



What To Do When OSHA Comes A-Knockin'

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OSHA's Process Safety National Emphasis Program (NEP)

- Following the BP Texas City incident, OSHA was criticized for lack of enforcement of the Process Safety Management (PSM) Standard.
- The Refinery NEP was implemented in 2007 with the goal to inspect all refineries in the US.
- The program was expanded to chemicals manufacturing in the Chemical NEP in 2009.
 - RMP Program Level 3 Facilities
 - 25% of inspections have been NH₃ refrigeration systems
 - 25% Cl₂ Water Treatment Facilities
 - 50% Other
 - Previous PSM citation history
 - Referrals
- Chemicals NEP likely to last ~7 years
- VPP sites are exempt from programmed OSHA inspections, *but not EPA RMP inspection.*

OSHA Inspections 2005 – 1H 2010

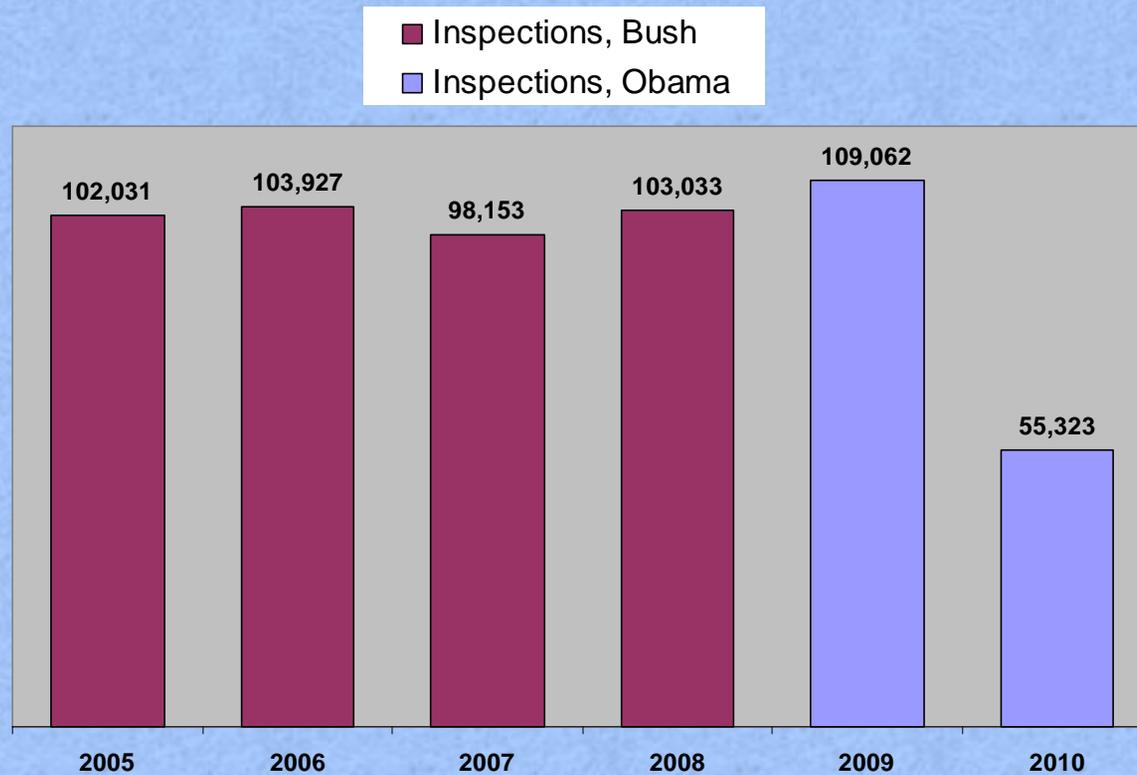


Chart courtesy of ABS Consulting

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OSHA Violations Issued 2005 – 1H 2010

