

29TH ANNUAL BUSINESS & INDUSTRY'S

Sustainability & Environmental, Health and Safety



S Y M P O S I U M

Workshop JJ

**Audits, a Vehicle for Change ...
Implementing a Successful EHS
Internal Auditing Program**

**Wednesday, March 25, 2020
11:15 a.m. to 12:30 p.m.**

Biographical Information

Moderator

Trent Blake, Business Unit EHS Group Manager, Johnson Controls, Inc.
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Mack Overton serves as Vice President in charge of KERAMIDA's Environmental Compliance and Health & Safety Services serving heavy industrial facilities, manufacturing facilities, utilities, and businesses. KERAMIDA's Compliance Services provide clients technical support and strategy advise on addressing air emissions, storm water, community right-to-know, solid and hazardous waste, wastewater issues, industrial hygiene, safety and overall EHS compliance, internationally. KERAMIDA's EHS services include permitting, in-plant services, reporting, corrective action, development of procedures, EHS Management Systems, audits of EHS compliance, audits of EHS Management Systems, and training, both at client facilities and by e-courses.

Mack has managed numerous multi-facility, multi-state projects, including a wide variety of environmental, health and safety inspection and compliance projects. Mack has conducted indoor air quality investigations for more than 20 years, and has served as a expert witness in multiple cases. Mack manages all phases of EHS compliance, including permitting and reporting, management plan development, compliance audits, corrective actions, waste management, and sampling and analysis across all media at facilities throughout the USA and abroad.

Mack's project work includes utilities, foundries, metalworking facilities, automotive products manufacturers, plastic molding and machining, pharmaceutical companies, food production, hospitals, schools, agricultural facilities, asphalt plants, wood treatment facilities, wood furniture manufacturers, secondary aluminum facilities, petroleum products manufacturers, distributors, transporters, and paper product manufacturers. These industries have been involved in a wide variety of manufacturing operations, including casting, surface coating, plating, forming and stamping, molding, shot-blasting, deburring and finishing.

Mack has a B.A. in Chemistry from Wabash College and has completed graduate coursework in Environmental Planning at Indiana University.

AREAS OF EXPERTISE

- Indoor Air Quality
- Industrial Hygiene Sampling & Analysis
- Laboratory Procedures and Operations
- EHS Compliance Audits
- Management Systems Audits
- EHS Compliance Technical Support & Strategy
- Permitting
- EHS Training
- Sustainability
- ESH In-Plant Services

Biographical Information

Heidi P. Knight, Esq., Principal
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Heidi Knight is a Principal in the Boston, Massachusetts office of Beveridge & Diamond, the first and largest law firm to focus on environmental law and litigation.

Heidi counsels clients on environmental, health and safety (EHS) compliance, EHS compliance auditing, and due diligence, and defends clients in federal and state enforcement actions. She is a leader of Beveridge & Diamond's Transactions & Auditing Practice Group and Co-Chair of the National Association of Women Lawyers' Environment & Energy Law Affinity Group. She was selected to the 2017 and 2018 New England area Rising Stars lists for her environmental law expertise. With over 100 lawyers in eight U.S. offices, Beveridge & Diamond is a top-ranked environmental law firm helping clients around the world resolve critical environmental, health and safety, natural resource, project development, and sustainability issues relating to their facilities, products, and operations.

Heidi graduated from the University of California, Berkeley, with a B.S. in Conservation and Resource Studies and a B.A. in Anthropology. She received her J.D., cum laude, from the University of Maryland School of Law, where she served on the Maryland Law Review and received a certificate of Concentration in Environmental Law. During law school, she interned with the U.S. Department of Justice's Environment and Natural Resources Division, the U.S. Attorney's Office for the District of Maryland, and the Maryland Office of the Attorney General.

