

SPFA SAFETY BREAKOUT SESSION

1. **Contractor Safety Overview: SPFA Member Programs**

Rick Duncan, SPFA

1. **Managing an OSHA Inspection**

Joe Bolduc CSP, Masco Contractor Services



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Contractor Safety Overview: SPFA
Member Programs

Rick Duncan
SPFA



WHY IS SAFETY IMPORTANT?

It is all about **LIFE**

- Legal
- Insurance
- Financial
- Ethical

LEGAL - IT IS THE LAW

- OSHA, EPA and DOT set environmental and safety standards
- Civil penalties and criminal actions can be brought against companies, managers and employees for non-compliance



LEGAL - YOU CAN BE SUED

Tort Liability:

- You can be subject to legal action (tort liability)
- Tort is a basis for court actions



Defendant must have a legal duty to perform
(you must run your business safely)

Defendant must have failed to properly perform that duty
(you didn't run it safely)

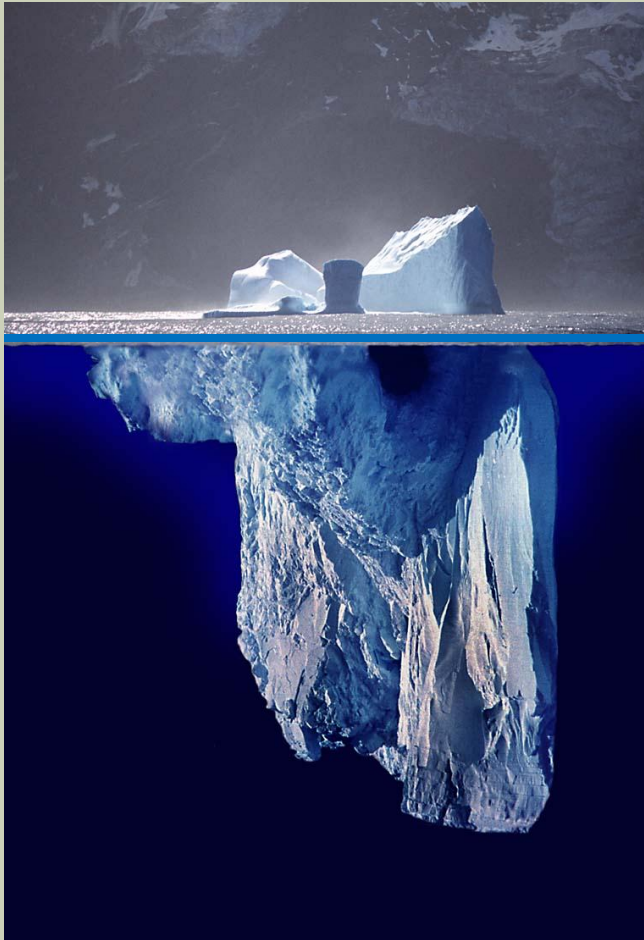
Plaintiff must have suffered damage as a result
(the person suing you was hurt)

INSURANCE - INSURERS REWARD SAFETY

- When companies have fewer Incidents, their insurance rates go down
- Lower costs result in bidding success, and overall profitability

Classification	Code	Rate	Payroll	Premium
Clerical	8810	0.32	\$100,000	\$320.00
Outside Sales	8742	0.78	\$75,000	\$585.00
Machine Shop	3632	6.75	\$750,000	\$50,625.00
Manual Premium				\$51,530.00
Experience Modification Factor				0.78
Modified Premium				\$40,193.40

FINANCIAL – ACCIDENTS COST MONEY



\$1 – Injury and Illness

Medical and Compensation (insured cost)

\$5-50 – Ledger Costs

Repair or replacement of building,
equipment, product, etc.

