

# THE ADVISOR

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Your Free Newsletter of  
Management Information

*Specializing in Safety, Environmental and  
Human Resources Topics*

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## **DRAMATIC NEAR-MISSES**

OSHA isn't just an enforcement agency that shows up after a problem in the workplace is reported. They often prevent fatalities and disabling injuries. The following stories are dramatic examples of OSHA interventions that saved lives:

On Aug. 22, 2006 OSHA Health Officer Anthony Nozzi of the North Aurora, Ill., Area Office, while driving by a Chicago-area residential construction site, observed employees working at approximately 30 feet above grade performing roofing work. He stopped at the worksite and saw an employee trip on a slide guard and nearly fall off the roof -- the employee caught himself on the side of a chimney. Nozzi initiated an inspection and asked the employer to cease work until employees were provided adequate fall protection.

On Saturday, July 15, 2006, while driving through Prospect Heights, Ill., OSHA Officer Gary Weil of OSHA's Chicago North Area Office spotted three employees at a construction site performing masonry work from tubular-welded frame scaffolding. Weil saw they were exposed to fall hazards and stopped to initiate an inspection. He discovered a "hot" power line was within 12 inches of the scaffolding and asked the crew's foreman to remove the employees so the line could be de-energized by the local power company.

OSHA's role in the life of the American worker was exhibited once again when, at 10 a.m. on the morning of June 6, 2006 in Brooklyn, N.Y., OSHA officer Bob Stewart requested that six construction employees be removed from a 22-foot deep excavation due to the hazardous 10-ton concrete abutment hanging above it. Fifteen minutes later, the overhang collapsed and fell, landing in the exact spot in which the employees had been working.

Three workers were removed from a Cleveland-area construction project within minutes of a roof collapse on April 10, 2006 by OSHA Officer Joe Schwarz of OSHA's Cleveland Area Office and Medina County Building Inspector Art Verdoorn. In response to an anonymous complaint to both organizations, the men coincidentally made a surprise visit to the construction site of a preschool on Normandy Park Rd. The exterior walls were up and half the roof was on, but the structure was not braced properly. Some workers were on the high beams and some inside. The building inspector, with Schwarz's concurrence, issued a stop-work order, and ordered the workers removed just before the roof fell in and walls collapsed.

Should one doubt the wisdom of using fall protection during construction, you might want to ask one fortunate construction worker from Michigan. In September, 2005, while working at the Lambeau Field Renovation project in Green Bay, Wisconsin, the worker slipped from a steel beam - six stories above ground. Thanks to his use of full fall protection, serious injury - or death - was avoided. He was back at work shortly after

his rescue. Less than two months later, a second worker slipped from a beam, but also escaped injury because of his fall protection equipment. He also returned to work the same day. OSHA has a Strategic Partnership agreement with Turner Construction, the Lambeau Field general contractor, which requires 100 percent use of fall protection above six feet. Strict adherence to the requirement saved two lives in the first year of the project.

"Get out of that trench," OSHA Inspector Robert Dickinson ordered a worker in an unshored, unsloped, unsafe trench by the side of the road near El Paso, Texas. Good thing El Paso Assistant Area Director Mario Solano had spotted the trench earlier on September 13, 2001 and sent Dickinson and Elias Casillas to check it out. Because 30 seconds after the employee left the trench, the wall near where he had been standing collapsed. Heeding the compliance officer's warning and order to leave the trench kept the worker from experiencing a serious, perhaps life-threatening injury.

In Houston, on August 8, 2001, two window washers were suspended from the Baker Hughes building when their scaffold broke, leaving them dangling high above the ground. But they were hooked to the proper safety equipment and so they remained aloft until firefighters rescued them. Had they not followed OSHA's required safety procedures and tied off separately from the scaffold, they would likely have plunged to the earth with tragic results.

## **OHIO SMALL BUSINESS ENERGY SAVER**

Businesses that spend less than \$150.00 on their annual energy bill now have a tool to help them reduce energy waste and hold costs down. The Ohio Department of Development has developed a free online tool that is confidential and easy to use. By using this tool, you can:

- quickly identify basic energy-saving opportunities;
- create a project plan with estimated pay backs;
- get information on project assistance resources;
- target specific aspects of your operations to work on first;
- get a checklist to review, track and evaluate power;
- compare your energy use to similar businesses; and
- view examples of how similar business save energy.

