Summary

- Applicable to employers whose businesses affect interstate commerce (virtually every employer).
- Complex and detailed regulation of workplace safety and health by specific standards and requirements, including such things as detailed supervision and training obligations.
- Significant recordkeeping and posting requirements.
- Reporting requirements within eight hours for any accidents involving one or more fatalities or hospitalization of three or more employees.
- Administered and enforced by the Occupational Safety and Health Administration through a system of administrative inspections and civil and criminal penalties.
- Provides a hearing and appeal procedure to employers to contest OSHA citations.
- Prohibits retaliation against employees for exercising protected rights.
- Does not preempt criminal prosecution of employers and management personnel by state and local authorities.
A. Background
The Occupational Safety and Health Act of 1970 ("the Act") became effective on April 28, 1971. This legislation resulted from over 20 years of Congressional debate. The Act's stated purpose is to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

With the exception of overlapping jurisdiction in certain pervasively regulated industries, the Act, through its implementing agency, the Occupational Safety and Health Administration (OSHA), has exclusive jurisdiction over employers whose business operations affect interstate commerce.

Safety and health regulation of the workplace is generally vested in OSHA. Various legislation dealing with workplace safety and health has been deemed to have been preempted by the Act where OSHA has exercised its authority to regulate the workplace.

B. Administrative Organization
Under the Act, OSHA has the authority to (1) promulgate safety and health standards; (2) conduct inspections and investigations; (3) issue citations and propose penalties; (4) set abatement times for correcting unsafe or unhealthful conditions; (5) require employers to keep records of job-related injuries and illnesses; (6) petition the courts to restrain imminent danger situations; (7) approve or reject state plans (currently existing in 26 states) for administering and enforcing state occupational safety and health programs under the Act; (8) provide information and advice to employers and employees concerning compliance and effective means of preventing occupational injuries and illnesses; and (9) provide evaluative, consultative, and promotional programs to assist federal agencies in implementing job safety and health programs for federal workers.

OSHA is organized with a national office, 10 regional offices, and over 50 area offices. Each region also may contain district and field offices. Each area office covers a specific geographical area in a region. Area offices are staffed with safety and health compliance officers and may include support personnel for such areas as industrial hygiene, toxic substances, and educational and technical assistance.

For most employers, the most important local OSHA official is the Area Director. The Area Director answers local information requests, handles employee complaints, schedules and conducts inspections, issues citations and proposed penalties, and conducts informal settlement conferences. Subject to agency and other administrative
internal regulations and oversight procedures, the Area Director has discretion in many areas that involve safety and health issues in the workplace.

The Secretary of Labor represents OSHA in litigation before the Occupational Safety and Health Review Commission (OSHRC), appellate courts, district courts, and in other civil litigation. The Secretary’s legal counsel is the Office of the Solicitor, United States Department of Labor. The Solicitor’s office also advises OSHA on legal issues.

OSHA’s website, http://www.osha.gov, contains many useful resources for safety and health training and education and compliance with the Act. OSHA also actively promotes voluntary cooperative programs for employers, such as its Voluntary Protection Program (VPP). These programs result in the recognition by OSHA of superior safety and health programs.

C. Employer Responsibilities

1. General Duty Clause

   The Act, in its general duty clause, provides that:

   Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.³

   The general duty clause, also known as the “catch all” clause of the Act, applies in circumstances where no specific standard has been promulgated by the Secretary of Labor or where no standard applies to a specific situation. This clause has been interpreted to require an employer to familiarize itself with industry and recognized safety and health standards, disseminate information about employee rights and duties, and ensure that employees have and use safe, well-maintained tools and equipment.

   An employer has violated the general duty clause when the following facts are found to exist: (1) the employer failed to render its workplace free from a recognized hazard that was (2) causing or likely to cause death or serious physical harm and (3) a feasible measure existed which, if undertaken, would have materially reduced the likelihood of the existence of the hazard.

   Key to the establishment of a general duty clause violation is proof that the hazard is generally recognized by the involved industry (employer or safety and health expert consensus) and that a feasible method existed to perform the work that would eliminate the hazard.

2. Specific Safety and Health Standards

   The Act grants to the Secretary of Labor the authority to promulgate regulations and standards for the promotion of safety and health.⁴ Literally thousands of standards have been promulgated or incorporated by reference into the Act.⁵ These standards and regulations have the force of law.
To establish a violation of a specific safety or health standard, it must be shown that (1) a standard applied to the situation at hand and the employer did not comply (the “hazard” being defined by the standard), (2) an employee was exposed to the hazard (generally defined as some reasonable access to the alleged hazard), and (3) the employer knew, or should have known, of the hazardous condition. An employer “should have known” of an alleged hazard if the employer would have foreseen the hazard with the exercise of reasonable diligence. Generally, the courts have refused to impute knowledge of a hazardous condition unless the employer failed to institute an adequate safety training and supervising program. However, an employer violates a standard if, through reasonable actions or procedures, it could have discovered the hazard.

Employers should be knowledgeable of all safety and health standards that apply to their operations and be aware of modifications and changes.

3. Variances
Employers who are either unable to comply with a standard or who have implemented other means of ensuring safety equal to or better than those provided by the otherwise applicable standard may request a variance from the Secretary of Labor. A variance, when approved, excuses prospective compliance with the involved standard.

The Act refers to four types of variances: (1) temporary, (2) permanent, (3) national defense, and (4) research or experimental.

The variance process requires a detailed application, notice to involved parties and employees, a hearing to establish a record concerning the variance application, and an ultimate order approving or denying (with or without modification) the application. Orders granting variances can be modified, revoked, or renewed.

4. Supervision and Training
The Act requires training and supervision of employees, including the training of employees to enable them to deal with and recognize hazards in their workplace. The establishment of a comprehensive safety and health program, effectively communicated and enforced, is critical to compliance with the Act and often affords an affirmative defense to allegations of violations of the Act.