Strategies for Implementing A Successful EHS Internal Auditing Program

Moderator: Trent Blake, Business Unit EHS Group Manager, Johnson Controls

Heidi Knight, EHS Attorney/Principal, Beveridge & Diamond

Mack Overton, VP, EHS Compliance Services, KERAMIDA

29th Annual Sustainability & Environmental, Health and Safety Symposium
March 25, 2020



Introduction



- Establishing an audit program
- Objectives & benefits of audits
- Best practices for planning and implementing audits
- Common EHS audit findings & potential corrective actions
- Play “You Are The Auditor”
- EPA & States’ Self-Audit Policies
- OSHA’s Self-Audit Policies



Establishing A Voluntary Audit Program

- Develop and implement an audit procedure
- Determine:
 - Objective(s) of the audit program
 - Scope of the audit program
 - Makeup of the audit team
 - Frequency and duration of the audits
- Senior management support is key



Why Audit?

- Assess the overall (or partial) compliance with applicable regulatory requirements, company policies, and best management practices
- Avoid repeat/prolonged noncompliance
- Reduce potential for governmental enforcement actions, and reduce or avoid penalties
- Reduce potential for third-party lawsuits
- Demonstrate satisfactory or improved safety performance to senior management, board of directors, and major customers

Why Audit? (cont.)

- Satisfy requirements of ISO Protocols
- Perform as part of a compliance settlement
- Educate and train staff on applicable EHS requirements
- Identify opportunities for eliminating hazards from workplace and reducing injuries
- Communicate a particular site's best practices throughout the company
- Specific Regulatory Requirements (PSM)

Enhance EHS Culture

- Assess compliance
- Evaluate communication strategies
- Discuss with staff – follow through?
- Gauge implementation



No Surprises!



Scope Of An Audit Program

- Determine scope of regulations and company procedures to be audited
- Determine types of facilities, operations, and equipment to be audited:
 - Facilities owned and operated
 - Facilities operated on leased land
 - Contractor-managed areas within a facility
 - Warehouses and distribution centers
- If resources are limited, consider focusing on the operations or equipment posing greatest risks

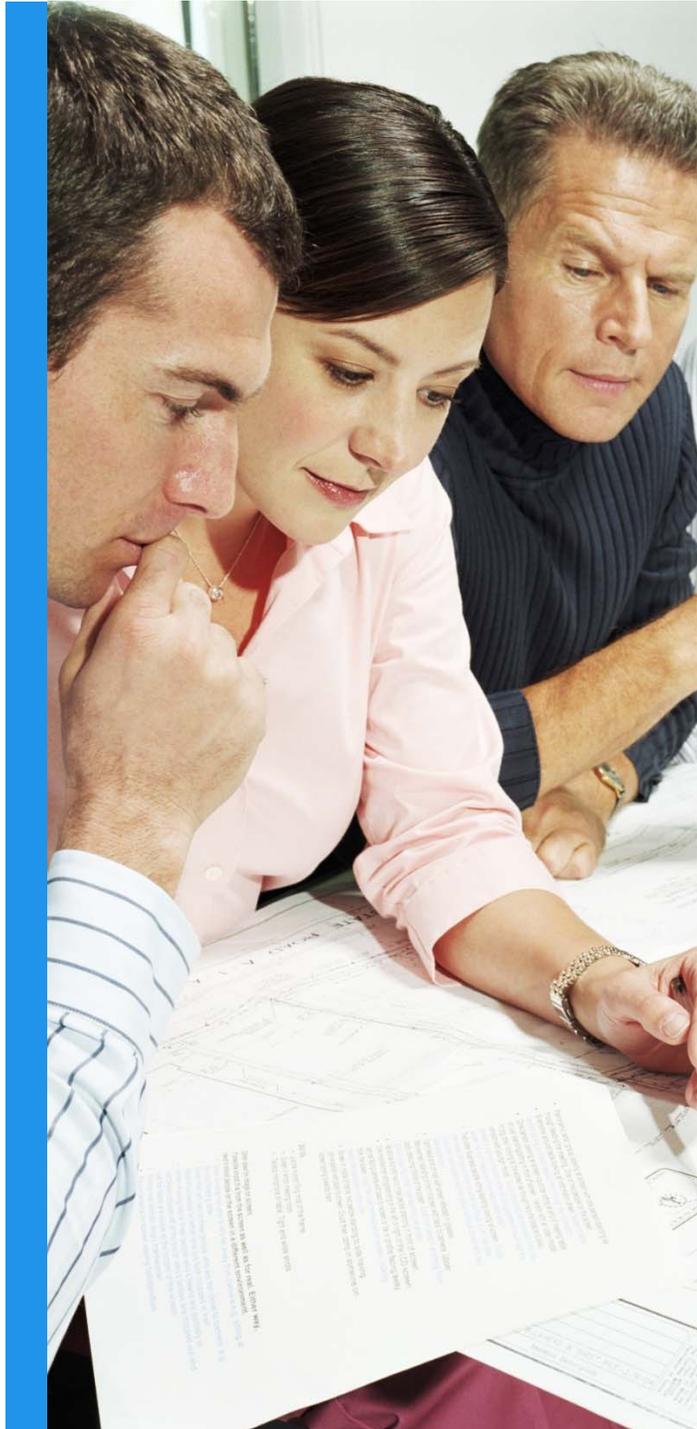
Top 10 Most Frequently Cited OSHA Standards For FY 2019

