





# Collaborative Bachelor's Degree Program of Fire Protection and Safety Engineering Technology between Southwest Jiaotong University and Oklahoma State University, U.S.A.





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## FPST 3013 Safety Management

OSHA Legal and Regulatory Issues

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## Legislative History of the OSH Act



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- The Williams-Steiger Act  
Signed December 1970 by President Nixon
  - Effective April 1971
- Up until this point, S&H laws historically left to the states
- Prior to 1960's, laws applied to a limited number of federal contract employers or a specific industry
  - Walsh-Healy Public Contracts Act
  - Longshoremen's and Harbor Workers' Compensation Act

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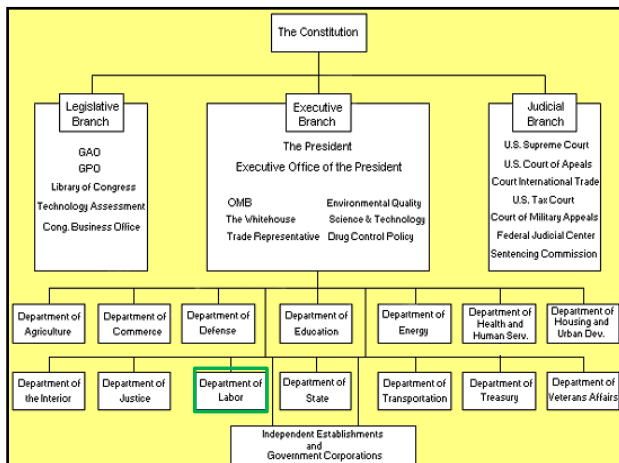
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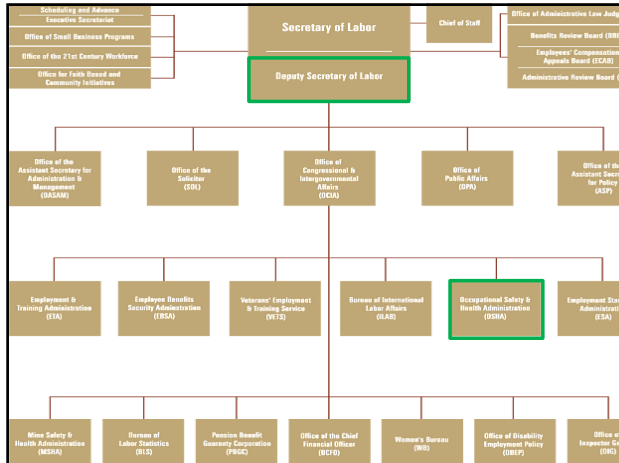
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## OSHA



- Occupational Safety and Health Administration
  - April 28, 1971
  - Group was created with the passing of the OSH Act
- Areas of authority:
  - Promulgate, modify, and revoke safety and health standards
  - Conduct inspections and issue citations
  - Require employers to keep records
  - Petition the courts in cases of imminent danger
  - Approve or reject state plans
  - Provide training and education (employers and employees)
  - Consult with employers and employees regarding prevention of illnesses and injuries
  - Grant funds to the states for program development
  - Develop and maintain a statistics program
  - They are the law

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## OSHA Structure



- DOL - Secretary of Labor
- Assistant Secretary of Labor for OSHA
  - Investigation and prosecution
- 10 Regional Offices
  - Area Offices in each region
  - Area Director



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### OSHA's Regulatory Agenda

- <https://www.osha.gov/laws-regs/unifiedagenda/currentagenda>

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### Fun Facts about OSHA

- FY 2019 budget
  - \$557,787,000.00
- FY 2018 – Inspections
  - Federal – 32,020
  - Citations – 40,993 (58,702 in FY 2017)
- 2200 Inspectors
  - 130 million workers in the US
  - 8 million worksites
- 59,000 workers for every OSHA employee
- Watch videos:
  - OSHA cites Hartford Fire Dept. in Firefighter Bell's death
  - What is OSHA and which jobs does it protect?

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## Employee Rights (pg 54-55)

- Receive information and training (in applicable language) about hazards, methods to prevent harm, and applicable OSHA standards
- Review records of their workplace injuries and illnesses
- Receive copies of the results from tests and IH monitoring
- Get copies of their workplace medical records
- Participate in an OSHA inspection and speak in private with the inspector
- File a complaint with OSHA if they have been retaliated against by their employer as the result of requesting an inspection or using any of their other rights under the OSH Act
- File a complaint if punished or retaliated against for acting as a "whistleblower"
- File a confidential complaint

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## Filing an OSHA Complaint

- Download the OSHA-7 form from OSHA's website
- File the complaint online
- Workers can file a complaint
- A worker representative can file a complaint
- Telephone or visit local regional or area offices to discuss your concerns
- Complete the form – be specific and include appropriate details
- OSHA determines if an inspection is necessary
- Workers do not have to reveal their name

