

2005 INTERNATIONAL TELECOMMUNICATIONS SAFETY CONFERENCE

OSHA Regulatory Update (and More!)

Ann Brockhaus
ORC Worldwide

September 13, 2005

Today's Topics

- **OSHA Standards and Enforcement**
- **NIOSH Highlights**
- **A Brief Look at Legislative Activities**
- **Quick Takes on Some Hot Trends and Issues**

So What's Going on in Washington?



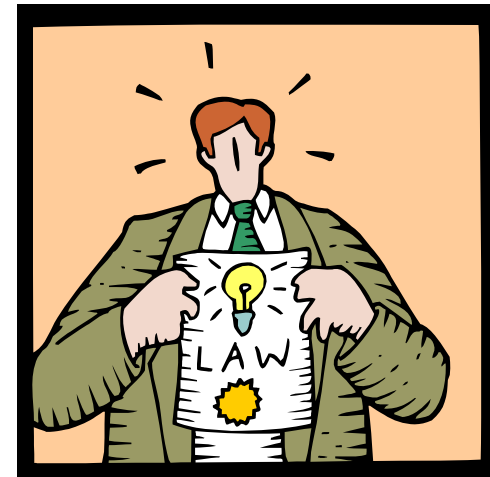


Job Opening at OSHA???

- **John Henshaw left OSHA on December 31, 2004**
- **Jonathan Snare, appointed Deputy Assistant Secretary, has been Acting A/S for OSHA since Mr. Henshaw's departure**
- **Announcement of permanent OSHA A/S imminent?**

OSHA Regulatory Activity

- **Electrical 1910 – Subpart S**
- **Electrical Power Transmission - Construction**
- **Updates Based on National Consensus Standards**
- **Hexavalent Chromium**
- **PPE Payment Issue**
- **Hazard Communication**
- **Crystalline Silica**
- **Explosives**
- **Ionizing Radiation**
- **Lead in Construction**



Electrical – Subpart S

- **Stage 1: Update to design requirements for electrical systems (installations) based on NFPA 70E**
- **Stage 2: Revision of safety-related maintenance and work practices; safety requirements for special equipment**
- **Final rule on Stage 1 scheduled for 9/05**
- **Action on Stage 2: TBD**

Electrical Standards Proposal

- **Proposal published June 15; Comments due October 13**
- **160 pages**
- **Updates construction standards (1926 Subpart V) for power transmission and distribution installations**
 - **Similar work treated same in both stds**
 - **Electrical protective equipment, protective clothing, foot protection**
 - **Fall protection from aerial lifts**

Electrical Standards Proposal (Cont.)

- Amends current Electric Power Generation, Transmission & Distribution standard (1910.269 Subpart R) for general industry
- Amends Electrical Protective Equipment Standards for both general industry and construction



Electrical Standards Proposal (Cont.)

- **Not just power companies affected**
- **Companies with substations and on-site generating facilities**
- **Issues:**
 - **Multi-employer worksites**
 - **Enforcement of Safety-Related Work Rules in Contracts**
 - **Electrical Protective Equipment**
 - **Arc Flash Protection**
 - **Provision of AEDs**

Updates of OSHA Standards Based on National Consensus Standards

- **Multi-year project**
- **1st set proposed/direct final rule (DRF) published 11/04**
- **Direct final rule withdrawn 2/18/05**
- **To be reissued (no new NPRM) ~ 7/05**
- **Proposal & DFR on Set #2 ~ 6/05**
- **Do NOT confuse this with SIPS**

Standards Improvement Projects (SIPS)

- **Continuing effort to remove or revise duplicative, unnecessary and inconsistent S&H standards**
- **Agency has completed two of these efforts to date**
- **Will issue ANPRM 9/05 to solicit input on what to include in a third round of SIPS**

Hexavalent Chromium

- **Action required by 3rd Cir. Ct. of Appeals**
- **Final rule must be published by 1/18/06.**
- **Feasibility of compliance with proposed PEL if 1 ug/m³ is major issue**
- **Whatever OSHA does, this standard will go back to Court for review.**

Hazard Communication

- **OSHA's Hazard Communication Initiative**
- **The Globally Harmonized System for Hazard Classification and Labeling**

OSHA's Hazard Communication Initiative

- **Two components**
 - **Compliance assistance**
 - **Enforcement**
- **Goal: Improve quality of chemical hazard information on MSDSs and labels, and improve hazcom training**

OSHA's Hazard Communication Initiative

- **Guidance documents in progress:**
 - **Hazard determination (draft posted)**
 - **Hazard communication training (draft posted)**
 - **Preparation of MSDS (not published)**
 - **Additional Compliance guidance for OSHA enforcement staff**
- **Dropped plans to develop “model MSDS”—instead developing “Minimum Information Checklists” for 10 chemicals**

Globally Harmonized System of Classification and Labeling of Chemicals (GHS)

- **The GHS is an internationally accepted common and coherent approach to:**
 - **Defining and Classifying chemical hazards**
 - **Communicating hazard information on labels and safety data sheets**
- **The UN Goal: Adoption by 2008**
- **The US is moving toward this goal—ANPR to be published 9/05**

Important Issues

- **Stakeholder input will be needed on costs and benefits**
 - **Estimates of costs**
 - **Approaches to managing costs**
 - **Examples of benefits to companies (e.g., better SDSs, no need to develop multiple SDSs for countries with differing requirements, \$ saved over time with harmonized system)**

Important Issues (Cont.)