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



OSHA's Multi-Employer Citation Policy

- Creating employer: employer that caused a hazardous condition that violates an OSHA standard
- Exposing employer: employer whose own employees are exposed to the hazard
- Correcting employer: employer who is engaged in a common undertaking, on the same worksite, as the exposing employer and is responsible for correcting a hazard
- Controlling employer: employer who has general supervisory authority over worksite, including the power to correct safety and health violations itself or require others to correct them



Audit Team Members

- An audit team might include:
 - Senior management
 - Audit program manager
 - Legal department and/or outside counsel
 - Facility manager
 - Facility HES manager(s)
 - Operations and maintenance manager(s)
 - Engineers
- Consider role of third party auditors
- Consider Cross Divisional Team Members
- Audit procedure should define roles/responsibilities



Frequency And Duration Of Audits

- Audit frequency and duration varies
- When establishing frequency and duration, consider:
 - Types of materials handled by the facility
 - Age of the facility
 - Complexity of the operations
 - Company's compliance history
 - Location of the facility
 - Past audit results

Develop Audit Protocols

- A “protocol” is essentially a checklist used by auditors as guidance for conducting the audit
- Focus on purpose of audit
- Comprehensive or focused?
- Can be time consuming to develop
- May consider purchase of protocols
- State focused, federal, and/or international requirements

ISO Audits

- May take the form of a Regulatory Compliance Audit within the scope of ISO 14001 or 45001
- ISO Programmatic Audits
 - Focus on Audit Elements
 - Not a Regulatory Audit

Specific Regulatory Program Audits

- Some Regulatory Programs Require Audits
 - Process Safety Management
- Consider a Focused Audit on Specific Regulatory Programs
 - Air Audit
 - Waste Audit
 - Lockout / Tagout Audit

Pre-Audit Process



- Establish scope of audit
- Establish audit team
- Define timeline of audit
- Conduct conference calls with team
- Review company's procedures
- Search records and review compliance history
- Review reports and corrective actions from any prior audits
- Conduct pre-audit walkthrough(s)



Site Visit

- Conduct opening conference
- Provide current site map (e.g., Google satellite image) that identifies buildings and operations
- Perform site tour
- Review site's programs and records on site
- Develop preliminary findings and discuss with facility management and staff
- Conduct final closing conference

Example Types Of Safety Records



Example Types of Environmental Records

Programs & Procedures	Air Permits	NPDES	Storm Water	Drinking Water
Hazardous Waste	Universal Waste	Solid Waste	Toxic Release Inventory	Ozone Depleting Substances
TSCA	USTs / ASTs	SPCC	Tier I / II	Greenhouse Gas Emissions
NESHAP Requirements	Stack Tests	Groundwater Protection	Biohazard Waste	

Audit Report

- Document audit process and findings in a written report (optional: include BMPs)
- Be specific with respect to the locations and equipment at issue
- Written after verifying findings
- Discuss the audit findings with corporate and site personnel before finalizing the report
- Provide management and legal counsel an opportunity to review and comment