5. Recordkeeping, Reporting, and Posting
The Act requires employers to maintain certain records and reports of occupational safety and health related information. Copies of the current versions of the following records, reports, and notices can be obtained from OSHA Area Offices or from OSHA’s website, http://www.osha.gov.

a. OSHA Form 300 and 300A-OSHA Injury and Illness Log and Summary
An employer must keep OSHA Form 300 in each work establishment or worksite expected to be in operation for one year or longer. An employer must enter on Form 300 all recordable occupational injuries and illnesses no later than seven calendar days after their occurrence.
Injuries and illnesses are recordable if an event or exposure in the work environment caused or contributed to an injury or illness or significantly aggravated a pre-existing injury or illness. Examples of injuries are broken bones and cuts. Examples of illnesses are reactions resulting from exposure to toxic substances and chemicals in the workplace. Generally, all injuries and illnesses that result in fatalities or lost workdays are reportable. Employers must also record when employees are diagnosed with significant illnesses, such as cancer or some other chronic irreversible disease, even when they do not result in lost workdays.9

b. OSHA Form 301-OSHA Injury and Illness Incident Record
Simultaneously with Form 300, employers are required to maintain OSHA Form 301 Incident Record. The Incident Record contains more detailed information concerning the injury and illness recorded in the log. If other reports (workers’ compensation, insurance, etc.) contain the same information required in the Incident Record, these reports are satisfactory substitutes.

c. Postings
OSHA requires employers to post numerous documents, such as all reports and summaries (Form 300, etc.), the OSHA poster, citations, notices of hearings, variance applications, specific hazard signs (e.g., lead exposure signs), imminent danger situations, etc. All postings must be in a conspicuous place or places in each establishment where employee notices are usually posted.

d. Retention of Records and Forms — Location of Records
Generally, an employer must retain all OSHA forms and records in each establishment for five years following the end of the calendar year to which they relate.10 Certain employee medical, physical exam, and exposure records may be required to be kept for longer periods of time. For example, certain employee medical records must be maintained for 30 years.11 An employer should refer to the health standard involved to ascertain the required retention time.

e. Access to Records
Employers are required to make records available to any representative of the Secretary of Labor or Secretary of Health and Human Services.12 Additionally, the Bureau of Labor Statistics and relevant state and local inspecting authorities must have access to employers’ OSHA records.

Present and former employees and their designated representatives (e.g., labor organizations) must have access to certain OSHA records maintained by employers. Additionally, employees must have access to medical and exposure records required to be maintained under various health standards.

f. Hazard Communication
The Act and several state laws13 require employers to conduct hazardous material determinations, maintain appropriate information on hazardous substances (e.g.,
material safety data sheets), label hazardous substances, train employees in the safe use of hazardous substances in the workplace, develop a written hazard communication program, and perform other duties. Although initially applicable only to the manufacturers and importers of chemicals, the Act’s hazard communication standard has been extended to all other employers, including those in the construction industry. However in some states, the hazard communication law applies only to employers not covered by the OSHA Standard and to chemical manufacturers, importers, and distributors with respect to the requirements regarding material safety data sheets.

g. Reporting Fatalities and Accidents
The Act requires employers to report accidents to OSHA as follows:

- All work-related fatalities within eight (8) hours.
- All work-related inpatient hospitalizations, all amputations and all losses of an eye within twenty-four (24) hours.¹⁴

Generally, these time periods will run from the time the employer knew or should have known of the event that triggers the reporting requirement. Currently, reporting can be done by calling the local OSHA Area Office during business hours or calling OSHA’s toll free number at 1-800-321-OSHA (6742). Employers may wish to obtain the advice of an attorney to coordinate an immediate response in such situations, due to the possibility of prosecution by federal or local authorities for criminal matters that may be raised by the incident or due to subsequent civil litigation.

Currently, OSHA Area Directors are sending a form request for information on all non-fatality reportings. The form request, which apparently has no regulatory or legal basis, requests detailed information, documentation, a root-cause analysis, etc. The request states that OSHA may conduct an inspection if the requested information is not provided by the employer. Appropriate legal counsel is suggested before responding to these requests.

h. Other Responsibilities
Many standards require additional recordkeeping, posting, and other duties. Workplace health exposures to toxic substances, asbestos, cotton dust, carcinogens, coke oven emissions, lead, and numerous other substances engender additional employer responsibilities. Additionally, regulations such as the Bloodborne Pathogens Standard and the fall protection and excavation standards in the construction industry require employers to take affirmative steps to prevent hazards that may exist in the workplace. Counsel should be consulted to ensure compliance with these additional employer responsibilities.

D. Employee Responsibilities
The Act specifically states that:

Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Chapter which are applicable to his own actions and conduct."¹⁵
Despite this language, employees are not subject to legal sanctions for noncompliance with the Act. The Secretary of Labor has not promulgated standards or regulations involving employee sanctions. Additionally, since the Act does not impose vicarious liability on employers for acts of employees, employee misconduct may not, under certain circumstances, result in employer liability under the Act.

E. Inspections

1. Reasons for Inspections

Generally, the Act requires OSHA Area Directors to inspect places of employment and assure that they are safe and healthful for employees. Most OSHA workplace inspections occur under the following circumstances:

Imminent Danger — Where OSHA has information to believe that a condition exists that can be expected to cause death or serious harm immediately.

Accidents and Fatalities — Due to required employer reports, media information, and other sources.

Complaints — By employees or the public. OSHA now accepts complaints via its website at www.osha.gov.

National Emphasis Programs — Inspections based upon OSHA-determined priorities (usually industries with high hazards).

Routine or General Schedule — Random, generally due to a formalized administrative targeting plan.

Follow-up — Confirm abatement from previous inspection.

2. The Inspection

Inspections are conducted by OSHA compliance officers who generally arrive unannounced and, after showing appropriate identification, request permission to enter a workplace to conduct an inspection. After an opening conference with the employer representative(s), the inspection begins. The inspection may take an hour or so or several days, depending upon the size of the operation and the nature of the matter being investigated. Photos, videos, and samples may be taken, employees interviewed, and machines, equipment, worksites, practices, and records are reviewed for compliance with the Act.

