



# Incident Investigations on Multi-Employer Work Sites

OSHA Oil & Gas Safety Conference  
December 5, 2018

# The Stakes

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- Serious incidents continue to drive focus on (i) how to conduct investigations, (ii) how to manage results of investigations, and (iii) managing safety and fiscal liabilities.
- Stakes are higher than ever
  - Significant potential for lasting reputational harm
  - Business ramifications are significant in upstream energy industry
  - Accidents are increasingly criminalized
- Multi-employer sites pose highly unique challenges
- Coordinated, well-managed investigation is essential

# Challenges for Upstream

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- Remote locations
- Sometimes transitory / short-term work force
- Multiple companies involved
- OSHA recordables and reportables have significant business impacts
- Service companies sometimes don't identify root causes
- Operating companies often demand to be involved in the wrong part of the investigation and sometimes ignore contractors' important legal issues
- Reporting investigation conclusions between companies
- Lack of periodic review of investigation results

# Investigation Team

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- Must have knowledge of equipment/procedure/systems
- Should not be involved in the incident or in the management hierarchy
- Do you include employees from other companies?
- Do you need a third-party consultant?

# Preserve Evidence

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- Physical evidence in the field
- Joint site control / evidence agreements
- Electronic data
- Electronic documents

# Interviews and Witness Statements

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- Why do people think that witness statements are so good?
- When - must you interview witnesses as soon as possible?
- Where – should you do it at the incident scene?
- Who conducts the interviews?
  - Is the person trained?
  - Is the person knowledgeable about the involved activity or equipment?
  - Number of interviewers?
- How?
  - Start with the beginning of the day (or better yet the day before).
- Documenting what you learn

# Lessons Learned from Others' Errors

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- Develop tiered investigation program
- Utilize investigation plan template to promote consistency
- Determine internal reporting process: operations, HSE, HR, corporate security, IT, and executive team.
- Prepare document holds and identify regional locations to store evidence.
- Determine pool of potential outside experts.
- Audit your investigation process and investigation results

# Privileged vs Non-Privileged Investigations

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- What are the purposes of the investigation?
  - Understand causes and prevent re-occurrence?
  - Prepare for government investigation?
  - Prepare for civil litigation?
- Is there a requirement to conduct an investigation?
  - Regulatory requirement
  - Company practice or rule
- Who will receive results?
  - Your company management
  - Your company employees
  - Customers / partners



# Parallel Investigations – Dual Track

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- It is possible to thoroughly investigate incident and safeguard company's legal interests!
- Where legal risk appears more significant, recommend “dual track” approach
  - Consider magnitude of incident
  - Potential systemic, programmatic, or repeat failure
  - Agency expectations
  - Media attention
  - Potential for criminal investigation
- Dual investigations serve separate functions and achieve distinct ends

# Parallel Investigations - Non-Privileged

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- Focused on specific facts and circumstances of incident
  - What happened immediately prior to, during, and after?
  - What did people do? Hear? Say? See?
- Purpose is to determine “technical” causal factors
  - Limit review to initiating event and technical causes
    - Review of interviews, records, inspection histories, near misses, process data, records or previous incidents, etc.
  - Catalogue deficiencies or missed opportunities directly related to causal factors (e.g., determine MOC not performed)

# Parallel Investigations - Privileged

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- A lawyer must supervise and direct all aspects of a privileged investigation
- Purpose is to build on non-privileged causal findings, provide legal advice, and evaluate potential liabilities
  - **Not** duplicative of non-privileged team's work
  - Focuses on certain issues examined in anticipation of litigation (more time and resources to dig deeper)
  - Facts are not privileged, but analysis is
- Often yields actionable recommendations to be operationally implemented and tracked

# Parallel Investigations - Privileged

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- Sharing lessons and maintaining privilege
  - Counsel should be involved in all communications with the client and / or external expert
  - Take caution when releasing information obtained or developed during privileged investigation
    - Only release strictly factual information or final recommendations when actionable
    - Do not release detailed information
    - Do not release attorneys' analysis, conclusions, or findings
    - Be aware of jurisdictional authority

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