OSHA in President Obama’s Second Term

The Association of Union Constructors
2013 Leadership Conference
Ritz Carlton Lodge
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Presented By:
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Ogletree Deakins – Atlanta, Georgia
Overview

- Today’s OSHA
- Tough Enforcement Stance
- Severe Violator Enforcement Program
- Benefits of Sustained Compliance
DOL Philosophy

“Let me be clear: the Department of Labor is back in the enforcement business. It’s time for a new direction in the Department. As long as I am the Secretary, the Department will go after anyone who . . . puts workers at risk.”

Former Secretary of Labor Hilda Solis
Thomas Perez, Secretary of Labor Designate

- Head, Department of Justice Civil Rights Division
- April 18, 2013 Senate Committee Confirmation Hearing
- One of top priorities – ensuring a safe work environment
David Michaels, Ph.D.

Assistant Secretary for OSH

- Epidemiologist, Dept. of Environmental and Occupational Health at George Washington University
- Author of book – *Doubt is Their Product: How Industry’s Assault on Science Threatens Your Health*
Jordan Barab

Deputy Asst. Secr. for OSH (Political)

- Primary architect of OSHA enforcement crackdown
- Former Senior Labor Policy Advisor to House Education and Labor Committee
- Former AFSCME S&H Director
Debbie Berkowitz

Chief of Staff for OSHA

- Right hand to OSHA administrator
- Former UFCW H&S Director
- Proponent of ergonomics regulation of meatpacking industry
- Gave carpal tunnel a public face
Richard Fairfax

Deputy Asst. Secr. for OSH (Career)

- Long–time OSHA executive; survived many changes in Administrations
- Former OSHA Director of Enforcement
- CIH; started in field
- Recently retired
Enforcement Stance

- “Tough enforcement” – easier politically than issuing standards; also makes it harder for Congress to cut OSHA’s budget
- More “willful” citations
- More “significant” cases
- Hard-hitting press releases
Regulation By Shaming

- Branding cited employers as “bad actors” in press releases to prompt compliance
- In the past, press releases were only issued for violations totaling $100,000 or more – the threshold is now $45,000
- Press releases can have big impact
Penalty Philosophy

“For many employers, investing in job safety happens only when they have adequate incentives to comply with OSHA’s requirements . . . Higher penalties and more aggressive, targeted enforcement will provide a greater deterrent . . .”

Dr. David Michaels
OSHA Administrator
Enforcement Initiatives

- Penalty system changes
- Doubled average final penalties for serious violations
- Special emphasis programs
- Corporate-wide settlements
- Severe Violator Enforcement Program
Significant OSHA Cases

- Proposed penalties > $100,000
- Important statistic for OSHA
- Financial concern for employers
FY 2009 – FY 2013
Significant Cases

FY09 120
FY10 164
FY11 215
FY12 219
FY'13 63
FY 2009 – FY 2013
Fatality Investigations

FY09: 797
FY10: 804
FY11: 820
FY12: 848
FY13: 299
FY 2013 - Top 10 Most Cited Standards For General Industry

- Hazard Communication
- Electrical, Wiring Methods
- Lockout/Tagout
- Respiratory Protection
- Powered Industrial Trucks

- Machine Guarding
- Electrical, General Requirements
- Bloodborne Pathogens
- Personal Protective Equipment
- Guarding Floor & Wall Openings
FY 2013 - Top 10 Most Cited Standards For Construction Industry

- Fall Protection
- Scaffolding
- Ladders
- Fall Protection, Training Requirements
- Hazard Communication
- Head Protection
- Eye & Face Protection
- Excavation Requirements
- Aerial Lifts
- Safety & Health Provisions
FY 2009 – FY 2013
% Construction Inspections
FY 2013 – Top Standards With The Most Willful Violations Cited

- Fall protection
- Excavation
- General Duty Clause
- Machine guarding
Hot Issues

- General Duty Clause
- Multi-employer worksites
- Workplace violence
- Health hazards
- Heat campaign
- Fall protection campaign
- Customer service
April 5, 2013 OSHA Letter of Interpretation

- Non-union workers can select anyone as their rep. during OSHA inspections
- Response to request of USWA for interpretation of 29 C.F.R. 1903.8(c)
- Original intent to permit participation of third-party subject matter experts, e.g., industrial hygienists
- OSHA inspector makes “final” decision on request for representative
Severe Violator Enforcement Program (SVEP)

- New category of major OSHA enforcement actions
- “Heightened focus on indifferent employers”
- OSHA places “severe violators” in SVEP
- State plans must adopt SVEP or equivalent
Consequences of SVEP

- High gravity serious items not normally grouped
- Implementation of interim abatement controls
- Enhanced settlement provisions
Enhanced Settlement Provisions

- Non-regulatory safety enhancements
- Retain consultant to audit affirmed violations
- Provide OSHA 10- or 30-hour safety training course
- Add various items to forms used in conducting audits
- Deploy internal audit teams on quarterly basis for two years
Consequences of SVEP, cont.

- Mandatory follow-up inspections of cited workplaces
- Regional and nationwide inspections of related workplaces
- OSHA Regional Administrators determine patterns of non-compliance
- OSHA Directorate of Enforcement serves as central coordinator for nationwide referrals
SVEP Admission Criteria

- 1 or more willful, repeated, or failure to abate citations
- Based on serious violation
- Related to death or 3 or more hospitalizations
- 20% of SVEP cases
SVEP Admission Criteria, cont.

- 2 or more willful, repeated, or FTAs
- Based on high-gravity serious violations
- Related to high-emphasis hazard
- 70% of SVEP cases
High-Emphasis Hazards

- Falls
- National Emphasis Programs
  - Crystalline silica
  - Amputations
  - Combustible dust
  - Hexavalent chromium
  - Lead
  - Excavation/trenching
  - Ship breaking
  - Primary metals
  - PSM-covered chemical facilities
SVEP Admission Criteria, cont.

- 3 or more willful, repeated, or FTAs
- Based on high-gravity serious violations
- Due to potential release of PSM highly hazardous chemical
- Section 1910.119 Appendix A

- All egregious enforcement actions (10%)
Exit from SVEP

- Minimum time served - 3 years
- All affirmed violations abated
- All final penalties paid
- All settlement provisions satisfied
Exit from SVEP, cont.

- No further serious citations
- At original and related workplaces
- Receiving inspections
Exit from SVEP, cont.

- Failure to meet above requirements
- After 3 years in SVEP
- Results in employer remaining in SVEP
- For another 3 years
SVEP Facts

- 300+ cases as of January 2013
- OSHA has notified or copied 51 corporate HQs on citations
- Size range of SVEP employers
  - 165 (35%) with 1-25 workers
  - 61 (20%) with 26-100 workers
  - 30 (10%) with 101-250 workers
  - 53 (17%) with 251 or > workers
Benefits of Sustained Compliance

- Reduce injuries and illnesses
- Control workers’ comp costs
- Avoid lawsuits
- Avoid adverse publicity
Benefits of Compliance, cont.

- Enhance employee and community relations
- Avoid OSHA inspections
- Reduce potential for civil and criminal penalties
- Avoid “significant” cases
- Avoid placement in SVEP
Enhancing Workplace Safety and Health
Advisory Committee on Construction Safety and Health (ACCSH)

- Established under Construction Safety Act of 1973
- Advises Asst. Secr. for OSH on construction standards and policy
- 15 members representing employers, employees, state agencies, public and NIOSH
- Chair – Peter Stafford, Building & Constr. Trades Dept., AFL-CIO
Concluding Remarks