

Osha concerns and regulations

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Most of the direct victims of terrorism in the United States in recent years have been people at work. Employers, who have a legal responsibility to provide workplaces that are as free of generally recognized hazards as feasible, must consider their exposure to this emerging threat. O. S. H. A. Concerns at the Cleaning up of the World Trade Center The World Trade Center site has presented an immediate safety and health challenge for public agencies and on-site workers. OSHA has jurisdiction in most disaster situations but exercises forbearance while local emergency authorities are dealing with rescue and recovery.

This period was unusually prolonged in the World Trade case, while workers and the general public were exposed to many toxic substances. Special enforcement and monitoring programs have been adopted there incrementally. General employer responsibilities that are relevant to the terrorism risk include building and site management, workers compensation and certain aspects of personnel policy (such as those regarding violence). In general, proper attention to these routine matters as modified for the new range of risks will help assure that all that can reasonably be done in preparation will be done.

In certain high-risk industries, emergency planning is required by a number of laws. Most facilities that use large quantities of toxic or flammable materials must explicitly assess all potential accident modes, adopt processes to minimize them, and plan their responses to emergencies, including coordination with local emergency agencies. The spread of anthrax through the mail has posed unique problems for many organizations. OSHA and the Centers for Disease Control have issued guidelines for dealing with

this and other bioterror agents in workplaces. Legislation (H. R. 448) is pending to improve overall preparedness for bioterrorism. Occupational hazards abound in rescue and recovery activities at disaster sites.

These include immediate dangers associated with falls, burns, cuts and the operation of heavy equipment, as well as longer term health risks from asbestos and toxic substances. The World Trade Center site (WTC) presents all of these and more, in a context of unprecedented scale, complexity and emotional ramifications. It is the policy of the Occupational Safety and Health Administration (OSHA) to defer to local authorities in the immediate response to catastrophic events.

OSHA will try to play a constructive role of providing technical assistance to the rescue and recovery effort, while also collecting evidence of prior violations that may have caused the incident. Nevertheless, the agency reserves the right to enforce safety standards with regard to workers on site. Usually, the search and rescue phase will give way to stabilization and clean-up within a couple of weeks. In the WTC case, the end of the rescue and recovery phase was not declared for months. In the interim, OSHA inspectors were on site and advising the clean-up contractors of safety shortcomings, without issuing formal citations.

An average of 43 violations was observed per day initially, decreasing gradually to 33 per day late October. OSHA, labor unions and other groups made respirators, helmets and other equipment available and encouraged its use. The most common problems included absent or inadequate personal protective equipment, improper storage or use of gas cylinders, and failure to mark off zones subject to falling objects. The most common injuries

resulted from inhalation of smoke and dust, cuts and burns. 1 In the first two months there were reported 40 near-miss incidents that could have been fatal.

In view of these dangers, there has been some criticism that OSHA and other agencies did not act more vigorously at an early stage. In any case, on November 20, 2001 a partnership agreement was reached among OSHA, the city government, contractors and unions. Safety hazards at Ground Zero were to be abated immediately; data would be shared on air contaminants and other health-related exposures; and union groups would provide training (with workers getting paid during training time). On January 25, 2002 OSHA launched an additional local emphasis enforcement program to oversee clean-up activities in a wider area surrounding the site proper.

A concern frequently expressed at the WTC, by nearby residents as well as workers, is the long-term health hazard of dust and gaseous emissions from the site. Unnatural odors are readily apparent, and many report respiratory problems like coughing and runny eyes and noses. OSHA have continuously monitored the outside air and report, generally, that the levels of asbestos, benzene, PCBs, etc. do not constitute a long-term risk to the public. At the same time, acute respiratory effects are evident among some workers and nearby residents.

Preliminary medical examination of firefighters indicated that one out of four had early signs of asthma. Respiratory protection for on-site workers was clearly called for, although not universally implemented. One of the most critical OSHA standards potentially applicable here is the one dealing with asbestos. In most building demolitions, hazardous materials like asbestos are

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supposed to be removed before the razing begins. The WTC situations obviously differ 1. Safety Becomes Prime Concern at Ground Zero. New York Times, p. B-1, B-11.