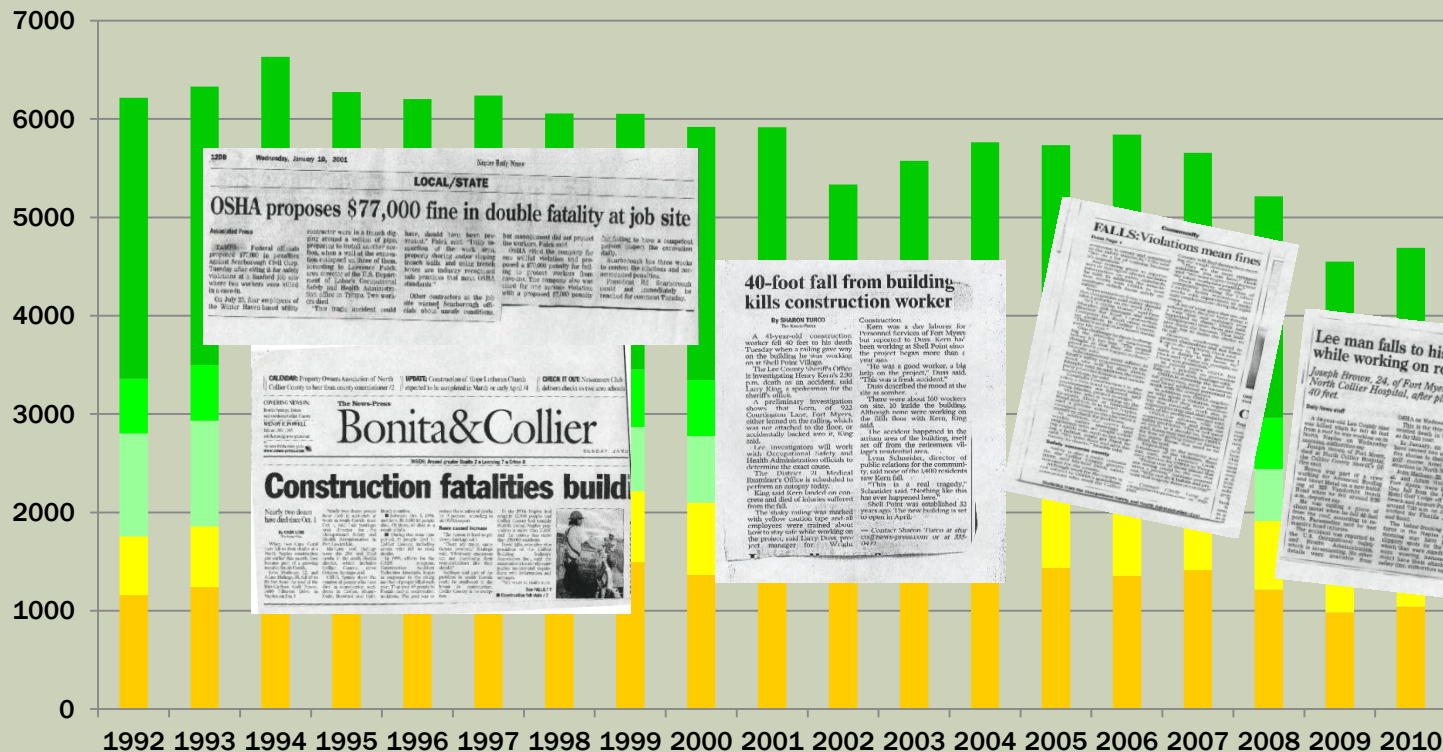
\$100-300 – Uninsured Costs

Accident investigation and recording
Hiring and training replacement
Overtime to 'catch up'
Reduced production of returning worker
Loss of business

ETHICAL – ACCIDENTS HURT AND KILL

- On average there are around 5,000 fatal workplace injuries in the US each year

Annual U.S. Workplace Fatalities 1992-2010



OTHER
Struck-By
Homicide
Falls
Highway



ETHICAL – ACCIDENTS HURT AND KILL

- These injuries and fatalities affect families
- How would an incident affect your family?



WHAT SHOULD AN SPF-CONTRACTOR DO?



FOUR ELEMENTS OF AN OSHA-COMPLIANT SAFETY PROGRAM



MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT

Employers and employees work together to make safety and health a priority. Employer and employee communication is essential.

Actions you can take include:

- Post the company's written safety and health policy for all to see.
- Involve employees in policy making on safety and health issues.
- Take an active part in safety activities.
- Hold meetings that focus on employee safety and health.
- Abide by all safety and health rules.
- Invest time, effort, and money in your safety and health program.

WORKSITE ANALYSIS

A worksite analysis means that managers and employees analyze all worksite conditions to identify and eliminate existing or potential hazards. There should be a comprehensive, baseline survey, with a system in place for periodic updates.

