Protecting Workers through Government Regulation and Penalties

John L. Henshaw
Focus

• Compliance and Enforcement Strategies
• Occupational Safety and Health Standards
• Next (Current) Administration
• OSHA vs. The True Determinate
OSHA Statute

• Debated in Congress ~50 years ago
• Modified slightly mostly for penalties
• Lacks teeth in criminal sanctions
• After 45 years of court rulings and additional laws – standards development under the Act cannot keep up with the science or needs
<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Old Maximum Penalty</th>
<th>New Maximum Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to Abate</td>
<td>$7,000 per day</td>
<td>$12,471 per day</td>
</tr>
<tr>
<td></td>
<td>beyond the abatement date</td>
<td>beyond the abatement date</td>
</tr>
<tr>
<td>Willful or Repeated</td>
<td>$70,000 per violation</td>
<td>$124,709 per violation</td>
</tr>
</tbody>
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OSHA Statute

• Section 17(e) of the Occupational Safety and Health Act ("OSH Act") provides for a Class B misdemeanor criminal penalty, including imprisonment up to **six months** and substantial monetary fines if an employer's willful violation of any OSHA standard causes the death of an employee.
OSHA Criminal Sanctions

- Since 1970 - >400,000 workplace fatalities
- < 80 OSH Act criminal cases prosecuted
- ~ 12 resulted in criminal convictions
- Prosecutions typically targeted falsified documents, lied to investigators
Atlantic States Cast Iron Pipe Company

September 2012, four former managers lost their appeal of prison sentences and financial penalties associated with several safety and environmental compliance violations, and cover-up.

- 70 months in prison plant manager
- 41 months in prison HR/Safety manager
- 30 months in prison maintenance supervisor
- 6 months in prison for a supervisor.
Types of EPA Enforcement

Civil Enforcement
• Settlements
• Civil Penalties
• Injunctive Relief
• Supplemental Environmental Projects (SEPs) and Mitigation

Criminal Enforcement
• Criminal Penalties
• Incarceration
EPA Criminal Provisions

Clean Air Act (CAA)
Clean Water Act (CWA)
Resource Conservation and Recovery Act (RCRA)
Comprehensive Environmental Response, Compensation, and Liability Act
Emergency Planning and Community Right to Know Act (EPCRA)
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
Hazardous Materials Transportation Act (HMTA)
Safe Drinking Water Act (SDWA)
Toxic Substances Control Act (TSCA)
U.S. Criminal Code (Title 18)
Endangered Species Act
Migratory Bird Treaty Act of 1918 (MBTA)
National Forests & National Park Service Lands

Classified as felonies in all the federal environmental statutes except for the toxic substances and pesticide statutes.
EPA’s Criminal Enforcement

- 40 offices nationwide
- 1,500 leads/year evaluated for criminal violations
- 700 – 800 ongoing investigations
- 90% conviction rate average
Future OSHA Enforcement

Civil Enforcement
• Civil Penalties
• Settlements – Classification

Criminal Enforcement
• Advance Notice
• Perjury
• Environmental Statues
• State Criminal Laws
Highlights of the Regulatory Process for an Individual Chemical Substance:

1. Preliminary data collection
   - Publish Advance Notice of Rulemaking
   - Typically takes 6 months to one year

2. Risk assessment
   - 3 months

3. Technological and economic feasibility analysis
   - At least one year substantially longer for a chemical in widespread use
   - 6 month process

4. SBREFA (Small Business Review) Panel
   - 3 months

5. OMB review
   - 6 months for the simplest rulemaking

6. Publish proposed rule and hold public hearings
   - 6-9 months

7. Revise standard and associated analyses
   - OMB review

8. Publish a final rule.
   - Even given these optimistic estimates and assuming all goes well, this process takes about 3.5 years
Next (Current) Administration?
Next Administrator?
Most Likely Going Forward

• Standards ??
• Strong, Fair, Effective Enforcement
• Compliance Assistance - Education, Training, and Outreach
  • Consultation Program
• Cooperative Programs
  • Voluntary Protection Programs / SHARP
  • Strategic Partnerships
  • Alliances
Growth of VPP
Federal & State

As of 07/31/2016

Source: OSHA, Office of Partnerships & Recognition
OSHA’s Cooperative Programs

• Alliance Program
• OSHA Strategic Partnership Program
• Voluntary Protection Programs (VPP)
• OSHA Challenge
• On-site Consultation Program & Safety and Health Recognition Program (SHARP)
determinant
dəˈtərmənənt/
noun
noun: determinant; plural noun: determinants
1.
a factor that decisively affects the nature or outcome of something.
"pure force of will was the main determinant of his success"