November 8, 2001. from a typical demolition, and many questions arise about how one would comply with the standard. Nevertheless, it appears that regulation 29 C. F. R. Section 1926. 1101, the OSHA construction standard, does apply not only to the site itself, but also to surrounding areas in need of repair or just clean-up. Asbestos-containing insulation was used to coat the structural steel in the first 40 stories of the north tower. Tests of dust in and around the WTC site have generally but not without exception shown asbestos content below 1%.

That would be the quantitative trigger for application of the most stringent requirements under the OSHA regulation, but the overall standard applies in any demolition job where asbestos is present. The standard establishes quantitative exposure limits and a number of specific practices to be followed. These practices include wetting down the material, using vacuum cleaners with high-efficiency filters, enclosure and ventilation of work areas, provision of respirators, protective clothing and personal decontamination, training and medical surveillance. A key component of proper work with asbestos involves the use of respirators.

The OSHA standard requires their use in all Class I work and specifies the types to be used according to the potential airborne concentrations. OSHA received considerable criticism during the WTC clean-up for working in a consulting, rather than enforcement, mode. A strong argument can be made, however, that OSHA was following its prescribed role under the FRP. Whether

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this was the correct role for the agency was often discussed. OSHA, however, did keep with the plan. OSHA had at least six officers assigned to each shift an unprecedented manpower commitment.

An associate director of the Center to Protect Workers Rights stated that OSHA made a big difference by providing outstanding manpower, and imagined how much improved incident and injury rates would be for any large construction project where there were six OSHA inspectors on site at all times. OSHA provided thousands of respirators, but only taught workers to perform positive and negative fit checks, not the qualitative or quantitative fit tests that are required under the agency's own respirator standard. Even when quantitative fit-tests were conducted, standard rules were not followed.

Workers with beards were reported to have been fit-tested even though this is not permitted under OSHA regulations. Workers with beard often wore respirators within the restricted zone. The Natural Resources Defense Council, in its February 2002 report, recommended that OSHA, along with appropriate state and city agencies, should immediately undertake stringent enforcement of workplace safety standards for workers at Ground Zero and workers involved in clean-up of dust and debris-filled offices or residences in the vicinity of the Trade Center. OSHA is the obvious choice for quickly and effectively enforcing worker-protection rules.

The Federal Response Plan gives that responsibility to FEMA with support from OSHA, but FEMA did not play an active role in safety and health at Ground Zero. OSHA's challenge in future disaster situations will be to focus on major issues, and avoid excessive consideration of minor infractions of

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the agency's many standards. Specific O. S. H. A. Regulations In response to rising concerns about worker and workplace safety, the U. S. Congress passed the Occupational Safety and Health Act of 1970 (OSHA). Enacted under 2. The environment impacts of The World Trade Center attacks, a preliminary assessment. Natural Resources Defense Council. 2002. the federal government's Constitutional right to regulate interstate commerce, the legislation aims to guarantee that workers across the United States have a workplace which is free from hazards like machinery dangers, constant loud noises, temperature

Extremes, unsanitary conditions, and toxic chemicals. In order to achieve these goals, the act authorized the creation of the Occupational Safety and Health Administration (OSHA), which was established in 1971. OSHA covers all employers and their employees in any U. S. state or territory. An employer is any person engaged in a business affecting commerce that has employees, but does not include the United States or any states or political subdivision of a state.

As a result, many industries and businesses are covered by the employer definition, granting OSHA control over safety regulations in manufacturing, agriculture, law, medicine, charity, and education, as well as other fields. However, the law doesn't encompass all U. S. workers; those who are self-employed, farms which rely only on family members, industries which interact with and run under the authority of other federal agencies and laws, and some government employees are not covered by OSHA.

The Occupational safety and Health Act has two main requirements: setting safety and occupational guidelines, and having regular inspections to

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guarantee compliance to safety and health standards. OSHA has the power to require employers to practice certain policies and methods in their workplaces and to become knowledgeable about OSHA standards. Although employers are mostly responsible for workplace safety, employees are also responsible for complying with OSHA standards.