At the conclusion of the inspection, the compliance officer holds a closing conference with the company representatives and indicates at that time whether there have been any violations of the Act. Comments made by company officials during inspections may later be admissible into evidence should the employer decide to contest an alleged violation of the Act. Accordingly, an employer should exercise some judgment in making remarks in the presence of OSHA compliance officers. A company also should establish a philosophy toward and procedure for inspections. See Appendix B as an example of a company policy and procedure for inspections.
Under the Act, both employers and employees have the right to have representatives accompany the inspector during the inspection. An employer’s walk-around representative should be knowledgeable about the employer’s operations and applicable standards and be someone who will not only carry out the employer’s inspection policies and procedures, but also develop a good working relationship with the compliance officer. This good working relationship may facilitate satisfactory resolution of issues that develop during the inspection.

3. Search Warrants

Upon the company’s request, OSHA must obtain a warrant before conducting an inspection on private property. Generally, forcing OSHA to obtain a warrant results only in a delay of the inspection, assuming OSHA can establish administrative cause for the inspection before the warrant-issuing authority.

If collateral matters, company philosophy, or particular circumstances dictate, a warrant should be required. Otherwise, if OSHA is pursuing proper purposes and objectives, all that may be gained by requiring a warrant will be delay and, potentially, some hostility from OSHA.

If a warrant is sought by OSHA, an employer should seek to limit the scope and purpose of the inspection. Any effort to prevent compliance officers from entering the property or inspecting records should be carefully evaluated in light of the attendant risks and benefits. A copy of a search warrant is found in Appendix C.

F. Sanctions for Violations

1. General

Inspections that result in the discovery by OSHA of alleged violations of the Act generally result in one or more of a series of civil or criminal sanctions. Administrative citations are issued, usually by the Area Director, alleging a violation of an applicable standard or the general duty clause and containing proposed abatement dates and penalties. Citations must be issued within six months following the occurrence of a violation.

2. Categories of Citations

a. Serious Violations

Violations of the Act are serious if:

[T]here is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. Serious violations are punishable with fines up to $7,000 per violation. An example of a serious violation would be the failure to provide fall protection to a worksite over 50 feet above the ground.
b. Other-Than-Serious Violations
Although not defined in the Act, this type of violation is similar to a serious violation except the condition carries with it no substantial probability of death or serious harm. Other-than-serious violations often bear no penalty, although the Act allows penalties up to $7,000 for each violation. An example of this type of violation would be the failure to provide fall protection for a worksite only five feet above the ground.

c. Repeat Violations
Employers that repeatedly commit violations of the Act can be fined up to $70,000. So long as the same standard is involved or similar conditions exist, the Act makes no distinction between violations at different establishments, under different supervisors, different time periods, or different circumstances. The agency’s compliance manual, however, indicates that repeat violations are appropriate when “substantially similar conditions” exist. When the violations are alleged to be “high gravity serious” violations, OSHA may use an employer’s compliance history across the country in determining whether to issue repeat violations.

d. Willful Violations
Willful violations are those violations of the Act that are voluntarily committed with intentional disregard of or plain indifference to the Act. Employers may be fined up to $70,000 for willful violations with a mandatory minimum penalty of $5,000 for each willful violation.

e. De Minimus Violations
Violations of the Act that have no immediate relationship to safety and health are classified as de minimus. Generally, de minimus violations are found if there is no evidence of hazard, no effective safety or health protection is available, protective devices used are equal to or better than required by the standard, or a substantial record of accident-free operation exists. No penalty is issued for de minimus violations.

f. Failure to Abate, Failure to Post
Failure to correct in a timely fashion a violation of the Act that has become final as a matter of law can result in an assessment of a penalty up to $7,000 per day if the employer fails to act in good faith in achieving abatement of a violation. Similarly, failure to comply with posting requirements may result in fines up to $7,000 per violation.

g. Imminent Danger Violations
Usually as a result of a complaint, OSHA may inspect and issue an imminent danger citation if conditions could reasonably be expected to cause death or serious physical injury immediately or before the danger can be corrected through normal enforcement proceedings. If OSHA is unable to obtain an immediate and voluntary resolution of the imminent danger, it may bring suit in a United States district court to restrain the dangerous condition or practice.
h. Criminal Penalties
Willful violations which lead to a death may be criminally punished by a fine up to $10,000 and/or six months’ imprisonment in the first instance and $20,000 or one year’s imprisonment for subsequent instances.26 Falsification of records may be criminally punished by a fine up to $10,000 and/or six months’ imprisonment.27 There is also a penalty of a $1,000 fine and/or six months’ imprisonment for giving advance notice of an inspection without proper authority.28 Maximum criminal penalties may be increased by the Sentencing Reform Act of 1984, 18 U.S.C. 3551, et seq.

i. “Egregious” Violations
OSHA issues citations on a violation-by-violation basis when the violations are clearly willful and appropriate conditions exist to justify the imposition of maximum penalties for each individual occurrence of employee exposure rather than grouping exposure instances into a single violation, so long as the cited regulation prohibits individual acts or conditions. For example, a work site catastrophe resulting in worker fatalities or a large number of serious injuries or illnesses may yield, under appropriate circumstances, proposed penalties in excess of several million dollars. OSHA Instruction CPL 2.80, “Handling of Cases to be Proposed for Violation-by-Violation Penalties,” outlines the various situations that may result in an egregious penalty assessment.29

j. Severe Violator Enforcement Program (SVEP)
By enforcement Directive, OSHA has determined that certain employers will be placed into the SVEP. Criteria for being placed in the SVEP include fatality/catastrophic events where willful and repeat citations are issued, where there is a failure to abate previous citations or non-fatality/catastrophic high emphasis hazards resulting in willful/repeat citations. The consequences of being placed in the SVEP include, among others, nationwide inspections, follow-up inspections and enhanced settlement terms.

k. Mitigating Factors
The Act provides for the consideration of certain mitigating factors to reduce an employer’s civil penalty or fine. Such factors include the gravity of the violation, the size of the employer’s business, the employer’s good faith, and the employer’s history of violations.30

G. The Contest Process
Employers have the right to contest a citation. An employer may file (within 15 working days of receiving the citation) a notice of contest to the citation with the OSHA Area Director. The notice should state whether the employer is contesting the citation, the penalty, the abatement date, or all three. An employer also has the option to discuss settlement or withdrawal of the citation with the Area Director (or his representatives) in an informal conference. Any settlement resulting from an informal conference must be executed within the 15-day period allowed to file a notice of contest.
H. Employer Defenses

Numerous defenses are available to an employer if it is issued a citation. These defenses, both legal and factual, if established may result in the citation being dismissed.

