

# 2011 Waste Management Symposia



## OSHA UPDATE: INDUSTRY PERSPECTIVE ON SAFETY TRENDS

February 28, 2011

Presented by:  
Edwin G. Foulke, Jr.  
[efoulke@laborlawyers.com](mailto:efoulke@laborlawyers.com)

FISHER & PHILLIPS LLP  
ATTORNEYS AT LAW  
*Solutions at Work*<sup>®</sup>

©Copyright 2011  
All rights Reserved

[www.laborlawyers.com](http://www.laborlawyers.com) • Phone (404) 231-1400

# THANK YOU FOR YOUR COMMITMENT TO SAFETY

FISHER & PHILLIPS LLP  
ATTORNEYS AT LAW  
*Solutions at Work*<sup>®</sup>

©Copyright 2011  
All rights Reserved

[www.laborlawyers.com](http://www.laborlawyers.com) • Phone (404) 231-1400

# Your Safety Program Needs To Avoid this . . .



FISHER & PHILLIPS LLP  
ATTORNEYS AT LAW  
*Solutions at Work*®

[www.laborlawyers.com](http://www.laborlawyers.com) • Phone (404) 231-1400

©Copyright 2011  
All rights Reserved

... and this!



FISHER & PHILLIPS LLP  
ATTORNEYS AT LAW  
*Solutions at Work*®

©Copyright 2011  
All rights Reserved

[www.laborlawyers.com](http://www.laborlawyers.com) • Phone (404) 231-1400

**But you don't want this approach either!**



**FISHER & PHILLIPS LLP**  
ATTORNEYS AT LAW  
*Solutions at Work*<sup>®</sup>

[www.laborlawyers.com](http://www.laborlawyers.com) • Phone (404) 231-1400

©Copyright 2011  
All rights Reserved

# Safety And Health In The 21<sup>st</sup> Century

Having great safety and health is important because ...

- 1) it is morally the right thing.
- 2) it allows your employees to go home each night safely to their family and loved ones.
- 3) it keeps you from having to do the worst job any person would possibly have to do.
- 4) it is the law.
- 5) it is essential for a company to be profitable and competitive in today's marketplace.

# What's Changing?

Almost everything . . .

- New administration and direction
- New legislation
- New enforcement focus
- Major new directives not requiring rulemaking
- Radical penalty directives
- Less cooperation

# The Administration's Own Description Of Its Focus

Secretary of Labor Hilda Solis:

“Let me be clear, the Labor Department is back in the enforcement business.”

April 28, 2009 “Workers Memorial Day” Speech

Assistant Secretary of Labor David Michaels:

“There is a new sheriff in town . . . this is not an abstract wish . . . it is a stern description of how OSHA is now working . . . and I take this phrase seriously.”

March 10, 2010, ABA




# The Proof Is In The Penalties

1. BP Products North America, Inc. (TX) - \$87 million
2. Whitesell Corp. (AL) - \$3.07 million
3. BP-Husky Refinery (OH) - \$3.04 million
4. E. N. Range, Inc. (FL) - \$2.1 million
5. South Dakota Wheat Growers ((SD) - \$1.6 million
6. Tempel Grain Elevators, LLC (CO) - \$\$1.59 million
7. CES Environmental Services, Inc. (TX) – \$1.4 million
8. Goodman Mfg. Co. (TX) - \$1.215 million
9. A-1 Excavating (WI) - \$861,000
10. WRR Environmental Services (WI) - \$787,000
11. Cooperative Plus (WI) - \$721,000
12. Sims Bark Co & Sims Stone Co. (GA & AL) – \$576,000

# The Proof Is In The Penalties

13. C.A. Franc (PA) - \$539,000 and criminal referral
14. Excelsior Brass Works (PA) - \$550,400
15. All-Feed Processing & Packaging, Inc. (IL) - \$518,520
16. Loren Cook Co. (MO) - \$511,000
17. Cranesville Aggregate Co. (NY) - \$509,000
18. New Jersey Transit (NJ) - \$500,000 – April
19. Cambridge Contracting, Inc. (NY) - \$484,000.
20. Endres Processing Ohio, LLC (OH) - \$473,000
21. U.S. Minerals (IN) - \$466,400
22. US Minerals (IL) - \$396,000
23. Mar-Jac Poultry, Inc. (GA) - \$379,800
24. Gerardi Sewer & Water Co. (IL) - \$360,000
25. New Place Carpentry (CT) - \$308,500

# OSHA In The Obama Administration

- 
- More inspections
  - More citations and increased penalties
  - Review of Field Office Manual and “OSHA Listens”
  - Less OSHA informal complaints
  - Less willingness to negotiate as to penalties, classification, abatement methods or vacation of citation
  - More difficulty in obtaining settlements and, as a result, more contests
  - More national, regional and local emphasis inspection programs

i.e. – Process Safety Management Refineries & Chemical Plants, Cranes and Derricks, Recordkeeping, Trenching, Chromium VI (Hexavalent Chromium)

FISHER & PHILLIPS LLP  
ATTORNEYS AT LAW  
*Solutions at Work*<sup>®</sup>

©Copyright 2011  
All rights Reserved

# OSHA In The Obama Administration

- Attempted dilution or elimination of unpreventable employee misconduct defense
- More focus on possible criminal referrals or collaboration with EPA and other agencies
- Greater use of incident-by-incident (egregious) citation approach
- Increased scrutiny of employer injury and illness recordkeeping and reporting.

