



Health & Safety

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Mail Call

Dear Health & Safety Advisor:

I recently had a surprise inspection by OSHA and would appreciate some insight concerning the following citations I received:

1. The flooring boards near my plating tanks were not smooth.
2. I did not have annual medical exams (required because of my chromic acid tanks).
3. My employees were wearing earplugs near a grinding operation and had not had baseline testing.
4. Employees were not wearing rubber aprons near open surface tanks.
5. The most serious allegation was that I "attacked" the inspector. The Compliance Officer took out a camera and I pushed the camera down and said "Sorry, no pictures." They claimed at that point I denied them entrance and could be prosecuted for hitting a Compliance Officer.

How much trouble am I in?

Signed,
Prefer to Remain Unnamed

Dear Unnamed:

Your described situation, although unfortunate, is not unique in today's world of regulatory oversight. I will attempt to provide commentary regarding each raised issue, subject to the limited amount of information you supplied and assuming that the citations were issued under Federal OSHA and not a local state agency.

First, regarding the "not smooth" flooring near your plating tanks, I am assuming that what was cited was the presence of possible tripping hazards, such as broken floor boards and/or missing boards. I suspect that what was cited was a violation of Section 1910.22(a), of the General Requirements' Housekeeping provisions, which states:

1. All places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition;
2. The floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practical; and
3. To facilitate cleaning, every floor, working place and passageway shall be kept free from protruding nails, splinters, holes or loose boards.

It is the requirement in number 3 that you were probably "nailed for" (excuse the pun). These conditions, when present, can lead to possible tripping hazards that could cause serious employee injury in your plating shop.

My recommendation is to set up a routine maintenance program to inspect and repair/replace any defective floorboards found. You should also instruct employees to notify management when any defective floorboards are noticed. You probably do not have cause to try to fight this citation, because it was clearly observed by the inspector at the time of the inspection. Your best option is to pay this citation's fine and prevent any future occurrence.

Second, regarding the lack of medical exams for employees working with your chromic acid tanks: Because OSHA has not yet issued its final version of the new Chromium Standard, there is no legal basis for a citation on this item at the time you were inspected. Under existing authorized regulations, there is no specific requirement for providing chromium workers with specific medical exams. Under existing general medical monitoring require-

ments, however, there is a requirement to do "appropriate" medical examinations of workers who are, or who have potential to be, exposed to hazardous materials above the permissible exposure limit (PEL). In the absence of any exposure monitoring data, this citation should have been challenged; if exposure monitoring data do exist and show potential exposures above PELs, then challenging this citation would not be prudent.

When the new Chromium Standard is issued in its final form, there will likely be specific medical monitoring requirements spelled out for exposed workers. If you have not already done so, I would recommend that you do exposure monitoring for chromium, as well as for exposure potentials to any known carcinogens, in your shop. This monitoring should be done at least annually.

Third, regarding employees wearing earplugs and having no baseline testing: This would seem to be a violation of Section 1910.95 (g)(5) of the Occupational Noise Exposure regulation. The violation only exists if your employee's exposure exceeds an eight-hr time-weighted average (TWA) of more than 85 decibels (dBA).

If not done already, I would recommend that you have noise-level monitoring of employees performed to determine their eight-hr TWA levels. Should monitoring indicate less than 85 dBA, eight-hr TWA, then you generally have no legal requirement to do baseline or annual audiograms. Should monitoring indicate exposure levels above this level, then this regulation requires you to:

1. Perform baseline (initial) audiograms on exposed employees who have not received this earlier, and within six months of assignment of new employees to this job;
2. A new audiogram must be done every year, if noise-level

exposures continue above 85 dBA, eight-hr TWA;

3. You must notify all employees exposed to these noise levels of the results of any noise monitoring done and of the results of the audiogram(s); and
4. As management of this facility, you must establish, first, effective administrative or engineering controls to reduce these noise levels below 85 dBA and, only if this is *not* feasible, after you have documented the results of your efforts, you can resort to providing employees with personal protective hearing controls, such as earplugs or muffs.

If you do not already have available results of prior noise-level monitoring to show that you do not exceed 85 dBA, eight-hr TWA levels for your employees, then you have no viable basis for challenging the present citation, unless the inspector did not use a noise-level meter during the inspection. If he didn't, I would have taken exception to that citation within the crucial, initial appeal period provided when the citation first arrived, and asked that it be put aside until noise-level results are obtained.

Fourth, regarding employees not wearing rubber aprons when near open tanks: I suspect what you were cited for was failure to provide or require the use of personal protective equipment (aprons or other equivalent means) to, and by, your employees, as required by 1910.94 (d)(9). This regulation specifically states:

“all persons required to work in such a manner that their clothing may become wet shall be provided with such aprons, coats, jackets, sleeves, or other garments made of rubber, or of other materials impervious to liquids other than water, as are required to keep their clothing dry. Aprons shall extend well below the top of boots to prevent liquid splashing into the boots.”

Simply providing these protective garments to employees alone is insufficient compliance to this regulation—you must make sure your employees use them properly and have an understanding of the hazards of exposure to the chemicals contained within the open tanks. You

may also wish to review the requirements spelled out in OSHA's Personal Protective Equipment (PPE) Standard.

Fifth, regarding your alleged attack upon the inspector, this can be a very serious situation. As depicted by your brief account, and assuming it is correct, I would have clearly taken exception to the claim that they were denied entrance. The fact that they were in your plant is proof that was not so. As to the claim of hitting the inspector by pushing the camera down, this unfortunately could be construed to be an act of physical violence by a particularly sensitive individual. If they are seriously trying to pursue this allegation, I would recommend that you contact

your legal counsel for advice and guidance on how to proceed on this issue.

It is important to note that this situation involving the camera could have been easily handled up front, if you had an inspection protocol developed and held an opening meeting prior to the inspection to establish ground rules to be followed. You cannot legally prevent an OSHA inspector from taking a photo of a violating situation, but you could have limited the photos taken without the resulting claim that you interfered with the inspection.

I hope this will provide you with some insight to the various citation issues you addressed. □