One of the most common defenses asserted by employers is the defense of unpreventable employee misconduct. To establish this defense, the employer must prove that (1) it has an established work rule that would prevent the violation; (2) the rule was adequately communicated to its employees; (3) procedures were in place to monitor the rule (if applicable); and (4) violations of the rule were uniformly enforced.\(^{31}\)

Examples of other defenses include failure to issue the citation within the six months statute of limitations contained in the Act\(^{32}\), lack of jurisdiction\(^{33}\), and compliance with the cited standard is infeasible\(^{34}\), or would create a greater hazard.\(^{35}\)

There are other defenses and counsel should be contacted to ensure that all available defenses are evaluated and properly presented to OSHA or, if applicable, proved with relevant evidence during an administrative hearing before the OSHRC.

I. Hearing and Appeal

Once a citation is contested, the Secretary of Labor must then file a complaint with the OSHRC seeking affirmation of the citation; i.e., a finding that the violation occurred. The employer then files an answer to the complaint, and limited discovery takes place. The OSHRC is an independent agency created to grant administrative hearings to those employers who wish to contest citations. OSHA hearings are held before an administrative law judge and are conducted under the Administrative Procedure Act\(^{36}\) and the Federal Rules of Civil Procedure and Evidence,\(^{37}\) as modified by the Rules of the OSHRC.\(^{38}\) For some cases, the OSHRC has a Simplified Proceedings system that provides for an expedited resolution of a contested citation.\(^{39}\) Employers should be cautious of the Simplified Proceedings because of the limited discovery provided under the OSHRC Rules.

Parties have the right to submit evidence and post-hearing briefs. At the conclusion of the hearing, the administrative law judge issues his decision, findings of fact, and conclusions of law.\(^{40}\) Either party may petition the OSHRC to review a decision by an administrative law judge. The OSHRC may either grant or deny a petition for review. If the Review Commission fails to act on the petition within 30 days after the docketing of the administrative law judge’s decision, the petition is deemed denied. Before seeking further appellate review, an employer must file a petition for review with the OSHRC.

Once a decision becomes final either by failure of the OSHRC to grant a petition for review or by rendition of its decision, an aggrieved party may, within 60 days, seek review of the decision in the Court of Appeals. In theory, a party may obtain further review in the Supreme Court; however, the Supreme Court has rarely granted review in such cases.
J. Costs and Fees of Parties

Under the Equal Access to Justice Act, a federal agency, such as OSHA, may be required to pay an employer its defense costs incurred in contesting OSHA citations in some circumstances.\textsuperscript{41} First, an OSHRC administrative law judge must find that OSHA’s position was not substantially justified.\textsuperscript{42} Second, the employer’s net worth must not exceed $7,000,000 and its workforce consist of no more than 500 employees.\textsuperscript{43} Finally, the administrative law judge may deny an employer its defense costs when it would simply be unjust to do so.\textsuperscript{44}

K. OSHA and Civil Liability

The Act specifically provides that:

\begin{quote}
Nothing in this chapter shall be construed to supersede or in any manner affect any workers’ compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment.\textsuperscript{45}
\end{quote}

Although violations of the Act have been held to be admissible in lawsuits raising tort, negligence, and products liability claims, no private, independent cause of action has been found to exist for violations of the Act. Moreover, a violation of the Act alone is not sufficient to establish negligence as a matter of law.\textsuperscript{46}

Additionally, OSHA follows an internal policy of informing families of workers killed on the job of OSHA’s investigation, citations issued, employer contests, and closing of the investigation. Information obtained during OSHA’s investigation can be shared with the family after the OSHA case is closed.

L. OSHA Discrimination

OSHA protects employees against discharge or other discriminatory treatment for exercising any rights they may have under the Act.\textsuperscript{47} Employers are prohibited from taking adverse action against employees who have filed complaints on health or safety matters or who have participated in OSHA proceedings. Additionally, employees are protected from retaliation for refusing to work under certain hazardous conditions. The pertinent OSHA regulation provides:

\begin{quote}
If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee’s apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also
\end{quote}
have sought from his employer, and been unable to obtain, a correction of the dangerous condition.\textsuperscript{48}

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as disciplinary action prohibited by the Act. This situation is distinguishable from legitimate refusals to work discussed above.\textsuperscript{49}

**M. Applicability of Other Laws**

OSHA is not and was never intended to be the only source of safety and health regulation. Employers should be aware that in many areas unregulated by OSHA, numerous federal, state, and local statutes and regulations may apply to the workplace. For example, the Federal Aviation Administration (safety in air commerce), the Department of Transportation through the National Transportation Safety Board (safe and efficient transportation), Motor Carrier Act,\textsuperscript{50} pipeline regulation, federal railway safety regulations, environmental matters such as the Toxic Substances Control Act,\textsuperscript{51} child labor laws, mine safety and health, and even discrimination laws all impact and regulate workplace safety and health. Labor counsel should be consulted to ensure compliance with these many laws and regulations which impact workplace safety and health.