Under the act, employers are bound under a general duty section of the legislation which affirms that employers must guarantee a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. Federal OSHA regulations are standardized into four major categories; general industry, construction, maritime, and agriculture. Some standards apply to every category, but there are many that apply only to a specific category. Out of all these regulations, there are three main cross-category requirements.

First, employers must give an employee access to any records that are kept about his health, as well as any additional records that document other specifics, such as toxic substance exposures. Second, the employers are required to provide the necessary equipment and protective gear to ensure a safe workplace. Third, employers that manufacture or use hazardous materials must regularly examine and test those hazardous materials for safety purposes. OSHA regulations require that employers keep thorough records, report on OSHA compliance regularly, and post OSHA standards for employees.

Any employer who has more than 10 employees, except for a few low-hazard exceptions, must keep three different types of records. These records are an OSHA Form 300 injury and illness log, an OSHA Form 301 individual incident

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report which provides more specific details of injuries, illnesses, or accidents from the OSHA form 300, and a national survey by the Department of Labor's Bureau of Labor Statistics on workplace safety which happens annually if a company is selected to participate by its state government.

Reports must be provided by all employers to the nearest OSHA office if there is an accident or occurrence which results in the death of any employee or the hospitalization of more than three employees. The report must be provided to the office within eight hours since an incident originally took place. As a result of the required report, OSHA officials may examine the circumstances surrounding a death or hospitalization to determine if safety or health standards were violated.

In recent years, OSHA has pursued an initiative known as the Voluntary Protection Program (VPP), which aims to better meet the goals of the Occupational Safety and Health Act of 1970. ³ The VPP is an attempt to extend work safety practices beyond the minimum requirements set forth in the legislation by recognizing employers and employees who have successfully incorporated health and safety into their workplace, motivating others to emulate those who are successful, and establishing a more cooperative relationship between employers and their local OSHA office.

Employee Rights Most importantly, employees are given significant rights which are guaranteed to them by the act and which are inviolable by employers. Employees have the right to voice their relevant concerns to their local OSHA office without having their identities revealed to their employer, to participate in OSHA inspections of their workplace, and challenge OSHA's efforts to ameliorate hazards in their workplace. Private

sector workers are protected by the legislation and may not be fired in response to filing a complaint with OSHA.

In order to achieve the standards set by OSHA and detailed in the Occupational Safety and Health Act, frequent standards updates are available in the federal government's publication, the Federal Register. Training assistance programs are available from the more than 70 field offices, which provide workers and management with educational materials on workplace hazards, as well as the opportunity to bring in 3. Industry Self-regulation and Voluntary Environment Compliance. CRC Press, 2001.

OSHA officers as consultants for the creation of a compliance program at no cost to the employer. Violations of OSHA and Occupational Safety and Health Act standards upon inspection may result in substantial fines and, in some severe cases, may result in criminal penalties. Penalties are determined by OSHA officials based upon a standard system of assessment. Fines for repeated and willful violation of standards may reach as high as \$500, 000 daily on each separate infringement for a corporation, and as high as \$250, 000 for an individual.

OSHA also maintains a significant appeals process for both employers and employees in order to review penalties assessed by OSHA officials for workplace violations. The OSHA Act empowers the Secretary of Labor to promulgate specific safety and health standards and prescribes the procedures by which such regulations are to be developed. An employer charged with violating the specific duty clause is notified of the standard in the regulations which he is alleged to have violated. Thus, the employer will

be cited for a violation of the specific duty clause and the regulatory standard under which the employer's duty arises.

Important OSHA regulations govern employer reporting requirements to OSHA with regard to workplace injuries and/ or deaths. Previously promulgated regulations have been expanded to require the reporting of work-related incidents resulting in the death of an employee or the inpatient hospitalization of three or more employees. In addition, the regulation requires the employer to report such incidents to OSHA by either written or verbal communication within eight hours after the employer learns of an event.