



# 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

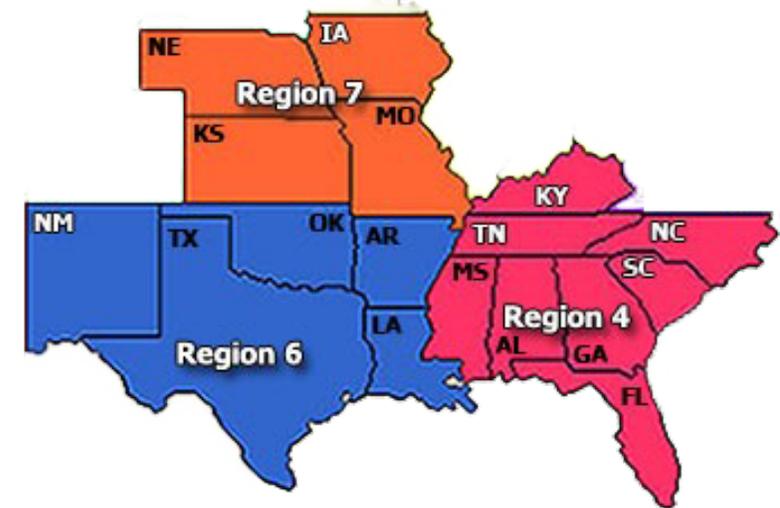


# Thank You for Your Commitment to Safety



# 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

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- 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

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“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

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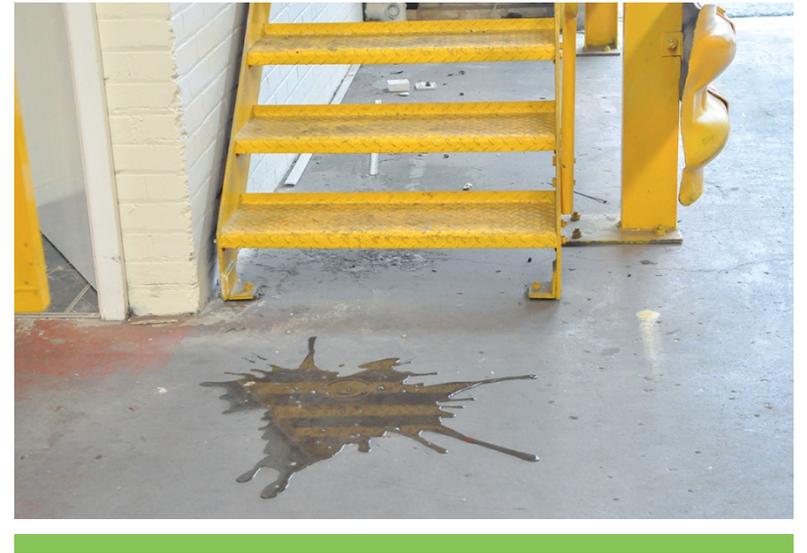
- **Establish** work rules designed to ensure safe work and to avoid OSHA violations
- **Communicate** the work rules to employees
- **Train** the employees as needed
- Take appropriate steps to **discover** violations
- Effectively **enforce** the rules and practices when violations are discovered;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