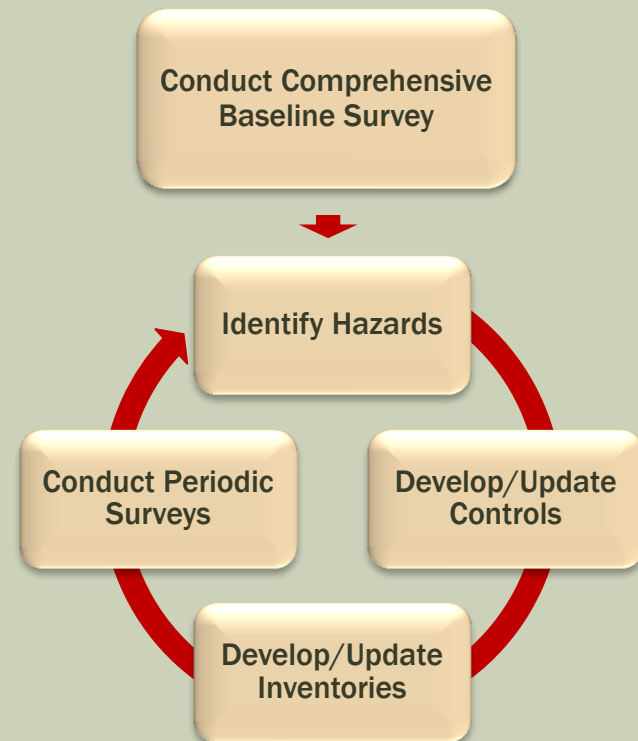
Actions you can take include:

- Request a free OSHA consultation visit
- Become aware of hazards in your industry
- Create safety teams
- Encourage employee reporting of hazards
- Have an adequate system for reporting hazards
- Have trained personnel conduct inspections of the worksite and correct hazards
- Ensure that any changes in process or new hazards are reviewed
- Seek assistance from safety and health experts

WORKSITE ANALYSIS

Actions you can take include:

- Conduct a comprehensive, baseline survey for safety and health and periodic, comprehensive update surveys.
- Change analysis of planned and new facilities, processes, materials, and equipment.
- Perform routine job hazard analyses.
- Conduct periodic and daily safety and health inspections of the workplace.



HAZARD PREVENTION & CONTROL

Continually review the work environment and work practices to control or prevent workplace hazards.

Actions you can take include:

- Regularly and thoroughly maintain equipment
- Ensure that hazard correction procedures are in place
- Ensure that everyone knows how to use and maintain personal protective equipment
- Make sure that everyone understands and follows safe work procedures
- Ensure that, when needed, there is a medical program tailored to your facility to help prevent workplace hazards and exposures

HAZARD PREVENTION & CONTROL

After detection, all current and potential hazards must be prevented, corrected or controlled. Systems used to prevent and control hazards include:

- Engineering Controls
- Safe Work Practices
- Administrative Controls
- Personal Protective Equipment (PPE)
- Systems to Track Hazard Correction
- Preventive Maintenance Systems
- Emergency Preparation
- Medical Programs

SAFETY AND HEALTH TRAINING

In order to know what to look for, it's important that everyone in the workplace is properly trained. This includes the floor worker to the supervisors, managers, contractors, and part-time and temporary workers.

Actions you can take include:

- Only properly authorized and instructed employees should be allowed to do any job
- Make sure no one does a job that appears unsafe
- Hold emergency preparedness drills
- Pay particular attention when new operations are being learned so that everyone has the proper job skills and awareness of hazards
- Supervisors and managers should be trained to recognize hazards and understand their responsibilities

SAFETY AND HEALTH TRAINING

Does everyone in the workplace know:

- The workplace plan in case of a fire or other emergency?
- When and where PPE is required?
- The types of chemicals used in the workplace?
- The precautions when handling them?

Training can help to develop the knowledge and skills needed to understand workplace hazards and safe procedures.

SAFETY PROGRAM BENEFITS

Implementing your safety & health program can:

- **Reduce** the chance of injury or illness.
- **Increase** productivity & profit
 - fewer workers miss work
 - safe healthy way of doing things is often faster.
- **Increase** employee loyalty to you as well as their commitment to your program.
 - expand your program to offer safety & health advice for off-the-job activities.



