mr. Wasser is a member of the board of directors of the Atlanta Humane Society. He is also a frequent speaker for other organizations, including the Society for Human Resource Management, the American Meat Institute, and the American Textile Manufacturers Association.

Mr. Wasser earned his BS from Tulane University, *magna cum laude*, and received his JD from the University of Georgia.

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Topics

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2. Preventing Your Next Complaint Inspection
3. Labor Unrest
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6. Preventing Repeat Violations
7. Preventing Willful Violations
8. Your Mail Room Procedures
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10. OSHA Recordkeeping
11. Off-the-job Safety

OSH Act (1970)

- General Duty Clause - furnish employment free from recognized hazards causing or likely to cause death or serious physical harm to employees.
- General and Industry Specific Standards
- 1123 federal inspectors, 2300 employees
- 26 State OSHA Plans – 10 Federal OSHA Regions
- Enforcement, Consultation, Standard Setting, Cooperative Programs
- March 1991 maximum penalty adjustment:
 - \$7,000 for serious and other than serious violations
 - \$70,000 for willful and repeat violations

Staying Current With OSHA

- www.osha.gov (3-4 million visitors/month)
- Easy to use – interpretive letters/guidance, Inspection Manuals
- OSHA's bi-monthly e-memos that describe what's new at OSHA – online sign-up <http://www.osha.gov/delphi-img/QuickTakes/subscribe.html>
- On-line inspection/enforcement history by employer/facility <http://www.osha.gov/cgi-bin/est/est1>

Preparing For and Preventing Your Next Inspection

- Complaint Inspections
- Labor Unrest
- Most Frequently Cited OSHA Standards
- Site Specific Targeting
- Repeat Violations
- Willful Violations
- Procedures for “What to do when OSHA Knocks”

Inspection/Enforcement Process

- Triggering event (e.g., complaint, programmed inspection)
- Opening conference
- Inspection (photos, interviews)
- Closing conference
- Citation
- Informal Conference
- Notice of Contest
- Administrative Hearing Process
- Defenses

OSHA Inspections FY 02

- FY 02 – 37,493 Federal Inspections
 - 29,463 safety inspections vs. 8,030 health inspections
- Percent of contested cases: 8% in FY 02
 - Down from 10% in FY 99
- Average number of violations cited per initial inspection in FY 02 – 3.2
 - Down from 3.5 in FY 99
- Average penalty per serious violation in FY 02 - \$977 – Up from \$906 in FY 99

Complaint Inspections

- Complaint inspections = 7,877 per year
- Phone-fax complaint investigations
 - Timely investigation and response
 - Attorney involvement
 - Impact on other facilities
- April 2000 - OSHA began allowing on-line complaints. A 19 question form – 10 minutes
 - OSHA receives approximately 5,000 electronic complaints per year.
 - www.osha.gov/as/opa/spanish/complaintform-sp.html
 - www.osha.gov/pls/osha7/eComplaintForm.html

Preventing Your Next Complaint Inspection

- Review company procedures for employees to raise safety and health concerns
 - Are they well publicized, easy to use, confidential, credible? Is there any fear of reprisal?
 - Section 11(c) Retaliation
- Are supervisors trained so that they understand “complaints are good”?
- Is there a documented procedure for prompt investigation and follow-up on complaints?
- Review work order system. Are work orders prioritized, timely processed and tracked (e.g., action registers)?

Labor Unrest ? ? ?

- General Accounting Office Report, August 2000.
 - OSHA Inspections at Establishments Experiencing Labor Unrest. The report found that establishments experiencing labor unrest are approximately 6.5 times more likely to be inspected by OSHA than establishments not experiencing labor unrest.
 - www.gao.gov/new.items/he00144.pdf

Frequently Cited Standards - 2002 General Industry v. Your Industry {SIC 5411 – Grocery Stores}



1.	Hazard Comm	1910.1200	{#2}
2.	Personal Protective Equip.	1910.134	{#16}
3.	Lockout Tagout	1910.147	{#11}
4.	Wiring Methods	1910.305	{#5}
5.	Machine Guarding	1910.212	{#7}
6.	Powered Ind. Trucks	1910.178	{#9}
7.	Electrical	1910.303	{#4}
8.	Mech. Power Trans.	1910.219	{#40}
9.	Bloodborne Pathogens	1910.1030	{#44}
10.	Process Safety Mgm.	1910.119	{#1}

How to find the most frequently cited standards for your workplace?
Prepare for an on-site inspection.