**N. State Criminal Liability**

Courts in several states\textsuperscript{52} have concluded that the Act does not preempt state criminal prosecutions based upon workplace conditions. Thus, employers and management personnel can be subject to criminal prosecution by state and local authorities despite the fact that OSHA may have also been involved in a workplace safety or health investigation.
ENDNOTES

8 See 29 C.F.R. § 1904.
9 29 C.F.R. § 1904.7(a),(b)(7)
12 For example, in Texas see, e.g. TEX. HEALTH AND SAFETY CODE ANN. art. 502.001 (Vernon Supp. 1996).
13 29 C.F.R. § 1904.39.
17 See generally, 29 C.F.R. § 1903, et seq.
26 29 U.S.C. § 666(e).
27 29 U.S.C. § 666(g).

29 In Secretary of Labor v. Arcadian Corp., 110 F. 3d 1192 (5th Cir. 1997), the United States Court of Appeals for the Fifth Circuit ruled that OSHA did not have authority to issue egregious citations based on the general duty clause. Whether OSHA has the authority to issue egregious citations based on specific standards is still a contested issue and may be limited to “those standards which are capable of such interpretation.” Chao v. Occupational Safety and Health Review, 403 F.3d 355, 368 (5th Cir. 2005).
31 See L. E. Myers Co., 16 OSHC 1037 (Rev. Comm’n 1993); L.R. Willson & Sons, Inc. v. OSHRC, 134 F. 3d 1235 (4th Cir. 1998) cert. denied 142 L. Ed. 2d 328 (1998); contrast with New York State Electric and Gas Corp. v. Secretary of Labor, 88 F.3d 98, 107 (2d Cir. 1996).
37 See, e.g., 29 U.S.C. § 661(g).
38 29 C.F.R. §§ 2200, et seq.
39 29 C.F.R. §§ 2200.200 et seq.
47 29 U.S.C. § 660(c)(1) and (2).
49 29 C.F.R. § 1977.22.
52 For example, in Texas see Sabine Consolidated, Inc. v. Texas, 806 S.W.2d 553 (Tex. Crim. App. 1991).
APPENDIX A

Region VI (NM, TX, OK, AR, LA)

**Acting Regional Administrator:**
**John Hermanson**
525 Griffin Street, Suite 602
Dallas, Texas 75202
972.850.4145
972.850.4149 (fax)

**Deputy Regional Administrator:**
**Eric Harbin**
525 Griffin Street, Suite 602
Griffin & Young Streets
Dallas, Texas 75202
972.850.4145

**Area Offices:**

- **Austin Area Office**
  Casey Perkins, Area Dir.
  1033 La Posada Drive
  Suite 375
  Austin, TX 78752-3832
  512.374.0271
  512.374.0086 (fax)

- **Corpus Christi Area Office**
  Michael Rivera, Area Dir.
  Wilson Plaza, Suite 700
  606 N. Carancahua
  Corpus Christi, TX 78476-1702
  361.888.3420
  361.888.3424 (fax)

- **Dallas Area Office**
  Stephen Boyd, Area Dir.
  8344 E. R.L. Thornton Freeway
  Suite 420
  Dallas, TX 75228
  214.320.2400
  214.320.2598 (fax)

- **El Paso District Office**
  Joanne J. Figueroa, Asst. Area Dir.
  4849 N. Mesa St., Suite 200
  El Paso, TX 79912-5936
  915.534.6251 (6252)
  915.534.6259 (fax)

- **Fort Worth Area Office**
  Jack Rector, Area Dir.
  8713 Airport Freeway, Suite 302
  Fort Worth, TX 76180-7610
  817.428.2470
  817.581.7723 (fax)

- **Houston North Area Office**
  David A. Doucet, Area Dir.
  507 North Sam Houston Parkway East, Suite 400
  Houston, TX 77060
  281.591.2438
  281.999.7457 (fax)

- **Houston South Area Office**
  Mark Briggs, Area Dir.
  17625 El Camino Real
  Suite 400
  Houston, Texas 77058
  281.286.0583 (0584)
  281.286.6352 (fax)

- **Lubbock Area Office**
  (also covers New Mexico)
  Joanne J. Figueroa, Area Dir.
  Federal Office Building
  1205 Texas Avenue, Room 806
  Lubbock, Texas 79401
  806.472.7681 (7685)
  806.472.7686 (fax)

**San Antonio Area Office**
Kelly Knighton, Area Dir.
800 Dolorosa Street, Suite 203
San Antonio, TX 78207-4559
210.472.5040
210.472.5045 (fax)

**Little Rock Area Office**
Carlos M. Reynolds, Area Dir.
10810 Executive Center Drive
Danville Bldg #2; Suite 206
Little Rock, AR 72211
501.224.1841
501.224.4431 (fax)

**Baton Rouge Area Office**
Dorinda Folse, Area Dir.
9100 Bluebonnet Centre Blvd
Suite 201
Baton Rouge, LA 70809
225.298.5458
225.298.5457 (fax)

**Oklahoma City Area Office**
David Bates, Area Dir.
55 North Robinson, Suite 315
Oklahoma City, Oklahoma 73102-9237
405.278.9560
405.278.9572 (fax)

OSHA maintains a comprehensive website — [www.osha.gov](http://www.osha.gov) — that provides additional information and compliance assistance. OSHA also has an 800 telephone number for reporting fatality or accidents that are required to be reported 1-800-321-OSHA (6742).
APPENDIX B

XYZ Industries
OSHA Inspection Procedures

I. REASONS FOR INSPECTION.
A. Imminent Danger — Where OSHA has information to believe that a condition exists that can be expected to cause death or serious harm immediately.
B. Accidents and Fatalities — Where OSHA has information concerning accidents or fatalities (OSHA regulations require notification of the OSHA area office within eight hours of a fatality or accident that results in the hospitalization of three or more — call corporate personnel if such a situation occurs).
C. Complaints — Employees or the public may call or write OSHA and report unsafe or unhealthful conditions.
D. Special Inspection Programs — Inspections based on OSHA-determined priorities (usually industries with high hazards).
E. Routine or General Schedule — Random, generally due to a formalized administrative targeting plan.
F. Follow-up — Confirm abatement from previous inspection.