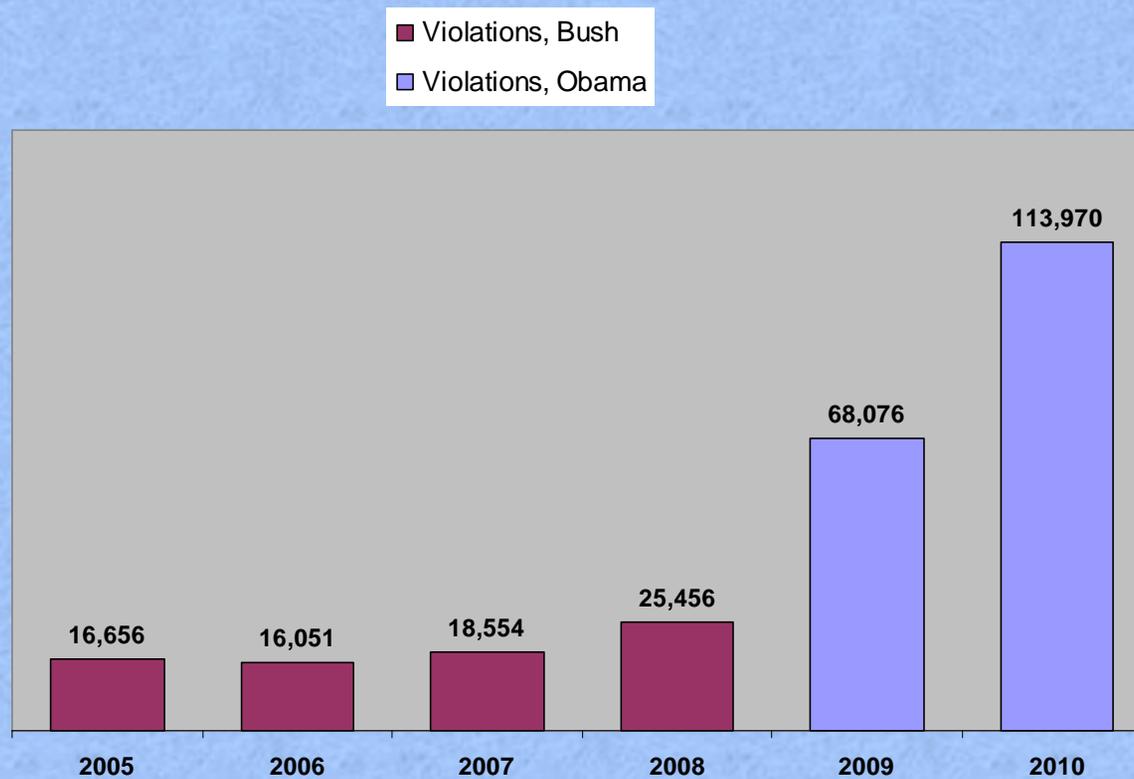


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OSHA Willful Violations Issued 2005 – 1H 2010