- Look up your SIC. <http://www.osha.gov/cgi-bin/est/est1>
- Search your industry. www.osha.gov/oshstats/std1.html

Site Specific Targeting

- OSHA's current SST Inspection Plan (based on 2001 Data):
 - *Primary inspection list: All worksites with an LWDII rate at or above 14 or, a DAFWII rate of 9 or more*
 - *Secondary inspection list: All workplaces with LWDII rate at or above 8 but below 14 or a DAFWII rate of between 4 and 9*
 - *200 workplaces randomly selected for inspection with LWDII rates between 0 and 8*
- Is your facility on the SST list?

Preventing Repeat Citations

- Repeat violation = when a new citation is issued to an employer who has been previously cited for a substantially similar condition within the last 3 years; \$5,000 - \$70,000 penalty range
- Repeat violation prevention:
 - Review your **Company's** past citations and ensure that all cited items have been abated and have remained abated
 - www.osha.gov/cgi-bin/est/est1
- Communicate internally – lessons learned
- Examine **other equipment** and **other facilities**

Preventing Willful Violations

- Willful violation = awareness of a violation or plain indifference to a known hazardous condition; \$5,000 - \$70,000 penalty range
 - Willful violation prevention:
 - Verify that all internal and external audits / inspections have been closed out and documented
 - Workers' compensation carrier audits
 - Fire safety audits
 - www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=16434&p_text_version=FALSE
 - Supervisor knowledge

Compliance Audits/Inspections

- Clearly defined scope & protocol that is regularly reviewed, updated
- Commitment of resources **in advance**
 - Qualified personnel to perform the audit/inspection
 - Auditor time on plant floor
 - Documented closure of the audit / inspection
- Interim controls
- Timely abatement/time lines/designated responsibilities.
- Audit Frequency
- Attorney-client privilege/OSHA Audit Policy
 - http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_tabl e=FEDERAL_REGISTER&p_id=16434

Notice of Contest

- Filing your notice of contest - 29 USC §659(a) - employers have **15 working days** (from citation receipt) to file a **notice of contest**. Failure to file within such time means that “the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.”
- Do you have orderly mailroom procedures for handling important mail – are they communicated and enforced?
- If not, your name could be Mudd.

Ergonomics

- March 20, 2001 – Congressional disapproval Bill killing the ergo standard that had been issued November 14, 2000. Bush Administration promises a “comprehensive approach”
- April 5, 2002, Administration said “yes” to comprehensive approach to ergonomics that includes “Guidelines”
 - Nursing homes (**Guidelines issued March 13, 2003**)
 - Retail grocery establishments
 - Poultry processing operations
- February 2003, OSHA issued four general duty ergonomic citations. Expect more in ‘03 and ‘04
- Ergonomics Programs Work and Increase Productivity
- OSHA alliances (e.g., AMI)

Safety and Health Training

- Our ugly secret
- Training matrix that includes both OSHA mandated and non-mandated training
- Qualified Instructors
- Targeted educational levels/languages
- Assessment of training quality
- OSHA Training Requirements Publication
 - www.osha.gov/Publications/osha2254.pdf

How Not To Train

- Fatality case in which the employee was killed on his first day on the job while working on a telecommunications tower.
- Iowa Department of Labor investigated. The company president, when asked during the opening conference about safety training, told the inspector that it was his practice “**to train after we can see if they can hack it.**”
- Iowa Supreme Court ruled that the statements by the president were admissible when the company later faced criminal charges for the fatality. State v. Trigon Inc. (2/26/03)

Injury and Illness Rates

- 1998 – I/I rate of 6.7 cases per 100 FTEs
 - LWDII = 3.1
- 1999 – I/I rate of 6.3 cases per 100 FTEs
 - LWDII = 3.0
- 2000 – I/I rate of 6.1 cases per 100 FTEs
 - LWDII = 3.0
- 2001 – I/I rate of 5.7 cases per 100 FTEs
 - LWDII = 2.8
- **Each year, these rates reflect the lowest levels since BLS began reporting data in the early 1970's.**
 - www.bls.gov/iif/oshwc/osh/os/osnr0016.pdf

New Recordkeeping Rules

- New rules effective January 1, 2002
- Effective 2003 - OSHA 300A Summary must be posted for three months – February 1 to April 30th
- Effective 2003 - OSHA 300A Summary must be signed by Company Executive – owner, officer, highest ranking company official working at the establishment, or that person's immediate supervisor
- Privacy Concern Cases

The 120 day grace period for enforcement ended on April 30, 2002.

Take the recordkeeping promise.