II. PREPARATION.
A. Be in compliance with safety and health rules and procedures.
B. Recordkeeping — the following should be kept up to date:
   1. OSHA 300 logs
   2. OSHA Form 301 — Supplementary Records/Incident Records
   3. Annual Summary
   4. Hazard Communication Program
   5. Company Safety and Health Programs, including safety meeting minutes, records of dissemination and enforcement of program, training, etc.
   6. Assured Equipment Grounding Program (if GFCI not used)
   7. OSHA Poster
C. Be prepared for inspections at any time, maintain housekeeping, continue self-inspections, and know OSHA regulations that apply to Company’s activities.

III. ARRIVAL OF OSHA INSPECTOR.
A. Immediately notify corporate personnel.
B. Ask to see credentials — write down name.
C. Escort into office — have OSHA stay in office until decision made how to proceed.

D. Ask why inspection taking place — obtain copy of complaint if applicable.

E. If manager is not at plant, ask OSHA to return when manager will return (at least following day). If OSHA objects, put them in touch with corporate personnel.

F. If manager is at plant:

1. Allow routine record checks.
2. Determine if inspection is to be allowed or if delay of inspection or search warrant will be requested — discuss with corporate personnel.
3. If delay is to be requested, tell OSHA schedule (yours, production, etc.) will not allow inspection — ask to come back in two days (one day is also acceptable).
4. If OSHA refuses, confer with corporate personnel to determine if search warrant will be required.
5. Confer with corporate personnel to discuss inspection strategy.

G. Notify all appropriate managers, foremen and subcontractors, if applicable, of impending OSHA inspection.

IV. THE INSPECTION.

A. Opening Conference.

1. Record names of all present; take notes of all said.
2. If by search warrant, obtain copy and read it carefully — OSHA inspection cannot exceed wording of warrant.
3. If not by search warrant, determine which work areas will be inspected.
4. If OSHA seeks to inspect areas outside work areas identified, do not allow — confer with corporate personnel.
5. Do not volunteer any information; be cooperative, but do not speculate.

B. The Walkaround.

1. Corporate personnel will designate the manager or a responsible person to accompany OSHA. This person is one who:
   a. Is completely familiar with federal safety standards.
   b. Is completely familiar with the operation.
   c. Is completely familiar with the company policy on federal safety inspections.
2. Attitude toward the inspection:
   a. Use your own expertise during an inspection.
   b. Emphasize a professional attitude during inspection.
      i. Take a calm and rational (reasonable) approach.
      ii. Avoid involving yourself emotionally.
3. Recommended techniques during the inspection:
   a. Establish a cooperative attitude with OSHA.
   b. Answer OSHA questions concerning facts of your operation. If you do not know the answer, do not guess.
   c. Make certain that OSHA understands the answers.
   d. Do not admit violations. Normally you will not have enough information to make that final judgment. Remember, most OSHA violations are proved by admissions voluntarily made by employer representatives during inspections.
   e. Be familiar enough with the regulations to tactfully represent the company’s position if you feel OSHA is making a mistake in citing a violation. (You can disagree without being disagreeable.)
      i. Present the company’s position at the time of the inspection.
      ii. Tell OSHA any mitigating circumstances.
      iii. Tell why there is no safety risk or exposure if there is none.
      iv. Give reasons why correction has not occurred (if there are any legitimate reasons).
      v. Explain why there is no imminent danger to life or limb.
   f. Do not overreact.
   g. When necessary, seek assistance and/or expertise from foremen, safety personnel, etc.
   h. Play an active role in the inspection.
   i. Take notes of each location visited, equipment checked (including serial numbers), personnel talked to, pictures taken, noteworthy comments by OSHA.
   j. Take a picture or have a sample taken of everything OSHA does.
   k. Always accompany OSHA — never leave OSHA alone.
   l. Do not perform demonstrations.
   m. It is the company’s decision whether to allow OSHA to interview, onsite, company personnel. Contact corporate personnel. Prepare potential interviewees and direct OSHA to them if OSHA asks to speak to employees. OSHA always requests private employee interviews. Have employees request your presence at interviews. OSHA cannot require private interviews with supervisors. Contact corporate personnel if questions occur.
   n. Statements.
      i. Supervisory personnel — never give written statements without prior approval of corporate personnel. If a statement is given ask for a copy.
      ii. Non-supervisory personnel — encourage employee to request your presence and ability to review statement before signing. OSHA will try to influence statements to the detriment of the company.
If private interviews and statements are given, encourage employee to be careful and be absolutely certain statement is accurate. Debrief involved employee immediately, have employee request a copy of statement, and obtain a copy from employee for company.

o. Abatement.
   i. If the alleged violation can be reasonably corrected go ahead and make the correction, even if you feel you will later contest the alleged violation. Do not admit a violation.
   ii. Where the alleged violation cannot be corrected on the spot, be certain to ask for sufficient time to abate the alleged violation properly so that OSHA’s report shows “abated at operator’s request.” Do not admit a violation.
   iii. If you have any questions on an alleged violation, contact corporate personnel for advice and direction.

p. Closing Conference.
   i. Make note of all present and what is said, including OSHA, especially the details of alleged violations.
   ii. Do not volunteer information. Do not admit violations.
   iii. If OSHA asks how long it will take to abate, the answer is “no comment.” The company will respond within the time period allowed by law.

q. The Citation — when received, notify corporate personnel immediately.
APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In the matter of
Inspection Warrant Docket No.
Construction Worksite Inspection Of
Docket No.

Dallas, Texas

INSPECTION WARRANT

TO: K Frank Gravitt AND/OR ANY OTHER DULY APPOINTED COMPLIANCE OFFICERS OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR (OSHA).

Request having been made and sufficient facts having been presented to the Court, the Court, based on these facts hereby finds probable cause exists to believe that the workplace hereinafter described was selected for a programmed construction inspection pursuant to an administrative enforcement plan based upon objective selection criteria. The Court further finds, based on the facts presented, that the proposed scope of the warrant is reasonable. Therefore,

IT IS HEREBY ORDERED that, pursuant to Section 8(a), 29 U.S.C. 657(a), of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), hereinafter referred to as “the Act,” you or your duly designated representative(s) are authorized to enter the workplace hereinafter described within 10 days for the purpose of conducting a programmed construction inspection.