If you are looking for ways to save on energy expenses at your business, visit the Small Business Energy Saver at:

<http://www.energyguide.com/EnergySmartSBE/welcomeba.asp?referrid=227&sid=436>

Grant funding is available for business owners who are ready to implement measures they are suggesting. For more information:

[www.odod.state.oh.us/cdd/oe/ELFGrant.htm#NOFA\\_07-05](http://www.odod.state.oh.us/cdd/oe/ELFGrant.htm#NOFA_07-05)

# **TOXIC SHIRT IS A NEW WRINKLE IN WTC WOE**

By Linda Stasi and Susan Edelman, New York Post

Sky-high toxic levels of potentially deadly asbestos still cling to the fibers of this ordinary white dress shirt - worn by a 9/11 volunteer for two days at Ground Zero, a shocking analysis sought by The Post reveals.

Community liaison Yehuda Kaploun volunteered at Ground Zero for 48 hours immediately after the attack, wearing the shirt as he watched good friend and beloved Fire Department chaplain Mychal Judge die in a building collapse.

The volunteer kept his contaminated shirt packed in a sealed plastic bag until last week, when The Post sent the garment to RJ Lee Group laboratories for testing.

Analyzed portions of his shirt collar reveal a chilling concentration of chrysotile asbestos - 93,000 times higher than the average typically found in the environment in U.S. cities. That appears to be even higher than what the EPA said was found in the most contaminated, blown-out building after 9/11.

While there appear to be no specific regulations for asbestos levels on clothing, one lawyer for relief workers called the sickly shirt's amount "astronomically toxic."

It's the "high end of surface concentrations that you would find anywhere," added Chuck Kraisinger, a senior scientist for RJ Lee.

Testing also revealed the shirt was contaminated with zinc, mercury, antimony, barium, chromium, cobalt, copper, lead and molybdenum. Tons of the heavy metals were pulverized and burned in the debris in fires that raged for four months.

The test results are especially frightening in light of last week's report by the Centers for Disease Control that 62 percent of those caught in the massive dust cloud suffered respiratory problems. Also, 46 percent of civilians living or working in the immediate area but not caught in the cloud still experienced respiratory problems - and 57 percent reported new and worsening respiratory symptoms.

Making matters worse, Dr. Mark Rosen, chief of the Division of Pulmonary and Critical Care Medicine at Beth Israel Hospital, said that because it can take decades for asbestos cancers to develop, "We just won't know the effect [of Ground Zero exposure] for years."

About 400,000 tons of asbestos were released in the World Trade Center collapse. David Worby, a lawyer for 7,300 rescue and recovery workers who inhaled the smoke and dust at Ground Zero for months, called the area "the worst toxic site ever."

"It's mind-boggling the poisons they made these people work through," Worby said. "The amount of dioxins there make Vietnam look like a kindergarten. It is an urgent situation. If the government does not act... in terms of setting up [widespread] medical testing... more people in the next few years will die of toxic diseases than died on 9/11."

According to the Mesothelioma Resource Center, "Asbestos becomes dangerous when it breaks into pieces small enough to enter deep into the lungs. The longer period of time that a person is exposed to asbestos fibers, the higher the risk of developing lung disease later in life."

On 9/11, Kaploun was a 35-year-old liaison between the Police and Fire departments and the Orthodox Jewish community, as well as a part-time Ambulance volunteer. He said he doesn't really know why he tucked the shirt away after the terror attacks.

"But something told me that it was loaded with stuff - and it goes to show you how very wrong these people were whom we trusted," he said. "I remember coming home, and you know what, I was going to give the shirt to the cleaners, and then somehow, for some reason, I didn't."

"But if my shirt and I can do something to help these people who were there for weeks and months on end - and if this is the kind of numbers needed that will help and support their cases - then that's the blessing."

He said he is "somewhat" concerned about his own health in the future, "but so far, thank God, everything is good. I've been checked and I check out OK - but I only hope the government will do the right thing for all the people who were there for an extended period of time. I was with government officials and we saw thousands of people covered in this soot, and while we were assured that preliminarily there was no danger, obviously this is not the case."

Although Kaploun may have saved his shirt in honor of the heroic efforts he saw that day, he hopes it may ultimately turn out to be the very thing that will help other 9/11 volunteers get help for illnesses they develop in the future.