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## The OSHA Poster

- What part of the law requires us to do this?
  - [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=9606](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9606)
- Don't pay for one. They're free
  - <https://www.osha.gov/Publications/poster.html>

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## Employer Rights



- Apply for variance
- Participate in standards development
- Apply for small business loan for compliance assistance
- Assured of confidentiality of trade secrets
- During inspections
  - Request ID from CSHO
  - Informed as to the purpose of inspection
  - Opening and closing conference
  - Contest violation

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## What to Expect

During an OSHA Inspection

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- **Boss:** "We are happy to have you here."

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## Workplace Inspections



- Establishments covered by the OSH Act are subject to inspection by OSHA compliance safety and health officers (CSHO's)
- The OSH Act authorizes CSHOs to conduct workplace inspections at reasonable times and typically without advance notice
  - It is illegal to have advance notice of an OSHA inspection
  - In fact, anyone who tells an employer about an OSHA inspection in advance can receive fines and a jail term

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## OSHA Inspection priority



Priority	Category of Inspection
1st	<b>Imminent Danger:</b> <i>Reasonable certainty an immediate danger exists</i>
2nd	<b>Fatality/Catastrophe:</b> <i>Reported to OSHA; inspected ASAP</i>
3rd	<b>Complaints/Referrals:</b> <i>Worker or worker representative can file a complaint about a safety or health hazard</i>
4th	<b>Programmed Inspections:</b> <i>Cover industries and employers with high injury and illness rates, specific hazards, or other exposures.</i>

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## Can OSHA just walk in?



- Barlow case – 1978
- OSHA inspectors violating 4<sup>th</sup> Amendment rights
  - The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures and requires any search warrant to be judicially sanctioned and supported by probable cause. It is part of the Bill of Rights
  - OSHA Inspectors must get warrant if requested

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## Opening Conference



- CSHO will
  - Present credentials
  - Explain purpose, nature and scope of inspection
  - Request records that need to be examined
  - Obtain names of employer & Employee representative who will accompany
  - Explain random interview process
  - Explain sampling/photograph protocol
  - Determine what PPE is needed on site
  - Explain normal violation/penalty structure
  - Set tentative date/time for closing conference

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- Regardless of purpose of visit, OSHA will view OSHA logs
  - Looking for reasons to expand the inspection
- Develop internal procedures and issue to leadership team
  - Goodyear

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## Walk Around Inspection



- Accompany the CSHO at all times
- Take side by side pictures/video/samples
- CSHO may speak to employees in private or have a representative present

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## Closing Conference



- OSHA will disclose proposed violations
- Not final until you receive the citation

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## Citation and Notice of Penalty



- Comes from the Area Director
- States nature of the violation
- Cites specific standard that was violated
- Suggest possible abatement measures
- Abatement dates
- Penalties

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## Violation Categories



- Willful
  - Intentional or indifferent
  - Failure to abate after serious violation
  - Knew but didn't do anything
  - Not issued without consulting with Regional Administrator
  - Condition that could cause death or serious physical
  - Hazardous condition the employer knew or should have known about
  - Big \$\$\$
- Serious
- Repeat
- Other than serious
  - Relationship to safety and health
  - Usually not accompanied by monetary citation
  - May be resolved in the informal conference
- "De Minimus"
  - The law does not concern itself with trifles"
  - No immediate or direct threat to H&S

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## Citations and Penalties



VIOLATION TYPE	PENALTY
<b>WILLFUL</b> A violation that the employer intentionally and knowingly commits or a violation that the employer commits with plain indifference to the law.	OSHA may propose penalties of up to \$134,937 for each willful violation, with a minimum penalty of \$13,494 for each willful violation.
<b>SERIOUS</b> A violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard.	There is a mandatory penalty for serious violations which may be up to \$13,494.
<b>OTHER-THAN-SERIOUS</b> A violation that has a direct relationship to safety and health, but probably would not cause death or serious physical harm.	OSHA may propose a penalty of up to \$13,494 for each other-than-serious violation.
<b>REPEATED</b> A violation that is the same or similar to a previous violation.	OSHA may propose penalties of up to \$134,937 for each repeated violation.