SPFA'S MODEL WRITTEN SAFETY PROGRAM

- To be published March 2014
- For SPFA Members Only
- 200-page program to include templates for:
 - **Company Safety Plan (main document)**
 - Hazard Communication Program
 - Personal Protective Equipment Hazard Assessment Checklist
 - Confined Space Entry Program
 - Respiratory Protection Program
 - Hearing Conservation Program
 - Control of Hazardous Energy (Lockout/Tagout) Program
 - Emergency Response Plan
 - Fall Protection Plan
 - Fire Prevention Plan
 - Asbestos and Lead Hazard Awareness
 - Forklift Safety Program
 - Vehicle Safety Guidance (Trucks, Trailers)
 - Spill Response Plan
 - Injury and Illness Prevention Plan

SPFA'S ONLINE SAFETY SEMINARS

- Under Consideration for mid/late 2014
- For SPFA Members Only
- Monthly or bi-monthly on-line webinar series for SPF Contractor Safety topics

SPFA SAFETY BREAKOUT SESSION

Managing an OSHA Inspection

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Services



WHY WOULD OSHA INSPECT ME?

- Complaint or Referral
 - Complaint to OSHA
 - OSHA Safety Compliance Officer making referral to Health Compliance Officer
 - Isocyanate NEP would be example
- Media Referral
- Planned Inspection
- Multiple Injury or Fatality reported

WHAT TO DO WHEN OSHA ARRIVES?

- On a job site
 - If no manager on site
 - Instruct workers to stop work and call office
 - Manager at office talk to OSHA ask for time to respond to jobsite and hold opening conference
 - Manager alert Corporate Safety and General Counsel that OSHA is onsite and solicit advice/direction

WHAT TO DO WHEN OSHA ARRIVES?

■ Manufacturing

- Escort Compliance Officer to a private meeting area. Explain you will need a few minutes to arrange the opening meeting.
 - Be polite the demeanor you exhibit with your initial meeting will set the tone of the investigation and can influence the outcome
 - Start making arrangements for opening meeting, Plant Manager, Safety, Other Managers as identified by the Plant Manager
 - Notify Corporate Safety and General Counsel of OSHA presence and solicit advice/direction

OSHA'S RIGHT TO OBTAIN A WARRANT

- As an employer you can refuse OSHA the right to conduct an inspection.
 - The Supreme Court has ruled that OSHA can get a Warrant to enter the facility.
 - Make the decision to refuse entry cautiously.
 - May set the wrong tone for the inspection, but may allow you time to correct a problem that would be “obvious” and prevent a problem being noticed.

THE OPENING CONFERENCE

- Be sure the OSHA Compliance Officer presents their credentials
- Manager in charge should introduce everyone and why they are participating in the meeting
 - All Employer Reps participating should have a good working knowledge of the company Health and Safety Plan.
- The Compliance Officer will explain the purpose of the visit and will outline the scope of the investigation.
 - Safety or Health
 - If Health the Compliance Officer is probably an Industrial Hygienist and will request access to company employee monitoring records
 - At this point it is prudent to involve someone who is skilled in sampling to take like samples to samples taken by the Compliance Officer should they take samples during the inspection.

THE OPENING CONFERENCE

- If the inspection is in response to a complaint or referral the Compliance Officer will provide a copy of the complaint or referral.
 - Immediately have this faxed to Corporate Safety and General Counsel
 - The complaint will not have the complainant's name. It is best to not know the name – if this person was to be disciplined in the future, the complainant could view this as discrimination and file 11 c discrimination for Whistle Blowing charges.
- The Opening Conference is the Employer's only opportunity to participate in defining the scope of the inspection.
 - Work with the Compliance Officer to reach agreement that the scope of the investigation is limited that which is identified in the complaint or referral.
 - The Compliance Officer is compelled to address an Health and Safety Hazards they observe or are told about during the inspection.
 - This is the time to let the Compliance Officer know of any trade secrets, intellectual property or competitive advantages you have and ensure it is understood that they are confidential.

THE OPENING CONFERENCE

- It is rare that it happens, but if agreement on Scope cannot be reached. The Senior/Plant Manager should ask for a few minutes and together with General Counsel place a call to the Area Director of the Office the Compliance Officer is attached to, for further discussion before the inspection begins.