- **Stakeholder input will also be needed on:**
 - **Length of time needed for company implementation**
 - **Other impacts on companies from perspective of both chemical manufacturers and chemical users**

PPE Payment Issue

- **Proposal would require employers to pay for all PPE with limited exceptions**
- **NPRM & hearings held in 1999**
- **Payment for PPE for temporary and itinerant workers**
- **“Tools of the trade” issue**
- **Final decision by October 2005**

Crystalline Silica

- **After years in “pre-rule” stage has moved to “proposed” rule stage**
- **Next step: Completion of Peer Review of Risk Assessment by 12/05**
- **Publication of NPRM scheduled for 4/06**

Explosives

- **Will address explosives and blasting agents, but NOT pyrotechnics**
- **Trade associations have petitioned for revisions and provided recommended language changes**
- **Target date for NPRM was 8/05**

Ionizing Radiation

- **ANPRM published 5/3/05**
- **Standard has had only minor revision since 1974**
- **Use of radiation technology has grown**
- **Other agencies have more extensive standards**
- **Comment period extended to 11/28/2005**

Lead in Construction Standard

- **Notice of a Regulatory Flexibility Act Review and Request for Comments published in FR June 6, 2005**
- **Purpose: to determine whether there are ways to modify this standard, published in 1993, “to make implementation more practical, to reduce regulatory burden on small business, and to improve its effectiveness, while still protecting worker health.”**
- **Comment period extended to November 7, 2005**

California Heat Stress Rule

- **Scope:**
 - All outdoor places of employment when environmental risk factors present
- **No Threshold Heat Level**
 - 7 Environmental risk factors
 - 7 Personal Risk Factors
- **Requirements:**
 - Provision of water
 - Access to shade
 - Training
- **Effective for 120 days**

Guidance - Ergonomics

- **Guidelines issued to date:**
 - **Poultry processing**
 - **Nursing Homes**
 - **Retail Grocery Stores**
- **National Advisory Committee on Ergonomics (NACE) recommended production of guidelines for 16 other industries**



Industries Identified for Guidelines

- ❖ **Trucking & Courier, 2**
- ❖ **Air Transport Scheduled, 3**
- ❖ **Hospitals, 4**
- ❖ **Groceries—Wholesale, 5**
- ❖ **Motor Vehicle-Equipment, 6**
- ❖ **Motor Vehicles and Car Bodies, 7**
- ❖ **Plumbing, HVAC, 8**
- ❖ **Department Stores, 9**
- ❖ **Local and Suburban Transportation, 11**
- ❖ **Household Furniture, 12**
- ❖ **Lumber/Building Materials—Retail, 13**
- ❖ **Motor Vehicle Parts and Accessories, 14**
- ❖ **Fabricated Structural Metal Products, 15**
- ❖ **Millwork, Plywood and Structural, 16**
- ❖ **Aircraft, 17**
- ❖ **Miscellaneous Plastics Products, 18**



New Challenge to Existing Guidelines

- **April 1 – National Coalition on Ergonomics Petitions OSHA**
- **Calls on OSHA to withdraw & revise three guidelines**
- **Says violates requirements of the 2001 Information Quality Act (aka Data Quality Act).**
 - **Federal agencies can be petitioned to correct or cease disseminating research if the findings are believed to be drawn from “bad science”**

Brief Legislative Update

Key Questions

- **Is there likely to be action on OSH-related legislation in the waning days of the 1st Session of the 109th Congress,?**
- **What issues are likely to be considered in the 2nd session?**

109th Congress, 1st Session

- **Only a very few days remaining**
- **Will be dominated by Roberts confirmation hearings**



John Roberts



109th Congress, 1st Session



House Safety & Health Issues



Rep. Norwood
(R-GA)

**Big News – Passage of
4 Norwood OSHA
Reform Bills – 7/12/05**

Occupational Safety & Health Business Day in Court (H.R. 739)

- **Would provide adjudicative flexibility if employer misses 15-day period to file notice of contest following issuance of citation if due to “mistake, inadvertence, surprise, or excusable neglect.”**
- **Passed 256-141**

Occupational Safety & Health Review Commission Efficiency Act (H.R. 740)

- **Would:**
 - **Increase number of Commissioners from 3 to 5;**
 - **Allow President to extend a Commissioner's term, for no more than 365 days, after term has expired until a successor has been nominated;**
 - **Require a Commissioner to have "legal training."**
- **Passed 234-185**

Occupational Safety & Health Independent Review of OSHA Citations Act (H.R. 741)

- **Would require that courts reviewing OSHA cases on appeal give deference to the decision of law made by the OSHRC unless it's arbitrary or capricious.**
- **Passed 226-197**

