

Federal OSHA Regulatory Update 22 September 2015

Elizabeth Treanor
Director
Phylmar Regulatory Roundtable
916.486.4415

Federal OSHA

- ❖ Standards Development
- ❖ Enforcement
- ❖ General Duty Clause
- ❖ Temporary Workers
- ❖ Recordkeeping

OSHA Administration – Personnel is Policy

- ❖ David Michaels – Assistant Secretary
- ❖ Deborah Berkowitz – Senior Policy Advisor
- ❖ Jordan Barab – Deputy Assistant Secretary
- ❖ Dorothy Dougherty – Deputy Assistant Secretary
- ❖ Kirk Sander, Chief of Staff
- ❖ Thomas E. Perez – Secretary of Labor
- ❖ Howard Shelanski – Administrator-OMB-OIRA

WHAT IS NOT NEW

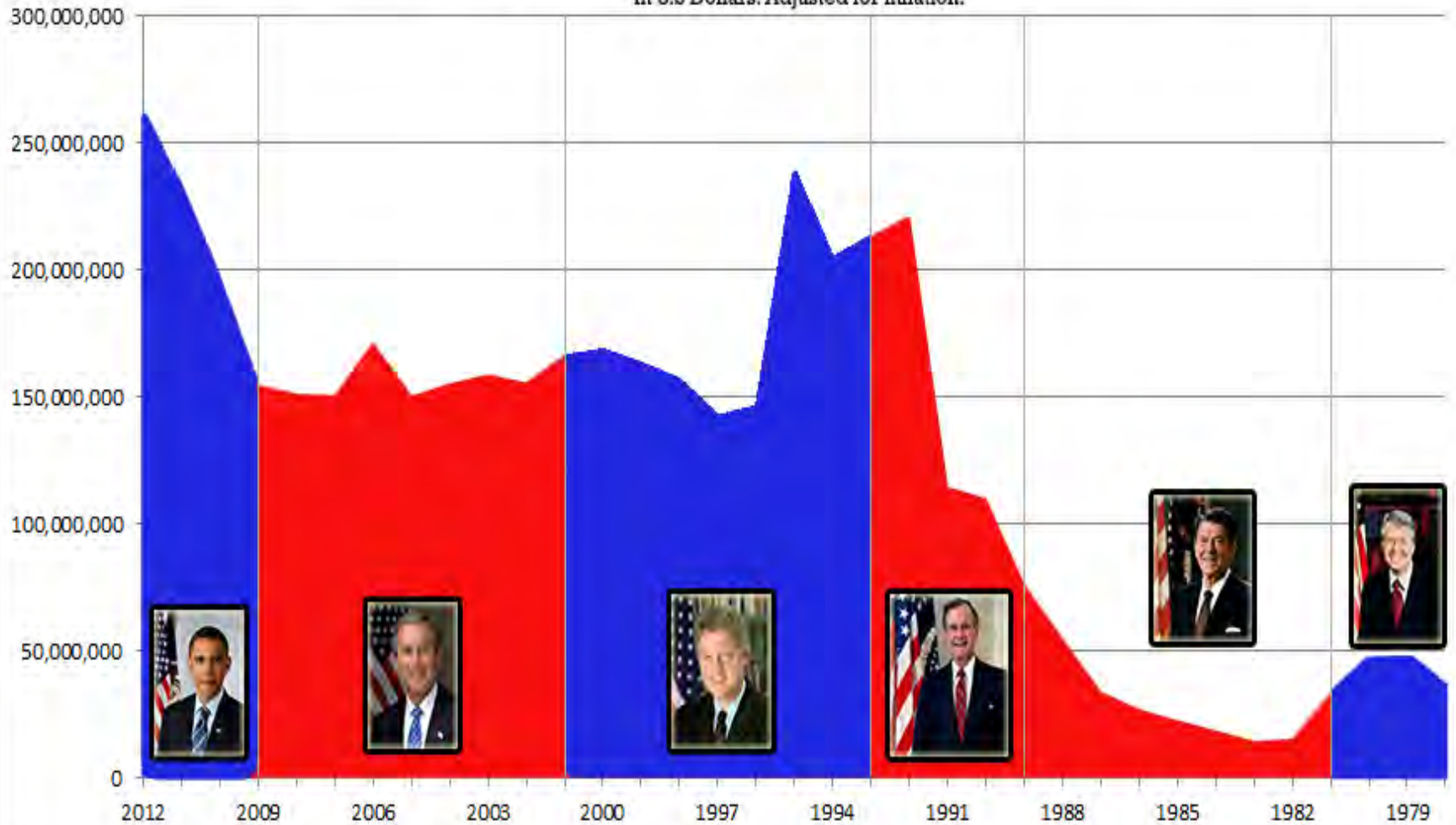
- ❖ Combustible dust delayed – still in pre rule stage
- ❖ Bloodborne Pathogens – still in pre rule stage
- ❖ Infectious Diseases – still in pre rule stage
- ❖ Temporary Worker Initiative

