

## OSHA INSPECTIONS

### PURPOSE OF THE POLICY

This policy outlines the General Manager's responsibilities in the event of an OSHA inspection or receipt of a complaint letter. OSHA has the authority to conduct inspections within certain criteria. This policy is intended to provide a guideline to plant managers in handling such inspections.

### HANDLING OSHA INSPECTIONS

1. When an OSHA inspector arrives, be polite and check his credentials.
2. Find out why the inspector has chosen your facility.
  - a. To investigate an accident?
  - b. Pursuant to a specific employee complaint? Obtain a copy of the complaint.
  - c. Target Industry Program ("TIP") investigation or other OSHA program, such as the Cooperative Compliance Program?
  - d. Pursuant to general administrative inspection?
3. Prior to allowing an inspection, call Corporate office (talk to General Counsel and/or Risk Management Department). Inform the official that company policy requires you to call the Corporate office.
4. A decision will be made whether to require the office to obtain a warrant after consulting with General Counsel. Issues to consider:
  - a. Do the benefits potentially flowing from refusal of entry outweigh the risk of a possibly more rigorous inspection if a warrant is obtained?
  - b. Where a serious allegation has been made, be aware that evidence obtained by local law enforcement officials, newspaper reporters, etc., may be obtainable for use in a subsequent civil action filed against Millard.

- (i) In this situation, Millard will consider requiring all officials to obtain a search warrant before conducting an investigation, taking photographs, taking product samples, etc. Local law enforcement officials may be unable to obtain a warrant if they do not have probable cause that a criminal act has occurred.
  - (ii) OSHA officials may inspect for an accident that has not been reported. Many states are now monitoring local newspapers, etc., for news of accidents and fatalities.
- 5. In the event of an inspection (whether voluntary or pursuant to a warrant), you should have an opening conference with the official:
  - a. The Plant Manager should represent management during all phases of the inspection.
  - b. Check the official's credentials and record all identifying data in a cordial, businesslike manner (See #1 above).
  - c. Use the opening conference to make a good impression with the official.
  - d. Briefly and generally explain Millard's preventative and safety programs such as safety meetings, training, and cooperation with state and local entities in voluntary inspections.
- 6. The "Walkaround".
  - a. If the inspection concerns a specific area, take the official directly to that area. Avoid areas which are unrelated to the inspection and keep employees from engaging in conversation with the official.
  - b. Stay with the official every moment that he/she is in the plant.
  - c. Keep the inspection within the stated scope as indicated by the official. Volunteer nothing that could be used to expand the inspection or impose citations on the Company. When in doubt, tell the official you will have to consult with General Counsel prior to giving requested information.
  - d. Have two representatives (plant manager and preferably the plant engineer) go on the walkaround, with one responsible for taking notes (do not give the official a copy of the notes).

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**29CFR1903.1**

- e. Also have a maintenance person on hand to fix any minor problems or violations on the spot, then photograph the fix (note the place, date and time on the photo).
  - f. OSHA officials may talk privately with employees. OSHA can require warrant, and therefore, we should make employees available on premises only at a convenient time and place. Negotiate conditions prior to allowing official to meet with employees (see paragraph #10 below).
  - g. No salaried supervisory employees should talk to official.
  - h. Don't explain how anything works -- let the official figure that out.
  - i. Write up complete report on the inspection and everything said or noted by the official. Immediately point out any variations between your notes and those of official. Send a copy of the report to the Risk Management Department.
  - j. Copies of your notes and photographs should not be furnished to official.
7. Photographs, samples and monitoring.
- a. If photographs are taken by the official during inspection, the following procedures should be followed:
    - (i) Request that the official provide a copy of photographs taken.
    - (ii) Whether or not he agrees to provide copies of his photos, we should take our own photographs as similar as possible to those taken by the official.
    - (iii) Take photographs of the subject from alternative views.
  - b. If samples, such as food samples, are taken by the official:
    - (i) Determine what sampling procedure and technical instruments or equipment the official is using.
    - (ii) Inquire when and by what procedures the sampling equipment was last calibrated.