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### ***Interesting Facts***

*Of the 2,976 questions five major TV interviewers have posed to the presidential candidates in interviews, according to a survey by the League of Conservation Voters, just six concerned global warning. That's 0.2 percent.*

*More Americans now die from misuse of prescription drugs—anti-depressants, painkillers, and sleeping pills—than from heroin and cocaine, the Centers for Disease Control and Prevention reported. Fatalities due to drug overdoses have been rising dramatically in the U.S. since 1999, largely because of the abuse of prescription drugs.*

# OSHA'S GUIDANCE ON EMERGENCY RESPONSE TO CHEMICAL RELEASES

OSHA has updated instructions for their compliance officers when inspecting employers that respond to chemical emergencies. New guidance is also provided on how the HAZWOPER rule may apply to terrorist attacks. It defines additional terms and expands on training requirements for emergency responders and other groups such as skilled support personnel. Here is a specially edited and excerpted version, so our clients may use it to review and critique their Emergency Response Plans.

HAZWOPER is referred to as a "performance-oriented" standard, which allows employers the flexibility to develop a safety and health program suitable for their particular facility or operations and defining what constitutes an emergency release. The most important aspect of HAZWOPER paragraph (q) is planning for emergencies through the development of an emergency response plan (ERP) or an emergency action plan (EAP) under 29 CFR 1910.38.

An employer must evaluate their ability to protect the health and safety of employees, while the employees contain, control, and clean-up hazardous substance(s) if an emergency were to occur. If an employer intends to have all employees evacuate immediately in the event of an emergency and not respond to the emergency, the employer must implement an EAP only.

Employers must consider the reasonable possibility of employee exposure to hazards associated with the release, or substantial threat of release, of a hazardous substance. The exposure or potential exposure to health hazards includes all routes of entry (inhalation, ingestion, and skin absorption) without regard to the use of PPE. Employees are considered "exposed" when they encounter any amount of a hazardous substance in the work environment that could cause them potential harm. Health hazards such as skin and eye damage, poisoning, long term effects on organs or cancer, must be covered. Safety hazards such as fire, explosion, and corrosive action from hazardous substances associated with the work site are also covered.

If a facility does not have an ERP or an EAP, the employer must be able to prove to the OSHA Inspector that the chemicals and the quantities used in the facility can not develop into an emergency incident if released in a (reasonably predictable) worst-case scenario, when employees are expected to respond. If there is a potential for an emergency, the employer must plan for it, and if there is no potential, then the employer does not fall within the scope of HAZWOPER. Although HAZWOPER may not apply to a particular event, incidental or non-emergency releases are covered under OSHA's Hazard Communication standard.

Workplaces located in areas prone to natural phenomena, such as earthquakes, floods, tornadoes and hurricanes, which could cause a "substantial threat of hazardous

substance releases," should have an ERP that includes responses to emergencies caused by natural phenomena.

### **HAZWOPER's application to a terrorist incident response involving chemical, biological, radiological, or nuclear materials:**

OSHA does not consider terrorist events to be foreseeable workplace emergencies requiring employers to prepare for such emergencies. The release of hazardous substances in a workplace, caused by a terrorist event are considered a hazardous materials (HAZMAT) incident. Employers would not be required to develop an ERP for such an event, however, there are new Homeland Security regulations that may apply to such situations.

### **Hospital-Based First Receivers of Victims from Mass Casualty Incidents Involving the Release of Hazardous Substances:**

Hospitals, or emergency medical services designated by the local or state emergency agencies do not have to develop an ERP for the community, provided their role is addressed in the local contingency plan. Hospitals should have designated decontamination areas, although they do not need to be dedicated solely to decontamination. The hospital is responsible for employees responses to an emergency caused by the release of its own hazardous substances.

Hospitals that will receive contaminated accident victims must accentuate decontamination and PPE in the training for personnel designated to set up decontamination facilities. *OSHA Best Practices for Hospital-Based First Receivers of Victims from Mass Casualty Incidents Involving the Release of Hazardous Substances* is a guidance document that provides practical information to assist hospitals. It addresses the protection of hospital-based emergency department personnel during the receipt of contaminated victims from mass casualty incidents and makes a distinction between first responders and first receivers.

First Receiver is defined as hospital-based staff that receive and treat contaminated victims from mass casualty incidents. These personnel are removed from the site of the emergency and the point of release and do not need to be trained – or equipped – for control, containment, or confinement of the release. First receivers are still considered to be part of an emergency response and will be required to wear appropriate PPE and be provided effective training based on the duties and functions to be performed.