Said inspection shall be within 10 days and shall be conducted and finished within a reasonable time. Said inspection shall be conducted during regular hours and at other reasonable times, within reasonable limits and in a reasonable manner.

Said inspection shall extend to all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials necessary to effectuate its purpose. The compliance personnel shall be permitted to question privately any employer, owner, operator, agent, or employee. The compliance personnel also shall be permitted to review records, (excluding employee medical records) required by U.S.C. 657(c) and regulations promulgated pursuant thereto, which are directly related to the purpose of the inspection and to take photographs related to the purpose of the inspection.
SCOPE OF THE INSPECTION:
The inspection shall cover all areas of the below-described construction worksite under the control of __________________________________________________ and shall extend to and include any and all subcontractors located on the construction site.

DESCRIPTION OF WORKPLACE:
No return of this warrant need be made.

DATED this ________________ day of ________________________________

UNITED STATES MAGISTRATE
Citation and Notification of Penalty

To:
S.J. Louis Construction of Texas, Ltd.
and its successors
P.O. Box 834
Mansfield, TX 76063

Inspection Site:
860 W. Airport Frwy.
Hurst, TX 76054

Inspection Number: 316045335
Inspection Date(s): 02/16/2012 – 02/16/2012
Issuance Date: 08/06/2012

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting — The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer’s operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference — An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.
If you decide to request an informal conference, please complete, remove and post the page 4 Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Right to Contest** — You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

**Penalty Payment** — Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restriction or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** — For each violation which you do not contest, you are required by 29 CFR 1903.19 to submit an Abatement Certification to the Area Director of OSHA office issuing the citation and identified above. The certification must be sent by you within 10 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (examples: photos, copies of receipts, training records, etc.) demonstration that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citations states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer’s authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to OSHA, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** — The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

**Employer Rights and Responsibilities** — The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Notice to Employees** — The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown.
above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** — You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provision of the Electronic Freedom of Information Act. The information related to these alleged violation will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

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**U.S. Department of Labor**  
Occupational Safety and Health Administration

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**NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE**

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 08/06/2012. The conference will be held at the OSHA office located at Fort Worth Area Office, 8713 Airport Freeway, Suite 302, Fort Worth, TX 76180-7610 on ________________ at ________________. Employees and/or representatives of employees have a right to attend an informal conference.
Citation and Notification of Penalty

Company Name:  S. J. Louis Construction of Texas, Ltd.
Inspection Site:  860 W. Airport Frwy., Hurst, TX 76054

Citation 1 Item 1

Type of Violation:  Serious

29 CFR 1926.651(j)(2): Protection was not provided by placing and keeping excavated or other materials or equipment at least 2 feet (0.61 m) from the edge of excavations, or by the use of retaining devices that were sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary:

On or about 2/16/12, on the west side of the trench, employees working in the trench were exposed to the hazard of being struck by falling materials that were not kept at least 2 feet from the edge of the trench.

Date By Which Violation Must be Abated:  08/10/2012
Proposed Penalty:  $7000.00
Citation and Notification of Penalty

Company Name:  S. J. Louis Construction of Texas, Ltd.
Inspection Site:  860 W. Airport Frwy., Hurst, TX 76054

Citation 1 Item 1  Type of Violation: Repeat
29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section:
On or about 2/16/12 on the south end of the trench, employees were exposed to cave-in hazards while working in an open trench approximately 10 feet deep with inadequate sloping, benching or shoring configurations.
S. J. Louis Construction of Texas Ltd. Was previously cited for violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.652(a)(1) which was contained in OSHA Inspection 310447495, Citation 1, Item 2, and was affirmed as a final order on 06/26/08 with a final abatement date of 06/16/08, with respect to a workplace located at 4750 Block of Josey Lane, Carrollton, TX 75010.

  Date By Which Violation Must be Abated: 08/10/2012
  Proposed Penalty: $38500.00

Jack A. Rector
Area Director
COMPLAINT

An inspection has disclosed that, at the time and in the manner hereinafter stated, the provisions of Section 5(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651, et. seq.), hereinafter referred to as the Act, have been violated. It is, therefore, alleged and charged that:

I.

Jurisdiction of this proceeding is conferred upon the Occupational Safety and Health Review Commission, hereinafter referred to as the Commission, by Section 10(c) of the Act, 29 U.S.C. § 659(c).

II.

Respondent is an employer engaged in a business affecting commerce within the meaning of Section 3(5) of the Act, 29 U.S.C. § 652(5).

III.

As a result of an inspection at respondent’s workplace by an authorized representative of complainant, respondent was issued two citations for serious and repeat violations pursuant to Section 9(a) of the Act. The repeat violation is also serious within the meaning of Section 17(k) of the Act. The violations is set forth in the attached citation marked as Exhibit A and adopted by reference pursuant to 29 C.P.R.§ 2200.30(d).

IV.

Exhibit A states with particularity the time, location, place and circumstances of such alleged violations.

V.

On August 6, 2012, complainant received from respondent a notice of intent to contest the aforesaid citation pursuant to the provisions of § 10(c) of the Act.

VI.

The penalty proposed for the violations set forth in Exhibit A is appropriate within the meaning of § 170(j) of the Act, giving due consideration to the size of the business, the gravity of the violation, the good faith of the respondent, and the history of previous violations.

VII.

The period for abatement of the alleged violation is based upon a consideration of all known pertinent facts. Considerations useful to arriving at an abatement date include (1) the gravity of
alleged violation, (2) the availability of needed equipment, material, and/or personnel, (3) the time required for delivery, installation, modification of construction, and (4) training of personnel.

WHEREFORE PREMISES CONSIDERED, Complainant demands the Commission issue an order pursuant to Section 10(c) of the Act, 29 U.S.C. § 659(c), affirming the citation.