WHAT IS NEW

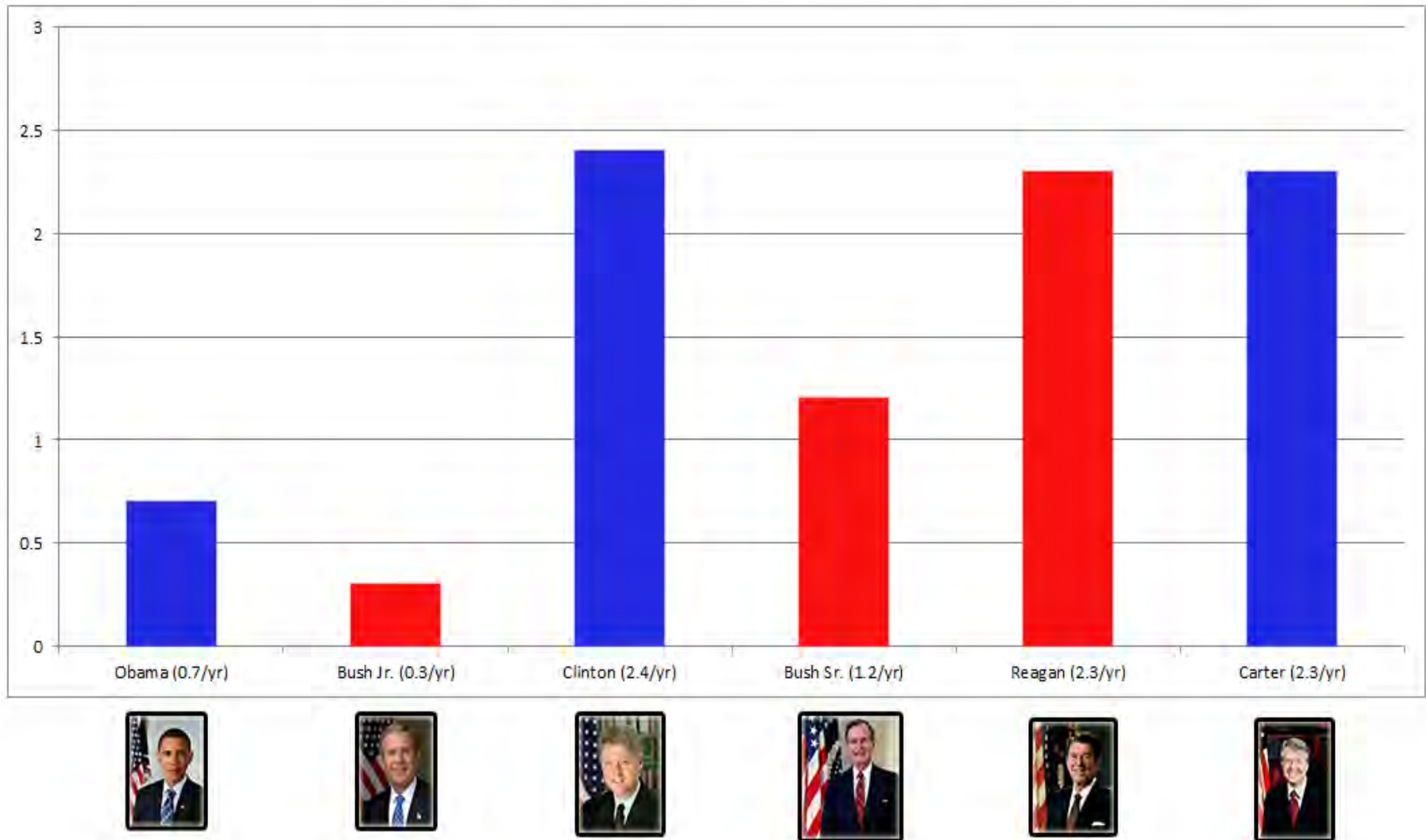
- ❖ Recordkeeping
- ❖ PELs – responses to RFI by 10/10/15
- ❖ Increased use of General Duty Clause
- ❖ Electrical Power Generation, Transmission, and Distribution: Protective Equipment
- ❖ Communication Towers

Total Fines imposed by OSHA Under U.S Presidents

In U.S Dollars. Adjusted for inflation.