- (iii) Record the number of samples taken and the operations and locations sampled.
  - (iv) Request that the official take two of each sample, and that the second sample will be retained by Millard's representative.
  - (v) Record the procedure followed by the official in collecting the samples.
  - (vi) The Company, if possible, should take its own samples, both duplicating the procedures followed by the official and using alternative procedures which would provide corresponding data.
8. Records review.
- a. Disclose only records the employer is required to maintain under OHSA regulations.
  - b. If a warrant is obtained, call General Counsel and review the requested records listed on the warrant prior to releasing.
  - c. Other records, such as internal accident reports, minutes, intercompany memos, letters or notes, should not be voluntarily disclosed without approval of General Counsel.
9. Closing conference.
- a. You should utilize the closing conference by thoroughly questioning the official as to all areas of possible and probable violations, but admit nothing! In this manner, Millard should have a good understanding as to those items that a citation may contain.
  - b. This will enable Millard to take evidence and begin preparing its' case while the evidence is still "fresh". Often, citations are not received for days or even weeks (up to 6 months).
  - c. Inquire what the official will require for abatement.
  - d. Draft a written report of all matters and possible violations and forward to General Counsel and Risk Management Department within 5 days of the inspection.

10. OSHA's Right to Interview Employees

- a. OSHA has the right to speak privately with individual employees. However, if an employee cannot be reasonably removed from his workstation, the employer need not do so.
- b. To avoid problems, agree to arrange a time and place for employee interviews away from the work area and behind closed doors. Make a list of all employees interviewed.
- c. Supervisors and other members of management are not required to be interviewed by or cooperate with compliance officers and should be cautioned against statements and admissions made to an inspector that could be used by OSHA in a subsequent hearing.

11. Responding to a Citation or Complaint Letter (**Note: It is General Counsel's responsibility to respond to a citation or complaint letter**)
- a. Citations must be issued in writing with reasonable promptness (no citation may be issued after 6 months following the violation). OSHA regulations require that a citation or complaint letter:
    - (i) Describe the violations with particularity.
    - (ii) Make reference to the standards violated.
    - (iii) Fix reasonable times for abatement.
    - (iv) Impose a monetary penalty where appropriate.
  - b. Immediately call General Counsel and fax a complete copy of the citation or complaint letter and all accompanying documentation to the General Counsel and Risk Management Department the day it is received. Forward the original by regular mail and retain one copy at the plant for later discussion.
  - c. Time Limits (General Counsel's responsibility)
    - (i) We must submit our written letter of intent to contest the citation within 15 working days of our receipt of the citation.
    - (ii) We will consider contesting everything. We can bargain later and all time periods are suspended.
    - (iii) We will usually attempt to schedule an informal conference with OSHA to resolve the citation. This must be scheduled within the 15 day contest period.
  - d. Employer must post the citation or complaint letter where it will be readily accessible for review by all employees, usually the breakroom.
  - e. General Counsel usually tries to work out a resolution in an informal conference with the Area Director under the rules which allow him to settle contested citations. In most cases (except Omaha), General Counsel will set up the informal conference with the Plant Manager (and Plant Engineer if applicable) attending in person and with General Counsel attending via conference call. Offer to pay for the long distance call (or in the alternative, General Counsel will place the call to the OSHA office). We should have all documents and evidence to prove our case at this conference.

12. Report to Corporate Office

After the conclusion of all administrative actions relating to the citation or complaint letter, the Plant Manager (in conjunction with General Counsel) should report the results of the inspection to the Corporate office for distribution to all plants if appropriate. It is OSHA's position that a violation at one Millard plant will be considered a repeat violation if it previously occurred at another Millard plant. Therefore, the results of an inspection at one plant will help another to prepare for future inspections.