Common Air Findings

- Air permits missing or inadequate (not including all air emission sources or modifications)
- Performance testing missing or inadequate
- Monitoring is inadequate, or relying on equipment not calibrated or maintained properly
- Monitoring records missing or incomplete



Common Wastewater/Stormwater Findings

- NPDES permits or SWPPPs are out of date or do not reflect current plant operations or discharges
- Unpermitted process wastewater or stormwater-contaminated discharges
- Sampling is inadequate, or relying on equipment not calibrated or maintained properly
- SWPPP training not completed for all employees



Common Oil Spill Control Findings

- SPCC plan not certified or signed by PE
- SPCC plan not reflecting current conditions and oil storage facilities (missing oil-filled equipment such as hydraulic transformers)
- SPCC training missing or inadequate
- Secondary-containment structures not maintained, have accumulated rainwater, or valves left open



Common Waste Findings

- Hazardous waste manifests incomplete or missing
- Satellite areas not properly managed; drums unlabeled or mislabeled, or kept open
- Accumulation start dates or other info missing
- Spent universal waste bulbs or aerosol cans in dumpsters or otherwise improperly stored or labeled



Common Environmental Findings

- LEPC/SERC notification missing or inadequate
- Tier I/II or TRI forms late or inadequate (not evaluating all materials)
- ODS/CFC inventory missing or inadequate
- Tank inspections missing or inadequate



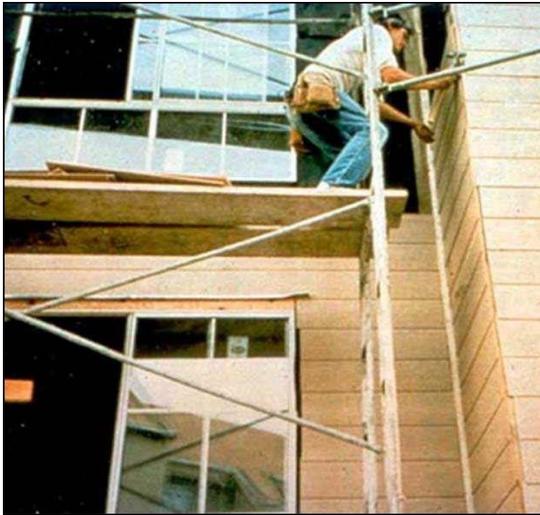
Common Health And Safety Findings

- Fire extinguishers missing, without proper signage or not routinely inspected
- Chemical labeling missing or inadequate
- Condition of walking-working surfaces creating a potential for trip and fall



Common Health And Safety Findings

- Fall protection missing or inadequate
- Eye wash/shower stations missing, in poor condition or not routinely inspected
- Exit signs missing or not sufficiently illuminated



Common Health And Safety Findings

- Compressed gases not secured while being stored, or stored improperly
- Missing, inadequate or damaged guarding on machines or tools
- Electrical panels with missing or inadequate labels, or material blocking access



Common Health And Safety Findings

- Potential permit-required confined spaces not on inventory or lacking proper signage
- Permits missing, incomplete, or not signed off (e.g., confined space entry permits, safe work permits, LO/TO permits)



Common Health And Safety Findings

- Medical testing not completed for all employees required to be tested
- Safety training not completed for all employees required to be trained, or inadequate



Common Health And Safety Findings

- Housekeeping Issues creating trip hazards
- Flex cords in poor condition or used as permanent
- Powered Industrial Vehicles in poor condition or lacking pre-use inspections
- Lifting equipment in poor condition or lacking inspections



Systemic Findings

- This is the real value in auditing
- Helps a facility understand where blind spots exist
- Think programmatically
- Plant floor – signage – plan completion – training – implementation

Consider Performance Metrics

- As part of an audit program, consider the development of performance metrics
- Many forms and approaches
 - Ranking of Priority Findings
 - Overall Letter / Numeric Grades
 - Color / Stoplight