Occupational Safety & Health Small Employer Access to Justice Act (H.R. 742)

- **Would provide for the award of attorney's fees and costs to small employers when they prevail in litigation prompted by OSHA citations.**
- **Passed 226-187**

Senate Prospects for Norwood Bills

Not So Good:

- No time
- Senator Enzi's Agenda
 - Criminal Penalty Provision
 - SAFE Act
 - MSDSs & Globally Harmonized System



Sen. Enzi (R-WY)

Enforcement

- **Site Specific Targeting for 2005**
- **Criminal Prosecutions**



New Site-Specific Targeting Plan for (SST-05)

Announced: August 9

Effective: 8-5-2005 – 8-5-2006

Based on employee injury & illnesses in 2003

**Primary Inspection List will target: ~ 4,400 individual
worksites:**

- **Those reporting a DART* rate of 12 or higher**
- **Those reporting a DAFWII** rate ≥ 9**

***Dart = days away from work, restricted work
activity, or job transfer**

****DAFWII = days away from work due to illness
and injury**

SST- 05 (Cont.)

Also on Primary Inspection List:

- Randomly selected group of ~ 400 workplaces (≥ 75 employees) that reported low injury and illness rates, but are in industries that have DART and DAFWII rates above the national average.*
- Nursing homes & personal care facilities
- Any establishment that failed to respond to the 2004 Data Collection Survey

**The national DART rate in 2003 for private industry was 2.6; national DAFWII rate was 1.5.*

SST- 05 (Cont.)

Secondary List:

- **Employers not on the primary list who reported DART rates between 7.0 and 12.0 or DAFWII rates of between 5.0 and 9.0**

New “Tertiary” Inspection List:

- **For those area offices that complete both of their Primary and Secondary Inspection Lists**

SST- 05 (Cont.)

Other new items in SST – 05:

- Compliance officers will normally conduct only comprehensive safety inspections rather than both a comprehensive safety and a comprehensive health inspection. Health inspections will be limited to certain situations.
- Establishments will receive a “records only” inspection if DART and DAFWII rates (in two of past three years) are below twice the private sector 2003 national incidence rates (i.e. DART = < 5.2 and DAFWII = < 3.0).
- Establishments under new ownership (< 6 months) will receive a “records only” inspection.

Criminal Prosecution

- **Dubbed “Worker Endangerment Initiative”**
 - **New effort to prosecute “bad actors”**
 - **Partnership between OSHA, EPA & Justice Department prosecutors to identify the nation’s most flagrant workplace safety violators**
 - **Will use environmental laws, criminal statutes used in anti-racketeering and white collar crime cases, and some provisions of Sarbanes-Oxley Act.**
- **Program is at advanced stage**
 - **Training of OSHA senior compliance officers**
 - **OSHA regions making lists of the worst workplaces to share with EPA and Justice criminal investigators**

Criminal Prosecution – Cases:

- **Dec 2003 -- Senior managers of McWane Inc. NJ foundry indicted on conspiracy to violate safety and environmental laws**
- **Mar 2005 -- Motiva (Delaware) refinery pleads guilty to negligent endangerment of workers and environmental crimes – \$10 million fine – 3 years probation**
- **W.R. Grace – Clean Air Act fines/jail sentences pending for exposing workers and community to asbestos**
- **NJ contractor to USPS – lied to USPS about wages through the mail -- mail fraud carries possible 20-year jail sentence.**

Status of the Occupational Safety and Health Review Commission

- **Three seats, but currently only two members**
- **Must have a two vote majority to dispose of case – if not, case is in limbo**

Review Commission

- **One Republican -- Chairman W. Scott Railton**
- **One Democrat -- Commissioner Thomasina V. Rogers**
- **Often disagree on controversial cases**
- **Both appointed by President Bush**
- **Republican term up April 27, 2007**
- **Democrat term up April 27, 2009**

Review Commission

**Someone in the Bush
Administration was not paying
attention!**

NIOSH Highlights

- **NORA 2 – The Second Decade of the National Occupational Research Agenda**
 - **Sector Approach**
 - Agriculture, forestry, and fishing
 - Construction
 - Health care and social assistance
 - Manufacturing
 - Mining
 - Services
 - Transportation, warehousing, and utilities
 - Wholesale and retail trade
 - **Submit your comments online**

NIOSH Highlights

- **r2p – Research to Practice**
 - Focused on transfer and translation of research findings, technologies, and information into prevention practices and products
- **Steps to a Healthier US Workforce**
 - Preventing work-related illness, injury, and disability, and
 - Promoting healthy living and lifestyles to reduce and prevent chronic disease.

Hot Trends and Issues

- **Management Systems**
 - **Z10 Approved!**
- **Identifying Effective Leading Metrics**
- **What Constitutes “World Class” and How to Achieve It**
- **Financial Issues Related to Safety and Health**
- **Strategic Planning, Business Continuity**
- **EHS Implications of Nanotechnologies**
- **Occupational Hearing Loss**

Questions?

Ann Brockhaus

ORC Worldwide

brockhaus@orc-dc.com