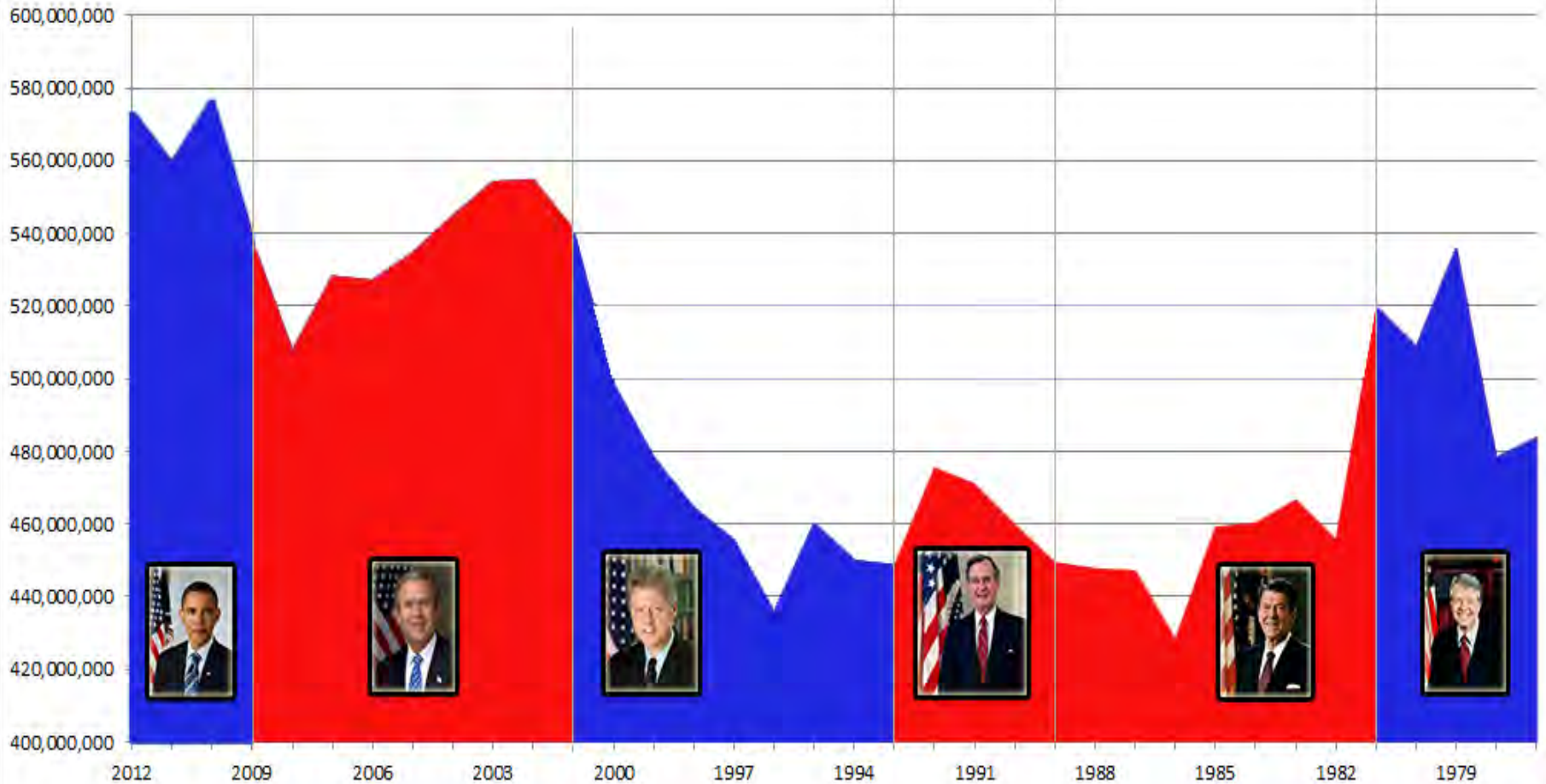


Amount Of New OSHA Regulations Under U.S Presidents



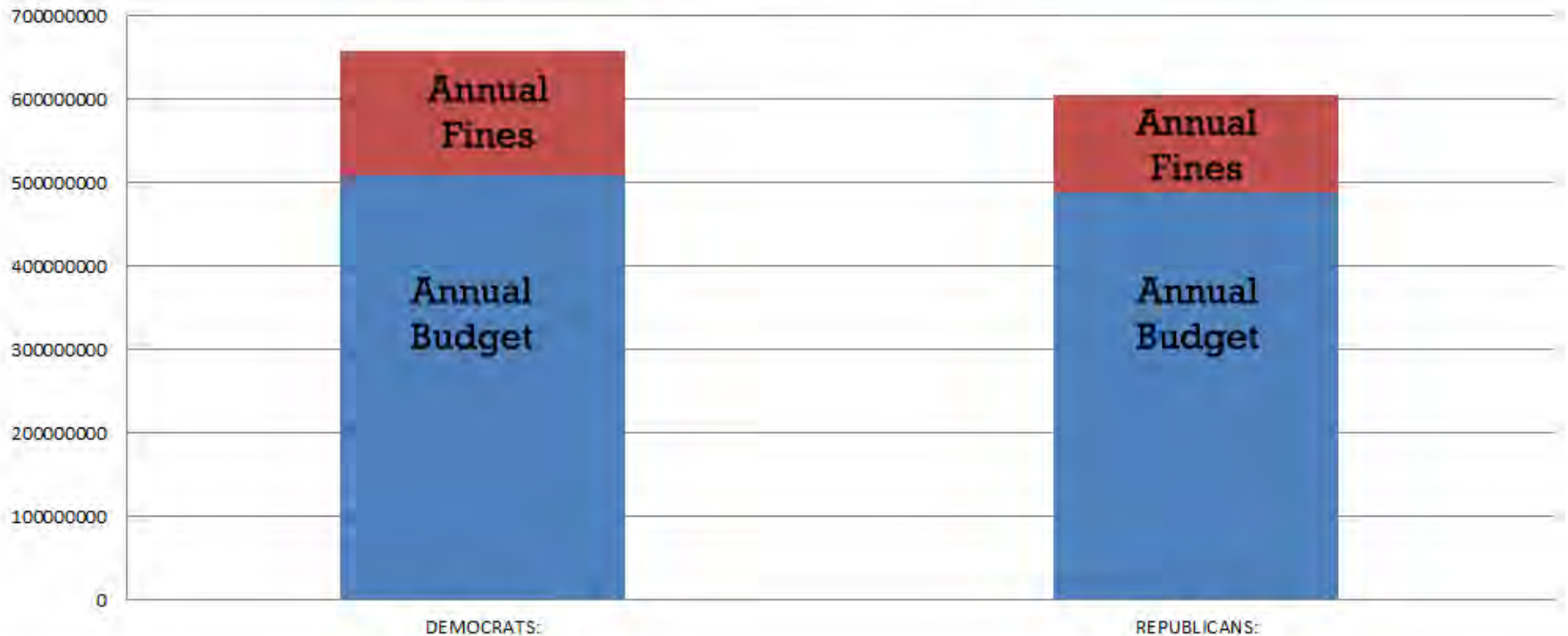
OSHA Budget Under U.S. Presidents

In U.S. Dollars. Adjusted for inflation.

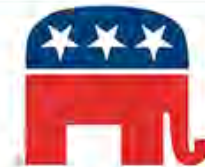


Average Annual OSHA Budget & Fines Imposed by Party

In U.S Dollars. Adjusted for inflation.



**TOTAL: \$656 Million
per year**



**TOTAL: \$604 Million
per year**

Hazard Communication Standard Compliance Directive

- ❖ Inspection Procedures for the Hazard Communication Standard - https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-02-079.pdf
- ❖ Employers must update their written hazard communication program, any alternative workplace labeling, and provide additional employee training for newly identified physical or health hazards by June 1, 2016.