INTERVIEWS

- Employers are not allowed to be present during interviews OSHA conducts with employees
 - If employees are represented, an employee representative may be present during the interview
- Employers have the right to be present while OSHA conducts management employee interviews

DOCUMENTATION REQUESTS

- OSHA will ask for documentation during an inspection.
 - Most commonly asked for document is the OSHA 300 log of Occupational Illness and Injury
 - When asked for employers have 8 hours to provide this document for review
 - OSHA regulations require employers to have the current plus past 5 years OSHA 300 logs available for review

DOCUMENTATION REQUESTS

- If OSHA requests other documentation; ask the Compliance Officer for a written list of all documentation required.
 - Assemble the documentation requested and review all the documents with Corporate Safety and/or General Counsel to determine which documents should be treated by OSHA confidentially.
 - Label all these documents CONFIDENTIAL DOCUMENT
- Keep a copy of all documents submitted to OSHA in the file being maintained for the inspection

COMMUNICATIONS

- Advise treating the Compliance Officer with respect and answering all questions truthfully
 - Limit answers to yes/no when possible and do not volunteer information
- At the end of each day and the end of the inspection ask the Compliance Officer for a debriefing.
 - The Debriefing at the close of the inspection is aka Closing Conference
 - During the closing conference the Compliance Officer will communicate if the company will be receiving citations, they will not speak to severity as this is outside their decision space
 - Immediately correct any compliance issues identified

AFTER THE INSPECTION

- OSHA has six calendar months from the start of an inspection to issue any citations for non compliance to Health and Safety Regulations.
- If citations are received read the citations and all included documentation carefully.
 - Citations must be posted where employees frequently gather
 - Verification of Abatement

CITATIONS

- **De Minimis Violation** – violation of standards and regulations that have no immediate relationship to safety.
- **Other Than Serious** – Direct Relationship to health and safety, will not cause death or serious harm \$7000 proposed penalty but may be adjusted down up to 75%
- **Serious Violation** – Probable that serious injury or death will result, mandatory \$7000 penalty, based on good faith, previous violation record may be adjusted downward
- **Willful Violation** – Violation the employer knowingly commits or commits with plain indifference to the law. \$70000 proposed violation, penalty may be reduced based on size of business and previous violation history
 - If the employer is convicted of a will violation of a standard that results in the death of an employee the violation is punishable by \$250,000 fine for individual, \$500,000 for corporation and/or imprisonment up to 5 months.
- **Repeated Violation** – A violation of any standard, regulation or rule or order that re-inspection reveals a substantially similar violation. Proposed \$70,000 fine for each violation
- **Failure to Abate Violation** – Failure to abate a prior violation may bring civil penalty of \$7000 each day beyond the prescribed abatement date

INFORMAL CONFERENCE AND NOTICE OF CONTEST

- Employers have **15** working days from the date of receipt of citations to schedule and attend an informal conference with OSHA to discuss citations received and attempt to resolve citations
- Employers have **15** working days from the date of receipt of citations to formally contest all citations, characterizations and abatement

EISA

■ Expedited Informal Settlement Agreement

- If citations are to be issued and after review:
 - The inspection was not the result of a fatality or catastrophe
 - The case does not include failure to abate, repeated or willful violations
 - The employer is not delinquent in any payments due OSHA
 - The company has a health and safety program
 - An EISA may be offered for settlement of the citations
 - 30% penalty reduction
 - 50% penalty reduction if the company agrees to contact their State Consultation program or Outside Consultant and conducts a full-service comprehensive visit
 - Free non-enforcement review
 - Penalties only if non-compliance found is discovered to not be abated

INFORMAL CONFERENCE

- If requesting an Informal Conference
 - The Notice of Informal Conference that is in the Citation Package from OSHA must be posted in a place conspicuous to employees
- Employer's opportunity to ask questions:
 - What lead to characterization of citation?
- Employer's opportunity to review depth of employer's safety program
- Opportunity to reach settlement agreement
- If no agreement reached be sure to file Notice of Formal Contest

NOTICE OF CONTEST

- Be sure to contest in writing:
 - Any and all citations
 - Any and all financial penalties
 - Any and all abatement requirements and dates
- Area OSHA Director forwards the case to the OSHRC – Occupational Health and Review Commission (not affiliated with OSHA)- OSHRC will assign the case to an ALD – Administrative Law Judge – A hearing will be scheduled – Employer and Employees may attend
- Once ALJ has issued ruling – any party can appeal for further review
- Commission rulings may be appealed to the appropriate U. S. Court of Appeals

SHOULD I HIRE AN ATTORNEY?

- Attorney's specializing in OSHA matters understand regulations and case law that defines most rules and regulations
 - Their relationships and experience with settling OSHA matters can be helpful
 - If hiring an attorney be sure to communicate regularly to work toward the desired outcome
- Expensive