You Are The Auditor



You Are The Auditor



You Are The Auditor



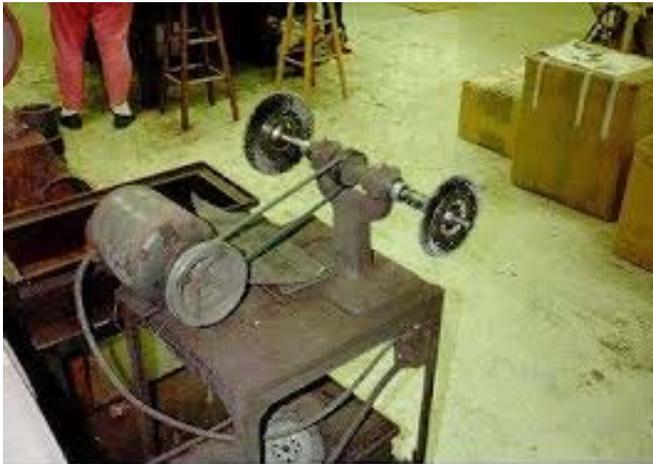
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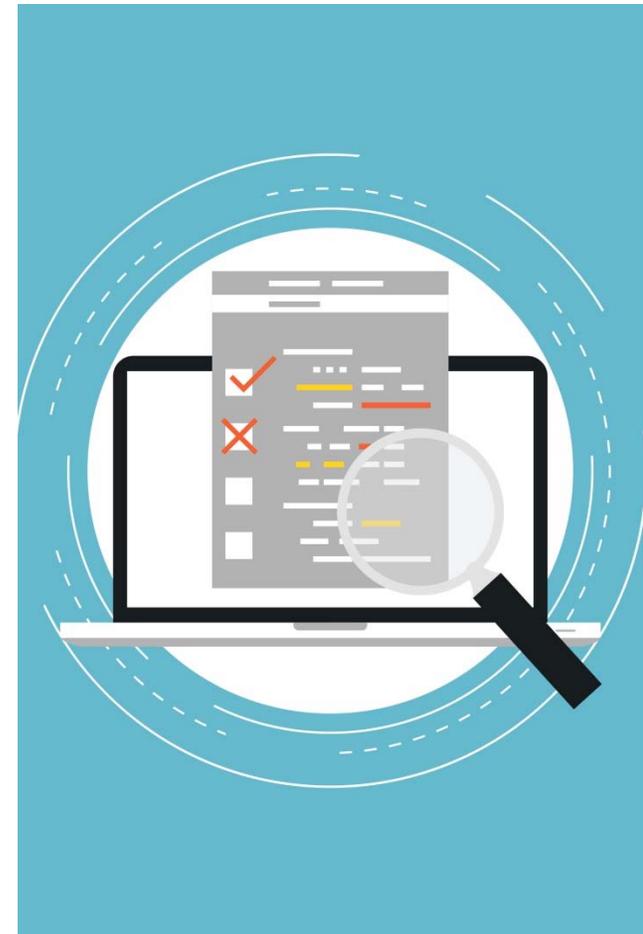


You Are The Auditor



After Audit: Corrective Action Plans

- Findings should be promptly corrected; more quickly for high priority findings
- Assign priorities based on level of risk and number of similar or repeat findings
- Establish short- and long-term corrective actions
- A good tracking system is key
- Establish procedure for extending due dates



Consider Self-Disclosure Of Your Environmental Findings

- Achieve environmental compliance with reduced or no civil penalty
- Resolve issues that might be identified in future
- Avoid the worry of discovery of violations through inspections or employee whistle-blowers
- If seller, resolve violations ahead of a facility sale
- If buyer, resolve violations post acquisition of a facility

Consider Self-Disclosure Of Your Environmental Findings (cont.)

- Self-disclose to EPA, state agency, or both?
 - Who enforces the law violated?
 - Multi-state?
 - What kind of relief is being sought?
 - Policy differences
 - With whom do you want to negotiate?