Hazard Communication Standard Compliance Directive Cont'd

- ❖ Training programs must be evaluated through program review and interviews with management and employees.
- ❖ Employees must have an adequate understanding of workplace chemical hazards they are exposed to.
- ❖ Employees must know how to obtain and use information and protective measures on labels and SDSs.

Hazard Communication Standard Compliance Directive Cont'd

- ❖ Use of General Duty Clause
- ❖ HCS to Support a Violation of the General Duty Clause when there is exposure to chemicals with no PEL.
- ❖ CSHOs to consider issuing a Section 5(a)(1) citation in accordance with the above guidance and the FOM, by taking into account information in the chemical's SDS.

Hazard Communication Standard Compliance Directive Cont'd

- ❖ Written Hazard Communication Program SDS Requirements
- ❖ Designation of the person(s) responsible.
- ❖ Procedures to maintain SDSs (e.g., in notebooks in work area(s), in a pick-up truck at jobsite), electronic retrieval, backup systems, and how employee access to SDSs.
- ❖ Procedure to follow if the SDS is not received at the time of the first shipment.
- ❖ Procedure to follow if it is suspected that the SDS is not appropriate (e.g., missing hazards).
- ❖ Procedure to follow to determine if the SDS is current.

Crystalline Silica Proposed Rule

- ❖ Published in Federal Register 9/12/13
- ❖ Extended Comment Period ended 1/27/14; hearings 3/18/14 – 4/4/14
- ❖ OSHA reviewing +2,700 comments
- ❖ 50 $\mu\text{g}/\text{m}^3$ 8-hour TWA – highly controversial
- ❖ Separate regulations for General Industry/Maritime & Construction
- ❖ Post Hearing Comment Period ended 7/14
- ❖ Goal: out by April 2016

Crystalline Silica Proposed Rule Cont.

- ❖ Includes provisions for:
 - ❖ Measuring silica exposure – Action Level of 25 $\mu\text{g}/\text{m}^3$
 - ❖ Reducing exposure
 - ❖ Medical exams – for exposure over 30 days per year
 - ❖ Training workers

Crystalline Silica Proposed Rule Cont.

- ❖ “It's absolutely necessary to go below the current PEL,” Says Dr. Michaels
- ❖ Proposed rule to save \$2.8 - \$4.7 billion in health benefits
- ❖ Average annual cost per workplace - \$1,242
- ❖ Mandates wet cleaning methods or HEPA-filter vacuuming
- ❖ Must be included in Hazard Communication Program

Electrical Power Generation, Transmission, and Distribution: Protective Equipment

- ❖ Degree of training must be determined by the risk to the worker for the hazard involved
- ❖ Qualified workers must have training to recognize and control or avoid electrical hazards present at the worksite
- ❖ Line-clearance tree trimmers must have training to distinguish exposed live parts & determine voltage of those parts, and must have training in minimum approach distances
- ❖ No longer necessary for employers to certify workers are proficient in safe practices

OSHA & NIOSH Joint Temporary Worker Recommended Practices

- ❖ Issued 8/25/14
- ❖ Tips:
 - ❖ Evaluate the Host Employer's Worksite prior to accepting a new host employer
 - ❖ Train Agency Staff to Recognize Safety and Health Hazards
 - ❖ Ensure the Employer Meets or Exceeds the other Employer's Standards
 - ❖ Assign Occupational Safety and Health Responsibilities and Define the Scope of Work in the Contract
 - ❖ Communicate Injury and Illness Tracking
 - ❖ Conduct Safety and Health Training and New Project Orientation

OSHA & NIOSH Joint Temporary Worker Recommended Practices Cont.

- ❖ Develop Procedures for First Aid, Medical Treatment, and Emergencies
- ❖ Both Employers should have an Injury and Illness Prevention Program
- ❖ Host employers should provide temporary workers with safety training that is identical or equivalent to that provided to the host employers' own employees performing the same or similar work
- ❖ Injury and illness prevention program assessments and investigations
- ❖ Maintain contact with workers

Recordkeeping

- ❖ Final Rule published 9/11/14
- ❖ Effective 1/1/15
- ❖ Retains 8 hour reporting for fatalities
- ❖ Requires reporting within 24 hours for work-related in-patient hospitalizations, amputations or loss of an eye
- ❖ Developing web portal for electronic reporting
- ❖ Changes from SIC to NAICS