Potential Legislation

- June 17, 2003 - Senator Jon Corzine (D-N.J.) – introduced a bill to amend the OSH Act to increase the maximum criminal penalty for employers who cause the death of an employee by willful violation to 10 years.
 - *Currently, Section 17(e) of OSH Act – a willful violation of standard that causes the death of an employee – punishable “by a fine of not more than \$10,000 or by imprisonment for not more than six months or both.”*

Argument for Increased Penalties

- Did You Know that the penalty for:
 - knowing and for profit reproduction of the character “Smokey Bear” - (18 USC §711);
 - knowingly and for profit reproducing the character “Woodsy Owl” or the slogan “Give a Hoot, Don’t pollute” (18 USC §711a);
 - Using an aircraft or motor vehicle to hunt, . . . wild, unbranded . . . Burro running at large on any public land (18 USC §47); and,
 - Wearing the 4-H club with intent to defraud for the purpose of inducing belief that one is a member of or associated with the 4-H club -fine and/or “imprisoned for not more than six months.” (18 USC §707)
- Is a fine and/or “imprisoned for not more than six months.”
 - P.S. – transportation of dentures across state lines without a prescription. (18 USC §1821)

Off-the-Job Safety

Did You Know? From July 2000 – June 2001 – U.S. employers spent \$38 Billion on unintentional injuries to employees in their homes. (2002 Home Safety Council report.)

- Cell Phones
- Exercise
- Automobile Safety
- Shopping Carts
- Ladders

Off-the-Job Safety (continued)

- Harvard Center for Risk Analysis study (2003) - cell phones result in approximately 2600 traffic deaths per year www.hcra.harvard.edu/cellphones.html
- 1996 U.S. Surgeon General – **moderate amount of daily physical activity** (e.g., 30 minutes of brisk walking) - reduces risk of heart disease, high blood pressure, etc. www.cdc.gov/nccdphp/sgr/adults.htm
- 42,116 motor vehicle fatalities in 2001. Check crash test results on your next car www.nhtsa.gov/cars/testing/ncap/
- 12,800 emergency room visits per year - children age 5 and under falling out of shopping carts www.cpsc.gov/cpspub/pubs/5075.html
- 511,000 treated annually - failure to use ladders safely

2002 Revised Publications

- **Job Hazard Analysis**
Revised: 2002
- **Access to Medical and Exposure Records**
Revised: 2002
- **Controlling Electrical Hazards**
Revised: 2002
- **Materials Handling and Storing**
Revised: 2002
- **Respiratory Protection**
Revised: 2002
- **Heat Stress Card (English) (Spanish)**
Revised: 2002
– www.osha.gov/pls/publications/pubindex.list

Final Thoughts

Now is the time to:

- Close out and document all of your audits
- Ensure that your company has effective, well-communicated mechanisms for employees to raise safety concerns
- Review your company's citation history and confirm abatement status
- Review your mail room procedures
- Verify that your facilities are practicing accurate recordkeeping and analyzing trends to develop controls that reduce injuries and illnesses
- Review effectiveness of your company's safety training program

SPECIFIC PROCEDURES FOR DURING AND AFTER AN OSHA INSPECTION

Presented by Neil H. Wasser, Constangy, Brooks & Smith, LLC

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 facility 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 Coordinator/Manager and notify them of the presence of the Compliance Officer at the facility.
- c. The Plant Manager or Safety Coordinator/Manager should then advise the Corporate Safety Department and the General Counsel's Office that there is an OSHA Compliance Officer at the facility. 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 Coordinator/Manager. If the Compliance Officer does not do so on his own, the Plant Manager or Safety Coordinator/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, 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 the Director of Human Resources 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 facility, 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 facility'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 facility to take samples alongside the OSHA industrial hygienist. This ensures that the employer is not unjustly cited because of erroneous laboratory analysis or results which 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 limit the scope of the inspection to the cited condition identified in the complaint/referral. Although the identity of the complainant employee is confidential, the Compliance Officer will provide an expurgated copy of the complaint, upon request. The Compliance Officer, however, may decline to provide a copy of a referral.
- e. 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 facility'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 facility 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 facility 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 Corporate Safety Department and/or 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 facility, photocopy the warrant and any supporting documentation and contact the Corporate Safety Department and/or General Counsel's Office for guidance. The warrant should include the exact facility 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. 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. 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. 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 facility should keep a list of all records shown to OSHA during the inspection, specifying which records were copied.
- e. During the walkaround inspection, Company representatives and the Compliance Officer will use the following personal protective safety equipment as necessary -- hearing protection, safety glasses or goggles, hard hat, respirator.
- 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.
- b. 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.
- c. 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.

d. 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.

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.

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.