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## Citations



- Must be posted upon receipt
  - 3 days or until corrected, whichever is longer
  - Must be done, even when citation is contested
- Petition for modification of abatement (PMA)
  - 10 days to request that more time needed to comply
    - Steps taken to date
    - Reasons for more time
    - Temporary safe guards in place
- Informal Conference
  - Within 15 days
  - Employer, employees, OSHA
  - Usually has good results

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	Company Name	Issuance Date	Total Issued Penalty
1	BP Products North America	10/29/2009	\$81,340,000
2	BP Products North America	09/21/2005	\$21,361,500
3	IMC Fertilizer/Angus Chemical	10/31/1991	\$11,550,000
4	Imperial Sugar	07/25/2008	\$8,777,500
5	O&G Industries, Inc.*	08/03/2010	\$8,347,000
6	Samsung Guam, Inc.	09/21/1995	\$8,260,000
7	CITGO Petroleum	08/29/1991	\$8,155,000
8	Dayton Tire (OKC)	04/18/1994	\$7,490,000
9	USX (aka U.S. Steel Corp.)	10/26/1989 11/02/1989	\$7,275,300
10	Keystone Construction Maintenance*	08/03/2010	\$6,623,000
11	Phillip 66/Fish Engineering	04/19/1990	\$6,395,200

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## Egregious Policy



- OSHA may cite each instance of each violation or employee exposed in lieu of grouping violations
- Factors include
  - Number of fatalities
  - Facility has bad history
  - Employer seriously disregarded workplace safety
- Dayton Tire – OKC
  - Document review
  - Ignorance as a defense?
  - It's about "good-faith"

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## Employer Options



- If you agree
  - Correct the violation
  - Pay the Penalty
  - Submit abatement certification
- If you do not agree
  - Within 15 days request Informal Conference to contest the citation

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## Contested cases



- Within 15 days
  - Includes time for informal conference if it occurs
  - Informal Conference strongly recommended
- If informal conference does not resolve differences, employer may contest:
  - Citation
  - Proposed penalty
  - Notice of failure to correct
  - Time allotted
- The Contest must be posted in the workplace
  - Keep employees in the loop

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### Tips to survive an inspection



- Allow access
  - Show them what they want to see, but nothing more
- Be courteous
- Get documents ASAP
- Make every effort to correct problems immediately
- Take side by side photos/video/samples
- Request Informal Conference – Every Time
- Be transparent
- Be able to show good faith effort

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### You must be truthful



- All information that employers and employees report to OSHA must be accurate and truthful.
- Providing false information on efforts to abate cited conditions or in required records is punishable under the *OSH Act*.

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### Emphasis Programs



- National
  - <https://www.osha.gov/enforcement/directives/nep>
- Regional
  - Region VI – (TX, AR, LA, NM, OK)

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## Severe Violators



- What makes a Severe Violator?
  - a fatality or catastrophe inspection with one or more willful or repeated violations or failure-to-abate
  - non-fatality/catastrophe inspection with two or more willful or repeated violations or failure-to-abate notices that are high gravity violations related to High-Emphasis Hazards
  - A non-fatality/catastrophe inspection with three or more willful or repeated violations or failure-to-abate notices that are high gravity violations related to the potential release of a highly hazardous chemical
  - An egregious (e.g., per-instance citations) case
  - <https://www.osha.gov/enforcement/directives/cpl-02-00-149>

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## SEVERE VIOLATORS

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## Variances & Interim Orders



- What is a Variance?
  - A variance permits an employer or class of employers to depart from the requirements of an OSHA standard under specified conditions.
- What is an Interim Order?
  - An interim order allows an applicant for a variance to use its proposed alternate means of protection, on a temporary basis, until OSHA renders a final
  - An applicant that would like OSHA to grant it an IO should include such a request with its variance application.

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## Variances From Standards



- Reasons for request
  - Standards cannot be met
  - The industry does a better job than the standard
- Types of variances:
  - Temporary
    - Statement of inability to comply
    - Description of steps to insure safety
    - Statement of when compliance will take place
    - Certification that employees have been notified
  - Permanent
    - Description of countermeasures used or proposed
    - Statement of how countermeasures will meet standards
    - Certification that employer has informed employees

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## Temporary Compliance Variances



- When an employer is unable to comply with a new standard immediately but may be able to if given time, a temporary variance may be requested. OSHA will grant such a variance up to a maximum of one year. Employers must
- Demonstrate that they are making a concerted effort to comply and
- Must take the steps necessary to protect employees while working toward compliance
  - [https://www.osha.gov/dts/otpc/variances/variances\\_ineffect.html](https://www.osha.gov/dts/otpc/variances/variances_ineffect.html)

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## Permanent Compliance Variances



- Employers who feel that their workplace already exceeds the (performance) requirements of a new standard (but not the details) may request a permanent variance and must present their evidence to OSHA for inspection. Employees must be informed of the application for a variance and notified of their right to request a hearing.
  - [https://www.osha.gov/dts/otpc/variances/denied\\_withdrawn95-10.html](https://www.osha.gov/dts/otpc/variances/denied_withdrawn95-10.html)

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## Employee Appeals



- Employees may appeal the following aspects of OSHA's decisions regarding their workplace:
- The amount of time (abatement period) given an employer to correct a hazardous condition that has been cited
- An employer's request for an extension of an abatement period

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## Services Available from OSHA



- Services available from OSHA include:
- Consultation
- Voluntary inspection programs
- Challenge
- Training/education
- VPP

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## Consultation Assistance



- Provided at no cost
- For smaller employers with more hazardous operations
- Delivered by state (OKDOL)
- No penalties or citations
- Violations not reported to OSHA



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## Has OSHA Made a Difference?