Recordkeeping 2013 Proposal

- ❖ Would require electronic submission of injury and illness information quarterly for employers with 250+ employees
- ❖ OSHA to publish data online
- ❖ Lots of opposition from US Chamber of Commerce

Recordkeeping Cont'd

- ❖ PRR Submitted comments March 6, 2014, comments included:
 - ❖ OSHA database should replace the OSHA Data Initiative (BLS) reports
 - ❖ Ability to submit through both online forms and batch submissions (Excel or XML files)
 - ❖ Personal Identifying Information be excluded from submission

PRR Recordkeeping Comments- cont'd

- ❖ Option for enterprise wide submission, up to enterprise
- ❖ “Owned/operated” to be defined by company
- ❖ Annual, rather than quarterly, submission
- ❖ Confirmation email once data is submitted
- ❖ Data submission system to include updates
- ❖ “User friendliness” of website is key

Spring 2015 Semiannual Agenda Pre-Rule Stage

- ❖ Bloodborne Pathogens – End Review
Issue Findings – 9/15
- ❖ Combustible Dust – Initiate SBREFA –
2/16
- ❖ PELs – RFI – issued!
- ❖ PSM – Analyze Comments – Initiate
SBREFA – 6/15

Spring 2015 Semiannual Agenda

Proposed Rule Stage

- ❖ Occupational Exposure to Crystalline Silica – Analyze comments through 6/15
- ❖ Occupational Exposure to Beryllium – NPRM – published 8/6/15- .2mg/u³
- ❖ Clarification of Employer's Obligation to Make and Maintain Accurate Records of Work Related Injuries and Illnesses – NPRM published 7/29/15 to clarify on-going duty

Spring 2015 Semiannual Agenda Proposed Stage Cont.

- ❖ Standards Improvement Project IV – NPRM 9/15
- ❖ Amendments to the Cranes and Derricks in Construction – NPRM 11/15
- ❖ Cranes and Derricks in Construction: Operator Certification – NPRM 12/15
- ❖ Infectious Diseases – NPRM– 12/16

Spring 2015 Semiannual Agenda

Final Rule Stage – often a work of fiction

- ❖ Confined Spaces in Construction – Final Rule – published 5/4/15, effective 8/3/15
- ❖ Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention) – Final Rule – 8/15
- ❖ Improved Tracking of Workplace Injuries and Illnesses – Final Rule 9/15 – electronic submission
- ❖ Updating OSHA Standards Based on National Consensus Standards for Eye and Face Protection – Final Rule 5/15

RFI on Permissible Exposure Limits

- ❖ Request for Information
- ❖ Reviews history
- ❖ Identifies possible courses of action
- ❖ Invites comments/Dialogue
- ❖ Series of questions mostly involving how companies manage chemical risks in the workplace

RFI on Permissible Exposure Limits (PELs)– Cont'd

- ❖ Most adopted into Z tables based on 1968 TLVs
- ❖ Late 1980s-OSHA issued rule to update them. 1989-Rule Overturned US Court of Appeals
- ❖ Should updating the PELs be a priority for the agency?
- ❖ Suggestions for ways to update the PELs?
- ❖ Are there other ways to control workplace chemical exposures?

RFI on Permissible Exposure Limits – Cont'd

- ❖ Popular idea – 6/24/10 1-day OSHA Stakeholder meeting on PELs
- ❖ Should issue an annotated list of PELs with basis & limitations for each, including target organ/endpoint used to set the limit, whether based on animal or human data, quality of data, quantity of data, protection factors used, who paid for research to produce data, and data gaps
- ❖ OSHA released:
<https://www.osha.gov/dsg/annotated-pels/index.html>

RFI on Permissible Exposure Limits – Cont'd Options

- ❖ Control Banding – But OSHA questions resources to develop bands
- ❖ How to Develop?
- ❖ General Duty Clause 5(a)(1) to enforce SDS recommendations?
- ❖ Decades ago – proposal to OSHA to develop generic standards to accompany HazCom: for exposure monitoring, medical monitoring, training, personal protective equipment (last was done by feds)
- ❖ Other options?