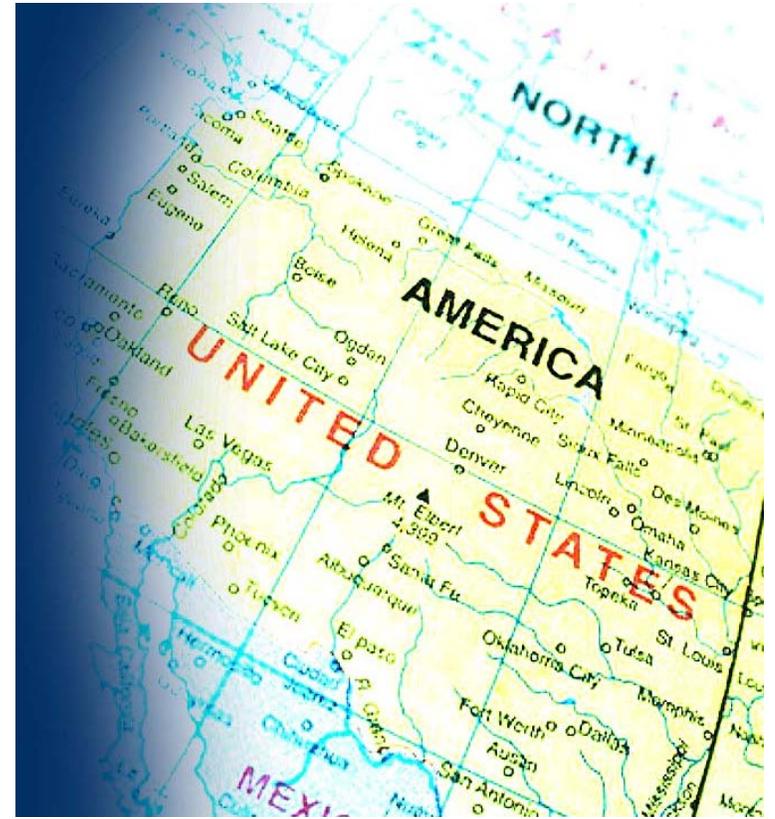
6. Maintenance, safeguards and operational features for exit routes (1910.0037)
7. Guarding floor and wall openings and holes (1910.0023)
8. Machine guarding – mechanical power-transmission apparatus (1910.0219)
9. Hazard communication (1910.1200)
10. OSHA Act General Duty (5A0001)



# 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)



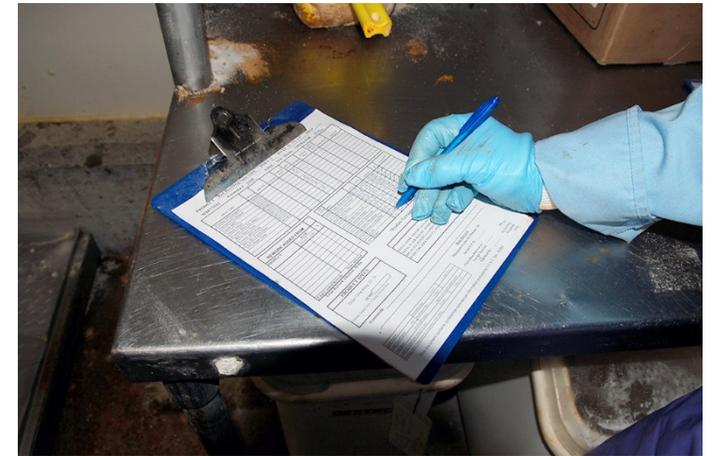
# Fundamental Requirements Under the Act

- 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?