Overview Of EPA's Audit Policy

- First published in 1995 (60 Fed. Reg. 66706)
- Amended in 2000 (65 Fed. Reg. 19618)
- Guidance through Q&A documents
- Amended Policy's Purpose:
 - To encourage regulated entities to voluntarily discover, promptly disclose and expeditiously correct violations of federal environmental requirements
- Interim Approach to Applying the Audit Policy to New Owners, 2018 (73 Fed. Reg. 44991)
- Announced renewed emphasis in 2018

Incentives Of EPA's Audit Policy

- Reduction of 100% of gravity-based penalties if all nine factors are met:
 - Systematic discovery
 - Voluntary discovery
 - Prompt disclosure (21 days)
 - Independent discovery and disclosure
 - Correction and remediation (60 days)
 - Prevent recurrence
 - Repeat violations excluded
 - Other violations excluded
 - Cooperation

Incentives Of EPA's Audit Policy (cont.)

- Reduction of gravity-based penalties by 75% if meet all but first factor -- detection of violation through systematic discovery process
- EPA retains discretion to collect economic benefit
- No recommendation for criminal prosecution if all applicable conditions are met, except:
 - DOJ retains total prosecutorial discretion
 - EPA recommendation applies only to corporate, not individuals
- No routine request for audit reports

Elements Of State Audit Programs

- Laws v. policies
- All EPA-inspired, some quite unique, but many similarities
- Variations in:
 - Pre-notification requirements
 - Audit completion deadlines
 - Disclosure deadlines
 - Corrective action implementation deadlines
 - Privileges and immunities

Kentucky's Audit Law

- Kentucky Revised Statutes § 224.1-040
- Requires “prompt” self-disclosure
- 60-day corrective action period
- Provides privilege for audit communications
- Provides privilege for environmental audit report from civil and administrative proceedings, unless an exception applies
- Provides full or partial penalty immunity, unless an exception applies

Ohio's Audit Law

- Ohio Revised Code §§ 3745.70–74 (1998)
- Requires “prompt” self-disclosure
- Provides privilege from civil and administrative proceedings, not criminal
- Provides full or partial penalty immunity, unless an exception applies

Indiana's Audit Policy & Law

- IDEM's Self-Disclosure and Environmental Audit Policy (MP-004-R2) (adopted 1999, last revised 2010)
 - Similar to EPA's Audit Policy, except:
 - 45 days to self-disclose
 - 60-day corrective action period, except 90 days for small regulated entities
 - Provides 100%, 75%, *or* up to 50% reduction in gravity-based penalties if not all factors are met but show good faith
- Indiana Code §§ 13-28-4-1-11 (1999)
 - Law (*not* non-rule policy)
 - Provides privilege from civil and administrative proceedings, not criminal, unless an exception applies

OSHA Policy On Voluntary Employer Safety & Health Self-Audits

- Final Policy (*not* formal rule) published in 2000 (65 Fed. Reg. 46498)
- Policy's purpose:
 - Recognize the value of voluntary self-audits
 - Encourage "appropriate, positive treatment"
- No routine request for audit reports
- No citation issued *if* condition corrected prior to inspection, and steps taken to prevent recurrence
 - If not corrected prior to inspection, but employer is responding in good faith, employer may be eligible for substantial civil penalty reduction



Preserving Attorney-Client Privilege

- Attorney-client privilege provides some limited protection for audit documents
 - Perform audit under direction of Legal Counsel for the purpose of providing legal advice
 - Consider seeking assistance from Outside Counsel
 - Communicate to affected employees that company has requested legal advice and their participation is needed to obtain that advice
 - Communicate importance of keeping confidential, and take appropriate steps to label and protect the audit communications

Audit Program Evaluation

- Evaluate the audit program periodically
 - Identify high priority and repeat findings
 - Identify potential corporate-wide issues
 - Identify best practices to share with other sites
 - Evaluate timeliness of corrective action plans
 - Evaluate potential improvements to audit program
 - Update audit program materials



Summary

- Develop a voluntary audit program that achieves your company's objectives
- Establish procedures and controls to maximize protection from disclosure
- Maintain communication with audit team throughout the audit process
- Ensure audit findings are documented in a written (dull) report; avoid speculations and unnecessary conclusions
- Develop and implement corrective action plans in good faith; take action promptly and fully to minimize potential recurrence

Thank You! Questions?



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