

28TH ANNUAL BUSINESS & INDUSTRY'S

Sustainability & Environmental, Health and Safety

S Y M P O S I U M

Tuesday & Wednesday, March 26-27, 2019 • Sharonville Convention Center, Cincinnati, Ohio

Workshop P

**Passionate about Safety ... Best
Practices in Workplace Safety ...
Preventing and Avoiding OSHA's
Top 10 Violations and Valuable Tips
on How to Respond**

**Tuesday, March 26, 2019
2 p.m. to 3:15 p.m.**

Biographical Information

William H. Haak, Founder, Haak Law LLC
Cleveland, Ohio

216.772.3532 whh@haaklawllc.com

William H. Haak is the Founder of Haak Law LLC (www.haaklawllc.com) – an environmental, health & safety legal and consulting firm based in Cleveland, Ohio. He has nearly 20 years of experience in occupational safety law and worker safety, and 25 years of experience in environmental law (including extensive experience in air pollution control law and multi-media environmental compliance). Mr. Haak practices nationally in the United States and consults globally on all matters related to the EHS field (plus security and crisis management).

Mr. Haak graduated from The University of Akron (Business Finance) and Case Western Reserve University School of Law (J.D. with an emphasis on litigation and trial practice). Following law school, he worked as an Assistant Attorney General in the State of Ohio Attorney General's Environmental Enforcement Section. As counsel to Ohio EPA, Mr. Haak's practice was focused primarily on civil and administrative air pollution control cases. During his time with the Attorney General's Office, Mr. Haak resolved civil environmental enforcement actions resulting in civil penalties totaling approximately \$4 million.

Prior to forming Haak Law LLC, Mr. Haak was Senior EH&S Counsel for General Electric. He supported GE's Appliances and Lighting Businesses, and was engaged in complex air permitting issues for other GE businesses nationwide. Mr. Haak has also been Associate General Counsel – EH&S for Hexion Specialty Chemicals in Columbus, Ohio, and Senior Regulatory Law Counsel for Owens Corning in Toledo, Ohio. He served overseas in the former Soviet Union (Ukraine) as an Environmental Enforcement Specialist with the American Bar Association's Central & East European Law Initiative ("ABA/CEELI").

Haak is a frequent lecturer to attorneys, engineers, and environmental professionals on topics concerning federal and state air pollution law. In addition, he has taught as an adjunct faculty member at the University of Central Florida in Orlando and Columbus State in Columbus, Ohio. From 2005 to 2018, Haak also taught classes focusing on Air Pollution Law and Occupational Safety and Health Law at The University of Toledo College of Law as an Adjunct Professor.

Gaye R. Johnson, Assistant Area Director, Cincinnati Area Office
Occupational Safety and Health Administration
36 Triangle Park Drive, Cincinnati, Ohio 45426
Johnson.Gaye@dol.gov

Gaye Johnson began her career with the U.S. Department of Labor, The Occupational Safety and Health Administration in the Cincinnati Area Office in 1985. She has held positions on both the administrative and professional side of OSHA. Gaye went through the Upward Mobility Program in 1989 to become a safety specialist at OSHA, a position she held for 17 years before being selected as a Compliance Assistance Specialist in September of 2007. In August of 2011, Gaye became an Assistant Area Director for the Cincinnati OSHA office. She has served on committees such as OSHA's National Reinvention Committee, and Region V's Training committee. She has received numerous awards over her career in OSHA, including the Distinguished Career award.

OSHA's Top 10 Violations: Avoiding and Responding to the Most Common OSHA Citations (*Plus, Bonus OSHA Updates...*)

Session P

March 26, 2019

Gaye Johnson
OSHA

William H. Haak
Haak Law LLC

Introduction & Agenda

- Overview, and a little about today's format
- OSHA's "Top 10" most cited violations for 2018
- Tips for avoiding inspections and OSHA's Top 10 violations
- Avoiding OSHA citations
- OSHA's updated penalties for 2019
- Responding to OSHA citations
- OSHA's new "drone program" and limits on inspection scope
- Upcoming OSHA initiatives
- Wrap-up and questions

OSHA'S 2018 Top 10 Most Frequently Cited Violations

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



www.osha.gov/Top_Ten_Standards.html

OSHA'S 2018 Top 10 Most Cited Construction Industry Violations

1. Fall Protection - General Requirements (1926.501)
2. Scaffolding (1926.451)
3. Ladders (1926.1053)
4. Fall Protection - Training (1926.503)
5. Eye and Face Protection (1926.102)
6. General Safety and Health Provisions (1926.20)
7. Head Protection (1926.100)
8. Aerial Lifts (1926.453)
9. Hazard Communication (1910.1200)
10. Fall Protection - Systems Criteria and Practices (1926.502)



Keys to Avoiding Inspections

- Strive towards a “mature” safety culture
- Communicate openly with employees on safety
- Respond promptly to safety-related maintenance issues
- Ensure that employees always feel “heard” on safety matters
- Tread carefully with terminations that could be perceived in any way to be safety-related...
- Respond promptly and thoroughly to OSHA fax complaints
- Understand OSHA reporting obligations

Avoiding OSHA's Top 10 Violations

- Actually caring about compliance is more than half the battle
- The other half of the battle (at 50,000 feet) consists of:
 1. Having programs
 2. Training your employees on your programs
 3. Enforcing your safety-related rules
- Keys to avoiding citations stemming from serious incidents:
 1. Conduct meaningful incident investigations
 2. Identify root causes and corrective actions
 3. Carefully manage any post-incident inspection by OSHA

OSHA's Updated Penalties

Type of Violation	New Maximum
<ul style="list-style-type: none">• Serious and• Other-Than-Serious• Posting Requirements	\$13,260 per violation
Willful or Repeated	\$132,598 per violation
Failure to Abate	\$13,260 per day beyond the abatement date

www.osha.gov/penalties

Responding to OSHA Citations

- Understand your time constraints
- Be realistic with your possible outcomes
- Match the facts with the allegations and the regulations OSHA uses to support the alleged violations
- Determine what a “win” looks like
- Make your case at an informal conference
- To contest or not contest?

Drones and New Limits on Inspections

- OSHA's drone inspection program
 - What is it, and when might OSHA use it?
 - Considerations for you as a regulated entity
- *U.S. v. Mar-Jac Poultry, Inc.*, Case No. 16-17745 (11th Cir. 2018)
 - Potentially limits OSHA's ability to conduct a wall-to-wall inspection
 - The concept of "probable cause"
 - How can OSHA establish probable cause?
 - Specific "evidence" of a violation
 - The inspection is part of a national emphasis program (neutral criteria)

- Caveats and limitations...

Upcoming OSHA Initiatives

- Stand-Up for Grain Engulfment Prevention (Mar. 25-29, 2019)
- National Work Zone Awareness Week (Apr. 8-12, 2019)
- Fall Prevention Stand-Down (May 6-10, 2019)
- Heat Illness Prevention (May 24, 2019)
- Trench Safety Stand-Down (June 17-22, 2019)
- Safe + Sound Week (Aug. 12-18, 2019)

Questions?

Thank You!