Respectfully Submitted,

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

U.S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, TX 75202
Telephone (972) 850-3100
Facsimile (972) 850-3101

MADELEINE T. LE
Counsel for Occupational Safety & Health

By:

MIA F. TERRELL
Trial Attorney

RSOL Case No. 94-01513

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Complaint was served upon the attorney of record of all parties, as shown by the letter of transmittal incorporated herein by reference, by depositing the same in the United States mail in an envelope addressed to such parties’ or attorney’s last known address:

Steven R. McCown
Littler Mendelson, P.C.
2001 Ross Avenue, Suite 1500
Dallas, TX 75201-2931

Signed this 27th day of August, 2012.

MIA F. TERRELL
Trial Attorney

NOTICE TO RESPONDENT/EMPLOYER

You are hereby notified that you must file an answer to this complaint proposing penalty, in which you include a plain and concise statement of the reasons you have contested each of the violations cited in the complaint proposing penalty, whether you admit that a violation occurred, and whether you request a hearing. Such answer must be filed with the Occupational Safety and Health Review Commission, within 20 days from the date of service of this complaint proposing penalty. See the Commission’s rules at 29 CFR 2200.34(b)(1). A copy of your answer must be sent to the Office of the Solicitor, at the address appearing above. Failure to file an answer may result in default being entered against you on this petition, under 29 CFR § 2200.101(a).
ANSWER OF RESPONDENT

Respondent answers the Complaint as follows:

I.
Respondent denies the conclusions and statements of Complainant made in the introductory paragraph of the Complaint. Respondent admits the allegations of Paragraph I of the Complaint.

II.
Respondent admits the allegations of Paragraph II of the Complaint.

III.
Responding to the allegations of Paragraph III of the Complaint, Respondent admits that it was issued citations and notifications of proposed penalties. Respondent is without sufficient information or belief to admit or deny whether the inspection was conducted by an authorized representative of Complainant or whether the citations were issued pursuant to the Act, and the allegations to that effect, therefore, are denied. Respondent denies the remaining allegations of paragraph III of the Complaint.

IV.
Respondent denies the allegations of paragraph IV of the Complaint and Exhibit A referred to therein.

V.
Responding to paragraph V of the Complaint, Respondent admits that it made a timely contest of the involved citation pursuant to Section 10(c) of the Act and that the Review Commission has jurisdiction of this proceeding.

VI.
Respondent denies the allegations of paragraph VI, and Exhibit A referred to therein.

VII.
Respondent denies the allegations of paragraph VII of the Complaint.

VIII.
Respondent denies all allegations of the Complaint not specifically admitted or otherwise qualified herein.
IX.
Respondent denies that it violated any valid provision of the Act and would show the Administrative Law Judge and the Review Commission that it has not violated the Act as alleged in the Complaint.

X.
In the alternative and as an affirmative defense, the alleged violations of the Act were the result of an unforeseeable employee misconduct that directly violated a clearly communicated and enforced Company rule.

WHEREFORE, RESPONDENT PRAYS that relief requested in the complaint be denied, that the Complaint and Citation be dismissed, and that Respondent have such further relief as it may be entitled.

Respectfully submitted,

Steven R. McCown
LITTLER MENDELSON, P.C.
2001 Ross Avenue, Suite 1500
Dallas, Texas 75201
(214) 880-8100, (214) 880-0181 (Fax)
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on ________________, Attorney, Office of the Solicitor, U.S. Department of Labor, 525 S. Griffin Street, Suite 501, Dallas, Texas 75202, by placing same in the United States Mail, postage prepaid, this _____ day of _________________, 2007.

Steven R. McCown
APPENDIX G

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Secretary of Labor

Complainant,

v.

Respondent.

OSHRC Docket No. ___________________________

RESPONDENT’S REQUEST FOR PRODUCTION OF DOCUMENTS

TO: _____________, Attorney, Office of the Solicitor, U.S. Department of Labor, 525 South Griffin Street, Suite 501, Dallas, Texas 75202.

Respondent __________________________, pursuant to Rule 53, Rules of Procedure, Occupational Safety and Health Review Commission, requests that the following documents pertaining to this case be produced for inspection and copying by Respondent at Littler Mendelson, a Professional Corporation, 2001 Ross Avenue, Suite 1500, Dallas, Texas 75201, or at some other mutually agreeable location, within thirty (30) days after receipt of this request:

1. Safety and Health Report — OSHA Form 1;
2. Narrative — OSHA Form 1A;
3. Worksheet — OSHA Form 1B;
4. Worksheet — OSHA Form 1B (1H);
5. All reports, notes, records, documents, citations, final orders of the Commission, or any other written materials that support the proposition that the alleged violations in the cause were violations under the Act.
6. All affidavits, videotapes, or written statements taken from Respondent’s employees (if a claim of informers’ privilege is made, produce said statements with necessary deletions to protect the identities of the informers);
7. All other notes, forms, reports, recommendations, or memoranda made by the Compliance Safety and Health Officer and other Department of Labor employees, consultants, and experts in connection with this case;
8. All photographs and videotapes taken at or of Respondent’s premises and workplace involved in this matter.
9. All interpretations, memoranda, or other internal documents that interpret or explain the OSHA standards involved in this matter.
10. All citations given to other employers involved in the work place in issue in this proceeding as a result of this inspection or any previous inspections and all documents requested in items 1-9 above in connection with such citation.

Respectfully submitted,

Steven R. McCown

LITTLER MENDELSON, P.C.
2001 Ross Avenue, Suite 1500
Dallas, Texas 75201
(214) 880-8100, (214) 880-0181 (Fax)

Attorneys for Respondent
ABOUT LITTLER

Littler is the largest global employment and labor law practice with more than 1,000 attorneys in over 60 offices worldwide. Littler represents management in all aspects of employment and labor law and serves as a single source solution provider to the global employer community. Consistently recognized in the industry as a leading and innovative law practice, Littler has been litigating, mediating and negotiating some of the most influential employment law cases and labor contracts on record for over 70 years. Littler is the collective trade name for an international legal practice, the practicing entities of which are separate and distinct professional firms.