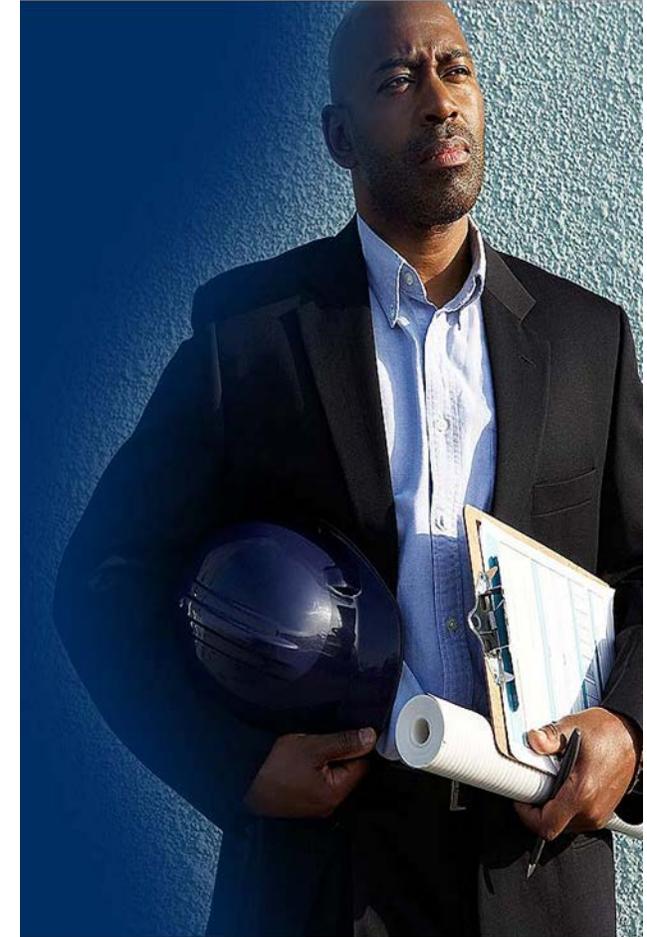
## INSPECTION PRIORITIES

- 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**



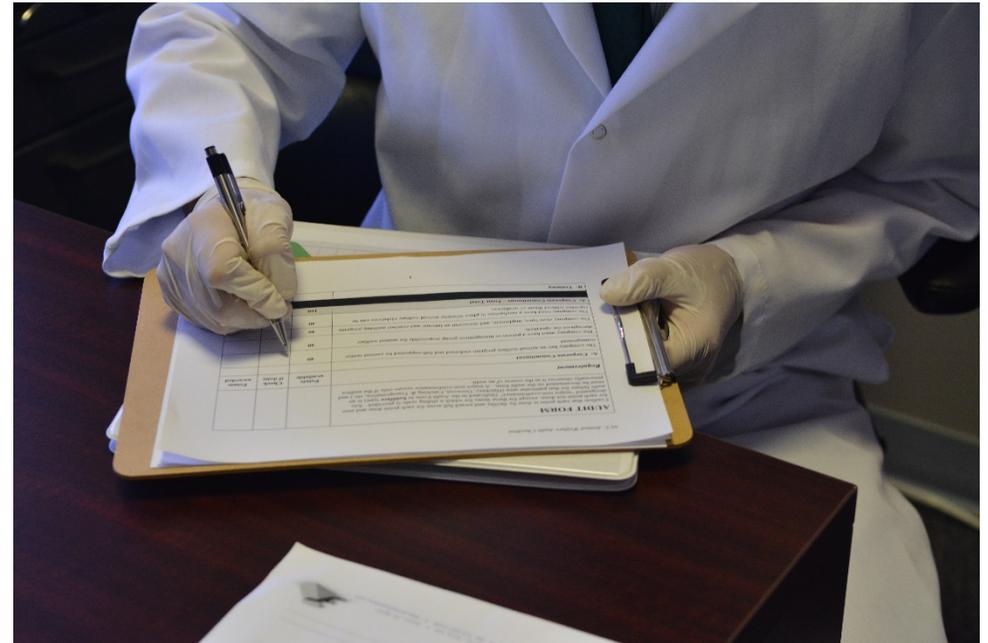
# Maintaining Control

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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

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- 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

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- 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

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- 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

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- **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

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- 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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**THESE MATERIALS AND THE INFORMATION PROVIDED DURING THE PROGRAM SHOULD NOT BE CONSTRUED AS LEGAL ADVICE OR AS CRITICAL OF THE CURRENT OR PAST ADMINISTRATIONS.**

# 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

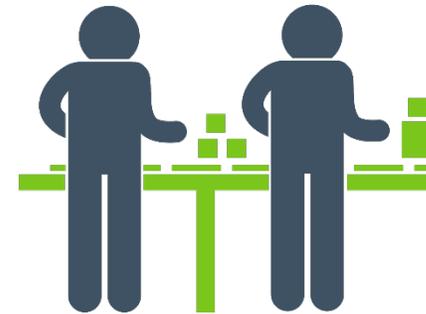
Improve control and message quality to entire company



## Mind of the Food Worker

Understand what drives today's frontline workforce

Determine how you can better motivate your employees



# Q&A



THANK YOU