- Since 1970 OSHA has:
  - Helped cut the work-related fatality rate in half
  - Worked with employers and employees to reduce workplace injuries and illnesses by 40%
  - Virtually eliminated brown lung disease in the textile industry, and
  - Reduced trenching and excavation fatalities by 35%

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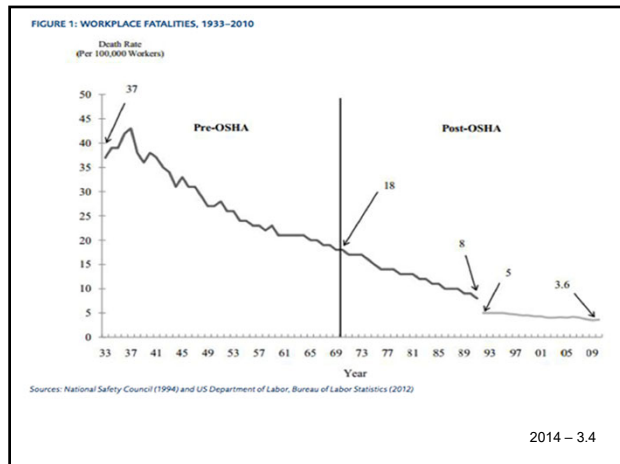
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## OSH Act Positive Steps

- Given employees significant role in S&H matters
- Made health a high priority as well as safety
- Status to health professionals
  - Greater training
  - University programs on the rise
- More emphasis on product safety
  - "New purchases must comply with OSHA requirements" in contract language
- Relate to management systems

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## Emphasis Programs



- NEP – National Emphasis Programs
  - <https://www.osha.gov/dep/neps/nep-programs.html>
- REP – Regional Emphasis Programs
  - <https://www.osha.gov/dep/leps/leps.html>

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## Voluntary Protection Programs (VPP)



- “Best of the Best”
- Comply with all applicable OSHA standards
- “Voluntarily” implement required elements of a SMS
- Recognition
  - Star
    - 3-year renewal
  - Merit
    - Annual renewal
  - Demonstration
- <https://www.osha.gov/dcsp/vpp/charts/presentation.html>

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## OSH Act Limitations



- Control only over physical conditions
  - Does compliance = safe?
    - Does not address behavioral issues
- Does not address
  - Human – machine interaction
    - Ergonomics
  - Supervisor Training
  - Work procedure development
  - Job instruction training

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## Safety Manager Roles



- Use knowledge based on experience, education, training, and instincts to comply with corporate safety programs, if one exists
  - Determine what's applicable
  - Avoid liabilities associated with injuries and loss of customer confidence
- Track and maintain relevant data records to satisfy regulatory obligations

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## Safety Manager Roles



- Key member in compliance team reducing liability by preventing injuries and regulatory citations
- Participate in Worker's Compensation
- Stay abreast of regulatory changes
- Ensure inspections by third-parties are transparent

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## Determining Applicable Standards



- Main responsibility
- Be intimately knowledgeable of facility processes
  - Machine design and function
  - Process chemistry
  - Interaction between humans and machines
- Understanding of other agencies involvement
  - EPA – Environmental Protection Agency
  - DOT – Department of Transportation
  - NRC – Nuclear Regulatory Commission
- 29 CFR 1910 Table of Contents
  - OSHA's Top 10

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## OSHA Top 10



### •2018

- 1.Fall Protection (1926.501)
- 2.Hazard Communication (1910.1200)
- 3.Scaffolding - General Requirements (1926.451)
- 4.**Respiratory Protection (1910.134)**
- 5.**Control of Hazardous Energy - Lockout/Tagout (1910.147)**
- 6.Ladders (1926.1053)
- 7.Powered Industrial Trucks (1910.178)
- 8.Fall Protection – Training Requirements (1926.503)
- 9.Machine Guarding– General Requirement (1910.212)
- 10.Personal Protective and Lifesaving Equipment – Eye and Face Protection (1926.102)

### •2019

- 1.Fall Protection – General Requirements (1926.501)
- 2.Hazard Communication (1910.1200)
- 3.Scaffolding (1926.451)
- 4.Lockout/Tagout (1910.147)
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