OSHA Moving to Guidance rather than Standard Setting

- ❖ Transitioning to Safer Chemicals – https://www.osha.gov/dsg/safer_chemicals/index.html
- ❖ Temporary Worker Initiative Guidance - https://www.osha.gov/temp_workers/
- ❖ Annotated PELs

SEVERE VIOLATORS PROGRAM - SVEP

- ❖ OSHA's Severe Violators Enforcement Program (SVEP) – recordkeeping a component; issued way to get off list
- ❖ Targets egregious & persistent OSH Act violators with willful, repeat, or failure-to-abate citations including recordkeeping violations based on underreporting
- ❖ Employers identified on OSHA website
- ❖ Likely to be expanded
- ❖ White Paper Issued 1/13

SVEP Focus

- ❖ Amputations
- ❖ Combustible dust
- ❖ Crystalline silica
- ❖ Excavation/trenching
- ❖ Lead
- ❖ Shipbreaking

SVEP REMOVAL CRITERIA

- ❖ Published SVEP Removal Criteria 8/12
 - ❖ 3 years from final disposition of SVEP citations
 - ❖ All affirmed violations abated, penalties paid, no additional serious citations
 - ❖ Controversy – press release when added to SVEP list, nothing when taken off. Added to list before citations are adjudicated

Penalty Structure

- ❖ Employer size
- ❖ Employer history
- ❖ Repeat violations
- ❖ SVEP
- ❖ Good faith
- ❖ Gravity-based penalties
- ❖ Penalty calculation

SST (Site Specific Targeting)

- ❖ New Site-Specific Targeting Inspection Plan issued 3/6/14
 - ❖ 2,250 establishments selected
 - ❖ 1,260 establishments selected to evaluate effectiveness of the program

SST Cont'd

- ❖ DART rate at or above 7.0 or DAFWII case rate at or above 5.0
- ❖ Non-manufacturing with a DART rate at or above 15.0 or a DAFWII rate at or above 14.0
- ❖ Nursing and Personal Care Facilities
- ❖ 2012 OSHA Data Survey Non-responders
- ❖ Industries without Permanent Workplaces

National Emphasis Programs

- ❖ 12 underway (including SVEP focus)
- ❖ Hazardous Machinery
- ❖ Primary Metal Injuries
- ❖ Hexavalent chromium
- ❖ Federal Agencies – 6/25/14
- ❖ Isocyanates – 6/20/13
- ❖ Inspections of all refineries completed

FED ENFORCEMENT STATS – 2014

- ❖ 23,183 inspections, down from 2013
- ❖ Programmed inspections – 51%
- ❖ Unprogrammed – 49% up from 2012
- ❖ Fatality Investigations, 827, up, 274 in 2014
- ❖ % with Violations contested – 11% same as 2012
- ❖ Referrals – 4,634, down 7.7%
- ❖ Average Penalty per Serious Violation - \$2,200
- ❖ Significant cases – 102 down from 2013
- ❖ Total violations – 43,580 down from 2013

TOP 10 MOST FREQUENTLY CITED STANDARDS – (General Industry) - FY 2014

- ❖ Hazard Communication
- ❖ Electrical, Wiring Methods
- ❖ Lockout/Tagout
- ❖ Respiratory Protection
- ❖ Powered Industrial Trucks
- ❖ Machine Guarding
- ❖ Electrical, General Requirements
- ❖ Bloodborne Pathogens
- ❖ Personal Protective Equipment
- ❖ Guarding Floor & Wall Openings

Temporary Worker Initiative (TWI)

- ❖ Started with Fairfax Memo April 2013
- ❖ Now a website identifying “shared responsibility” - https://www.osha.gov/temp_workers/
- ❖ 3/12/14 Issued TWI Bulletin 1, stating host log to include contractor injuries & illnesses on log
- ❖ Encourages communication-host & primary ER
- ❖ Michaels – “too many reports of workers being killed the first day on the job” and some workers have 50 first days on the job
- ❖ NIOSH/OSHA Practices

Ergonomics

- ❖ Using General Duty Clause – 5(a)(1) of OSH Act since 2004
- ❖ 28 Citations issued under 5(a)(1)
- ❖ 973 Ergonomics Hazard Alert Letters to employers in healthcare and nursing homes primarily

Workplace Violence

- ❖ Using General Duty Clause – 5(a)(1)
- ❖ 60 investigations in 2013
- ❖ 26 Hazard Alerts
- ❖ 30 5(a)(1)s issued in last 3 years
- ❖ 2014 – 29 on-going investigations in social services, night retail, healthcare, and prisons
- ❖ Updating directive to clarify employer responsibilities