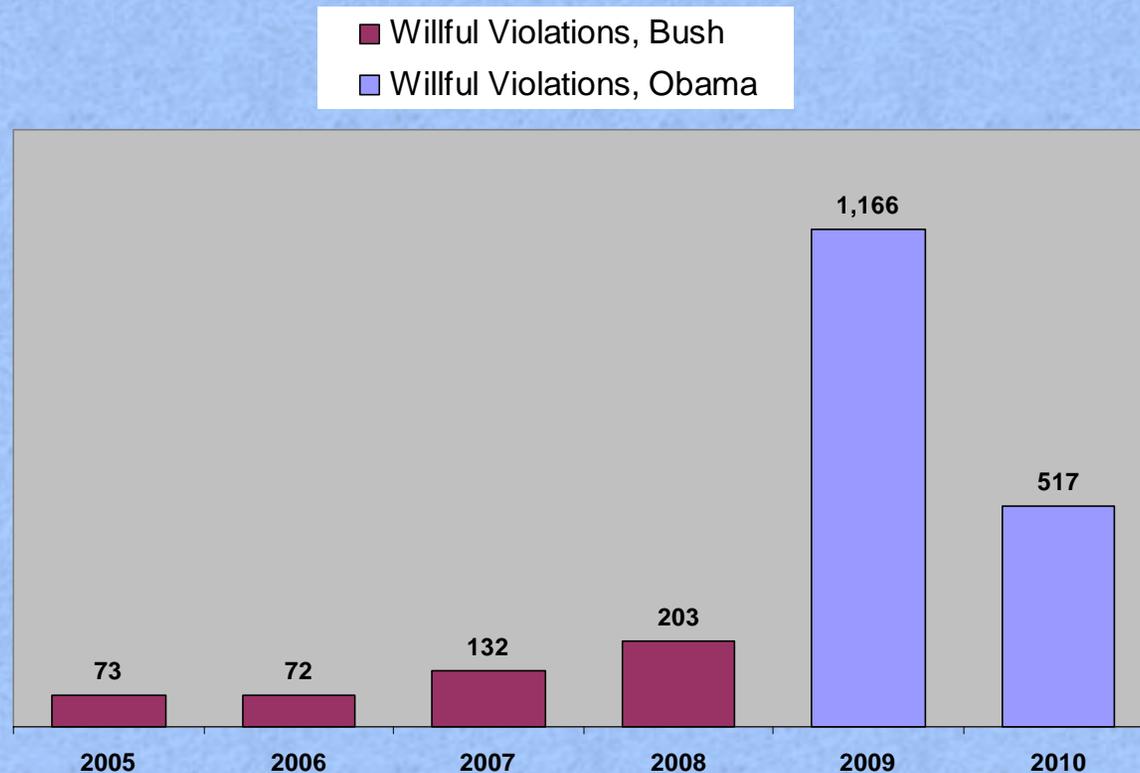


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OSHA Enforcement

- DOL began reviewing OSHA's penalty program in 2010 through audits to determine effectiveness of penalty reductions to encourage employer abatement of violations.
 - Also reviewing whistleblower prosecutions and application of site-specific targeting program for programmed inspections.
- OSHA will continue to impose higher fines – e.g., \$87.4 mil. against BP; \$8.8 mil. against Imperial Sugar; and \$1.6 mil. against Tempel Grain Elevators.
- Heightened use of “egregious” penalties (penalties “per exposed or affected employee”).
- Expect increased scrutiny of enforcement conducted by state OSHA agencies – possible plan revocations could occur (e.g., oversight of NV state plan enforcement after construction accidents; scrutiny of construction 10/30 hr trainers in NV and in NY City)

OSHA auditors typically ask to see the following written documents:

- Injury and illness summary (OSHA 200 and 300 logs) for the past 4 years
- Specific injury reports for each employee's injury for the past 4 years
- A written Hazard Communication Plan
- Documentation of employee training on Hazard Communication
- Material Safety Data Sheets for hazardous chemicals that you use or store on site
- Any documentation related to the reason for their visit such as written programs, training logs, and inspection and maintenance logs of equipment

Chemical NEP will use a dynamic list of inspection questions

- The refinery NEP featured a publically available static list of inspection questions
- The chemical NEP uses a dynamic list of questions available only to OSHA
- No two facilities can expect to be audited with exactly the same set of questions
- A summary of the dynamic list states:
 - “This list based evaluation is a gap analysis formatted in a series of questions that have been developed to assess and verify the employer’s PSM compliance with specific issues such as *design, fabrication, installation, startup, operation, maintenance, change, controls (engineering and administrative), safe work practices, contractor safety, etc., at the facility...*” (emphasis added)

Chemical NEP audits, similar to the refinery NEP audits , will focus on the following PSM elements:

- Mechanical Integrity
 - Operating Procedures
 - Management of Change/Pre-startup Safety Review
 - Contractor Safety
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- The refinery NEP audits also concentrated on Process Hazard Analysis (PHA), which has been the same for the chemical NEP audits.

You talk the talk, but do you walk the walk?

- Like the refinery NEP, the chemical NEP inspections focus more on the implementation of the PSM program, or the lack of it, rather than on just documentation.
- In other words, OSHA will examine the program from a “Say what you do, and do what you say” viewpoint rather than just examine written policies and procedures for compliance.

NEP Inspection – A Six Step Process

- Opening Conference
- A facility-led overview of the site's PSM programs
- An initial walk-around
- A compliance evaluation of a selected PSM covered unit within the facility
- An inspection of the contractors working within or adjacent to the selected unit(s)
- Issuance of citations for any PSM violations identified

Establish an inspection protocol at the outset

- Advise auditors who the company point person is and that all communications/requests must go through that person only
- Provide auditors with an inspection base of operations that:
 - Is away from the units (e.g., admin office or trailer)
 - Does not allow auditors ability to use internal phones
- Auditors are not entitled to access to company's database
- Identify trade secrets
- Auditors are not entitled to instant gratification
- Remember: When in doubt, politely ask auditors to wait and call counsel

Audit inspection will include:

- Document requests
 - Either via subpoena or informal request
 - Meet deadline or obtain extension
 - Provide only what requested
 - Be wary of obvious gaps or omissions
 - Bates stamp/number all documents
 - Keep duplicate set for you and counsel

Audit inspection will include:

- Interviews
 - Management – always have counsel present
 - Employees – may have Union representative present
 - Be careful in interviewing employees following their interviews
 - Read any statement before signing
 - You have the right not to sign any statement
 - Request copy of any statement signed before OSHA leaves
 - Think before you speak – answer their questions - honestly

Audit inspection will include:

- Field observations
 - Never allow the OSHA auditors to tour/inspect facility without a management level escort
 - Initial walk-around
 - Inspection of selected areas of OSHA review
 - Take good notes and/or bring another employee along to do so
 - Use your own camera to take the same photos the auditors take
 - Request digital copies of the auditors photos

Issuance of Citation

- Prepare management that citations will be issued
- Not just a money issue
 - Certain citations can prohibit bidding on future work
 - Acceptance of any citation can result in future repeat violations
- Request Informal Conference – but be prepared for no resolution