# OSHA In The Obama Administration

- Increased scrutiny of employers' recordkeeping safety program focusing on reward for low injury and illness rates and less credit to employers with low rates
- Increase in ergonomic general duty citations until new ergo standard completed
- Movement away from OSHA compliance assistance which will impact VPP, alliances and partnerships

# OSHA In The Obama Administration

- Strong increase in focus on investigation and encouragement of whistleblower claims
- Increased use of OSHA in union organizing drives and contract negotiations
- New administrative penalty policy
- Increase in the use of the Severe Violators Enforcement Program (SVEP)

# OSHA In The Obama Administration

## Increased rulemaking/regulations – 2010 Fall Agenda, 28 Items

1. Global harmonization of chemicals – final rule 8/11
2. Combustible dust – initiate SBREFA 4/11
3. Walking and working surfaces – public hearing 1/11
4. Electrical/PPE – final rule 5/11
5. Silica and beryllium – NPRM 2/11; complete peer review 11/10
6. Confined spaces in construction – final rule 11/11
7. Hexavalent chromium – final rule 6/10
8. Working conditions/shipyards - final rule 1/11
9. Recordkeeping (exempt industries SIC) – NPRM 3/11
10. Recordkeeping – MSDs – final action 2/11
11. Injury and illness prevention program – SBREFA 6/11
12. Infectious diseases – RFI comments 12/10
13. Recordkeeping – modernizing reporting system – NPRM 9/11
14. Cooperative agreements – final action 9/11

# OSHA In The Obama Administration

## What To Do Going Forward

- Evaluate risks at worksites, especially multi-employer safety issues
- Prepare to handle OSHA inspections
- More focus on training to employee and documentation
- Review company recordkeeping
- Focus on PPE standard requirements
- Focus on evacuation plans and emergency response
- Review previous citations received by company
- Review most frequently cited OSHA standards in construction



# Top 20 OSHA Standards Citations For Waste Services SIC 4953

- 1910.0147 - Lockout/tagout
- 1910.0134 - Respiratory protection
- 1910.1200 - Hazard communication
- 1904.0029 - Recordkeeping – forms
- 1910.0305 - Electrical – wiring methods
- 1910.0303 - Electrical – general requirements
- 1910.0023 - Guarding floor and wall openings and holes
- 1910.1030 - Bloodborne pathogens
- 1910.0178 - Powered industrial trucks
- 1904.0032 - Recordkeeping – annual summary

# Top 20 OSHA Standards Citations For Waste Services SIC 4953

- 1910.0212 - Machine guarding – general requirements
- 1910.0215 - Machine guarding – abrasive wheels
- 1910.0253 - Oxygen-fuel gas welding and cutting
- 1910.0132 - Personal protective equipment – general requirements
- 1910.0022 - Walking working surfaces – general requirements
- 1910.0095 - Occupational noise exposure
- 1910.0157 - Portable fire extinguishers
- 1910.0141 - Sanitation
- 1910.0146 - Permit-required confined spaces
- 1910.0219 - Machine guarding – mechanical presses

# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

## Element of an effective safety and health management system

1. Strong management commitment
2. All employee involvement
3. Worksite analysis
4. Hazard prevention and control
5. Training for employees, supervisors and managers

# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

## 1. Strong management commitment

- Develop vision
- Safety as core value and foundation of operational program
- Put safety on management agenda at all levels
- Develop timeline
- Safety performance metrics for all management

# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

## 2. All employee involvement

- Involve employees
- Teamwork
- Engage employees
- Develop trust

# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

## 3. Worksite analysis

- Hazard identification
- Identify inconsistent management program
- Job analysis – employee vs. task
- Leading vs. lagging indicators

# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

- 4. Hazard prevention and control
  - Problem-solving methods
  - Consistent policies and procedures
  - Standardized measurement processes

# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

5. Training for employees, supervisors and managers
  - Consistent education process
  - Understandable training
  - Retraining and review



# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

## 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.”

# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

Safety and health excellence becoming more critical

## Why?

- Other countries catching up to America in productivity, efficiency and quality
- The graying of the current workplace
- The incoming workforce

## What is the solution?

- Integrate safety with health into all aspects of management and operations
- Sincere and continuous commitment to safety and health
- Address problems head on
- Wellness

# Achieving Operational Excellence And Zero Injuries, Illness And Fatalities Through Safety

## Elements to a successful Wellness Program

- Review of company's health insurance program
- Case management
- Disease management
- Incentives and pay for performance
- Communications
- Benchmarking and analytical review
- Legal compliance

“If I seem unduly clear to you,  
you must have misunderstood what I said.

~ Alan Greenspan – Former Fed Chairman

FISHER & PHILLIPS LLP  
ATTORNEYS AT LAW  
*Solutions at Work*®

©Copyright 2011  
All rights Reserved

[www.laborlawyers.com](http://www.laborlawyers.com) • Phone (404) 231-1400

## Fisher & Phillips LLP

is dedicated exclusively to representing employers in the practice of employment, labor, benefits, OSHA, and immigration law and related litigation.

**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.**

1075 Peachtree Street NE  
Suite 3500  
Atlanta, GA 30309

**FISHER & PHILLIPS** LLP  
ATTORNEYS AT LAW  
*Solutions at Work*<sup>®</sup>

©Copyright 2011  
All rights Reserved

# BE SAFE!



FISHER & PHILLIPS LLP  
ATTORNEYS AT LAW  
*Solutions at Work*®

[www.laborlawyers.com](http://www.laborlawyers.com) • Phone (404) 231-1400

©Copyright 2011  
All rights Reserved