

TC08

File: TECHNICAL

IF OSHA COMES KNOCKING ...

If your company is visited by an OSHA inspector, here are some things to remember:

- Your plant's inspection may be the result of a random check or in response to an employee complaint or as a follow-up to a serious accident. Ask the inspector what prompted the visit. If an employee complaint was involved, the inspector must tell you, but does not have to reveal the employee's identity.
- The question of admitting inspectors without a search warrant is still largely unresolved. Procedures for obtaining warrants may differ from state to state. If your inspection is simply part of a random compliance check and you turn an inspector away, there is a fair chance that OSHA will not take the additional steps to obtain a warrant. However, if OSHA has ANY REASON to suspect that serious hazards exist (i.e., an employee complaint), it is fairly certain that a warrant will be obtained.

You should bear in mind that if you turn an inspector away to get a warrant, the subsequent inspection (if they return) is likely to be tougher.

- Once admitted to your plant, inspectors are generally not limited to checking only areas involving complaints or past accidents.
- You have the right to request an informal hearing with the OSHA Area Director if you dispute any citations or proposed penalties issued as a result of an inspection. You must make this request in writing within 15 days of receiving your inspection report. Many NTMA members have been successful in getting penalties reduced or eliminated as a result of these informal meetings.

If you meet with the Area Director for your locality, here are some further tips:

- **PUT YOUR BEST FOOT FORWARD**—You will want to demonstrate that your company takes an AC-

TIVE interest in safety and health. If you have safety awards from NTMA or other organizations, you should make this known. Insurance records are good documentation, also.

- **USE INDUSTRY STANDARDS TO YOUR ADVANTAGE**—Many violations cited in tooling and machining companies are for missing or inadequate point-of-operation guarding of machine tools. Yet OSHA has specific guarding regulations for only a few types of machines (notably, mechanical power presses). OSHA recognizes industry consensus standards such as the ANSI B-11 series as a source of interpretation, but these standards do not have the strength of being enforceable. Thus, you can point to those areas where you meet the appropriate ANSI consensus standards as evidence of your good faith efforts. If OSHA wants to hold you to compliance with an ANSI standard you can point out that these standards are not LAW and that you have alternate methods of achieving safety and control.
- **SHOW WHAT YOU ARE DOING TO IMPROVE**—By the time you hold your meeting with the Area Director, you may be able to make simple corrections to come into compliance. If you can demonstrate this, do so. Photos can also be very helpful. Remember that the Area Director probably doesn't know much about tooling and machining. If you can show purchase orders for guards or other safety devices related to the cited violations, this should also help your case.

WHAT ARE YOUR CHOICES WHEN OSHA CITES YOUR COMPANY FOR A VIOLATION?

There are two types of violations, a serious violation which always brings a penalty and the other is not serious which very seldom brings a penalty.

OSHA will first submit the violation for review before its board. If you are charged, you have three options to remedy

the situation. 1) pay the penalty, 2) ask for an informal settlement conference between OSHA, your representative and yourself, which must be requested in writing and take place fifteen federal working days after you have been notified, 3) ask for a hearing before a judge to rebuild or contest the violation.

It is suggested that you contact your local OSHA area office to obtain the OSHA Handbook for Small Business for further information (OSHA No. 2209).

SOURCES OF ADDITIONAL INFORMATION

ANSI B-11 COMMITTEE—issues safety standards on the major classes of machine tools. NTMA is a voting participant on this committee. As an NTMA member, you are entitled to a modest discount on the purchase price of B-11 standards. The committee is operated by the Association for Manufacturing Technology. For details or information, contact the safety department, c/o AMT, 7901 Westpark Dr., McLean, VA 22102, 703-893-2900.

YOUR INSURANCE CARRIER—Carriers of workers' compensation insurance have loss control and engineers knowledgeable in areas of machine guarding and other occupational safety and health issues. While most insurers won't intervene with OSHA for you, your carrier's loss control department is a resource that should not be overlooked. You pay for this service in your premiums.

THE NATIONAL SAFETY COUNCIL—has a broad collection of literature and recommendations on industrial safety. For further details contact: Power Press Forging Section, National Safety Council, 1211 Spring Lake Drive, Itasca, IL 60143-3201, 800-621-7615

ONE COMPANY'S EXPERIENCE:

A member company from the St. Louis Chapter followed NTMA's advice and requested an informal hearing when they disagreed with the inspector's findings. Here's what they had to say:

Dear NTMA:

Recently we were selected by OSHA for a full blown plant inspection. This was the result of a complaint from a disgruntled former employee. We had no trouble clearing ourselves of the ex-employee's accusations.

The site inspections, however, were a different matter. We received citations covering six alleged violations. Two were deemed as "other," but of special interest, one involved Material Safety Data Sheets. We had all the proper documentation in our safety office file—located in one of our two plants only 10 minutes apart. OSHA insisted that we have the pertinent information at both locations, even though we had better control with all in one location.

Three of the "serious" violations consisted mainly of housekeeping and maintenance oversights—a free standing empty cylinder, a missing deck midrail, and a tongue guard

on a pedestal grinder. The fourth "serious" violation proved to be very serious for us. We were cited for no point of operation guards on two press brakes under CFR 1910.212—the general point of operation guarding requirement. Section CFR 1910.217 specifically excludes press brakes from mechanical press guarding requirements. In short, we had "been had" since 70% of our precision stamping work involves these machines.

Upon OSHA's departure, we immediately went to work. Contacts were made to gather experience and information from customers, trade associations, machine builders and associates in other metal working businesses. You were contacted and provided very useful information. We thank you for this.

An informal hearing was requested by us and took place in the OSHA Area Director's office.

Thanks to all the support and information that we had received, we were well prepared and schooled. It took 2 1/2 hours of persuasion and documentation to convince OSHA that in a job shop situation, press brake point-of-operation guarding was impossible and impractical. We were able to get this press brake citation completely revoked and the penalty for the other "serious" situations substantially reduced to our relieved satisfaction.

In closing, I want to personally thank you for the help that you gave to us so that we were able to resolve our difficulties. We learned a lot with this experience and offer our help in turn to others that find themselves in a similar situation. Keep us in your files as a willing friend should a need arise.

Sincerely,

Stanley C. Musholt, President

Kuester Tool & Die, Inc., Quincy, IL

Editor's Note: The key here is point-of-operation guarding. While it is virtually impossible to provide guards at a press brake's point-of-operation (the closing faces of the dies), there are still plenty of ways to safeguard a press brake including presence sensing devices, two hand controls, proximity guards, etc.

Point-of-operation guards such as die enclosures for press brakes become practical only on longer job runs—not typical of most contract shops.

This member was able to demonstrate this by referencing materials from the ANSI B-11.3 standard on press brake safety and guidelines published in the National Safety Council's Accident Prevention Manual for Industrial Operations. Thanks to Kuester Tool & Die for proving that you can win if you stand up for your rights—even if it isn't always easy to do.

This BMA was prepared by NTMA's Technical Department.