NIOSH Carcinogen Policy - Sleeper

- ❖ Issued 11/5/2013
- ❖ Public Comment by 2/13/14
- ❖ Would use hazard assessment from NTP, EPA & IARC
- ❖ Evaluate occupational relevance-accurate ID and communicated in workplace
- ❖ If occupationally-relevant, NIOSH will list as occupational carcinogen
- ❖ NIOSH will determine GHS classification

Proposition 65

- ❖ Adopted by CA voters in 1986-“Clean Water and Toxic Enforcement Act”
- ❖ In part, requires warning prior to exposure to carcinogens & reproductive toxicants
- ❖ Bounty hunter provisions-happy lawyers
- ❖ Bill to “improve” Prop 65 passed in 2013
- ❖ Proposed regulations – early 2015
- ❖ Hearing May 2015
- ❖ Final Regulations expected soon

Proposition 65 – cont'd

- ❖ Name of chemical to be on warnings for acrylamide, arsenic; benzene; cadmium; chlorinated Tris; 1,4-Dioxane, formaldehyde, lead, mercury, phthalates, tobacco smoke & toluene
- ❖ Workplace warning - “Entering this area will expose you to a chemical (or chemicals) known to the State” instead of “This area contains”
- ❖ For carcinogens & reproductive toxins

Proposition 65 Occupational Warnings– cont'd

- ❖ International health hazard symbol required



- ❖ Supplemental information SDS, pamphlet, training materials may be provided, but cannot be substituted for warning methods required

Proposition 65 – cont'd

- ❖ Employers/manufacturers posting warning signs-upload info to website
- ❖ Must put “For more information, go to your employer or to www.P65Warnings.gov on signs
- ❖ Include name of chemical(s) if one of the 12
- ❖ Labels used within workplace must be re-labeled as well

10 Most Frequently Cited Title 8 Standards – California

- ❖ [Section 3203](#) Injury and Illness Prevention Program
- ❖ [Section 3395](#) Heat Illness Prevention
- ❖ [Section 1509](#) Construction IIPP
- ❖ [Section 5194](#) Hazard Communication
- ❖ [Section 3314](#) Lock out/Tag out (Energy Control)
- ❖ [Section 6151](#) Portable Fire Extinguishers
- ❖ [Section 461](#) Permits to Operate Air Tanks
- ❖ [Section 342](#) Failure to Report
- ❖ [Section 5144](#) Respiratory Protection
- ❖ [Section 2340.16](#) Work Space About Electrical Equipment

Heat Illness

- ❖ Revised Standard effective 5/1/15
- ❖ New High Heat Procedures effective at 80 degrees
- ❖ Effective communication with workers – voice, observation, electronic
- ❖ Observing employees for alertness or signs/symptoms of heat illness
- ❖ Designation of employee at each site authorized to call for emergency assistance
- ❖ Remind employees to drink water
- ❖ Pre-shift meeting

Heat Illness – cont'd

- ❖ One utility – cited for failure to include in written procedures that employees can refill water jugs at restaurant at lunch time
- ❖ Another citation – to qualify as “shade,” a truck must have the air conditioning running the entire time the employee is working
- ❖ Settlement with CRLA – heat illness is part of all outdoor workplace inspections

Heat Illness – cont'd

❖ Enforcement Inspections

- ❖ 2014 – 3,855; 2015 YTD – 1,690 heat inspections
 - ❖ 2014 – 713; 2015 YTD – 246; in agriculture
 - ❖ 2014 – 2,185; 2015 YTD - 992; in construction
 - ❖ Remainder outdoor work sites in various industries – utilities, landscaping
- ❖ 2014 – 1,058; 2015 YTD – 748; with at least one Section 3395 citation
- ❖ Most frequently cited section of Section 3395
 - ❖ Lack of or an inadequate written Heat Illness Prevention Program
 - ❖ Lack of or inadequate employee training
 - ❖ Lack of or inadequate provision of water

Questions?

☞ Contact:

☞ Elizabeth Treanor, Esq.

☞ Director, Phylmar Regulatory Roundtable

☞ 916.486.4415

☞ Etreanor@phylmar.com