### **Safe Distances and Places of Refuge:**

The ERP should contain a map with safe places of refuge identified for each area where hazardous substance emergencies could occur. Ideally, the map should contain the location of all buildings, structures, equipment, emergency apparatus, first aid stations,



routes of entry and exit, emergency exit routes and alternate routes, staging areas, and safe places of refuge.

The safe places of refuge (out-of-doors or shelter-in-place) should be the areas where an accounting of all employees will be performed. This can be critically important for identifying individuals that did not get out, estimating where they may be, and initiating any rescue operation. Information on safe places of refuge must be given to the emergency response team. In some cases, because of the nature or quantity of a release, it may be safer to remain indoors rather than to evacuate employees.

If an employer intends to include a shelter in-place option in their ERP, they must include methods for alerting their employees to shelter-in-place, that is distinguishable from the signal for an evacuation. Examples of situations that might result in shelter-in-place include an explosion in an ammonia refrigeration facility across the street, or a derailed and leaking tank car of chlorine on a nearby rail line. The ERP must identify who decides to shelter-in-place, and what situations may require it. The procedures should include turning off, sealing, or disabling the HVAC intake and closing doors and windows.

#### **Pre-Emergency Planning and Coordination:**

The ERP must address coordination with outside emergency response organizations, such as fire, police, HAZMAT teams, emergency medical services, and other nearby employers. OSHA inspectors will ask if employers have evidence that they notified and coordinated their ERP with the organizations listed, including the local fire department, LEPC, hospitals, and others regarding the employer's emergency response capabilities, needs and the public responder's role, if any, in providing emergency response.

OSHA inspectors will verify with randomly selected response organizations listed in the ERP that they are aware of and capable of fulfilling their role. Other questions include:

- \* Are telephone numbers and contact personnel for in-plant officials and local authorities updated and made available?
- \* Does the employer's pre-emergency planning address how outside parties are notified of an emergency situation and what role each would play?
- \* Are outside responders aware of any circumstances that were either not disclosed or not considered by the employer that would delay or prevent them from responding to an incident (e.g., distance, railroad tracks, etc.)?

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#### ***Holiday Factoid***

*Out of \$97 billion in gift cards purchased last year, nearly \$8 billion worth have gone unused, said researcher Tower Group.*

## EPA AGREES TO CUT LEAD IN KID'S PRODUCTS

Companies that make or distribute toys, zippers and other children's products will face tougher government scrutiny to keep out any lead that could poison and kill children or harm their brain development. The Environmental Protection Agency agreed, in response to legal pressure, to contact up to 120 importing and manufacturing companies, instructing them to provide health and safety studies, if any lead might be found in their products.

"Parents still need to be vigilant about the recalls on products marketed to children that might contain lead, and take those products away from children as soon as they are recalled," said Jessica Frohman, of the Sierra Club's national toxic committee. The EPA letters are part of a settlement signed Friday with Sierra Club and another advocacy group, Improving Kids' Environment. The agency must tell the Consumer Product Safety Commission "that information EPA has reviewed raises questions about the adequacy of quality control measures by companies importing and/ or distributing children's jewelry."

While the EPA can ban a substance such as lead, only the commission has the authority to ban a product. The Sierra Club last year petitioned EPA and the commission to monitor and ban the making of any children's necklaces, bracelets, rings and other jewelry containing lead. After the EPA rejected the petition, the two groups sued the EPA last year in the U.S. District Court for the Northern District of California, where the Sierra Club is headquartered. The attorneys general in California and Illinois sent letters to EPA supporting the groups' legal challenge.

The lawsuit also followed the death of 4-year-old Jarnell Brown of Minneapolis, who died last year from acute lead poisoning after swallowing part of a heart-shaped charm bracelet distributed by Reebok International Ltd. The child's death was ruled accidental, but Reebok recalled 300,000 of the silver-colored, Chinese-made bracelets found to contain 90 percent lead that the company had given away with its shoes.

In December, the commission began taking steps to ban, rather than recall as it has been doing, children's jewelry containing more than 0.06 percent lead by weight. California and Chicago have adopted the same standard.

The commission's decision came after it had recalled more than a dozen products in the past two years. Nationally, inexpensive toy jewelry made with lead or painted with lead paint is sold in vending machines and stores that sell mainly to immigrant communities. More than 70 major U.S. retailers agreed last year to stop selling children's jewelry containing lead in California after the Center for Environmental Health, and the state's attorney general, sued in 2004. The commission's biggest-ever recall was in 2004 and involved 150 million pieces of children's jewelry with unsafe lead levels. Lead safe toys: <http://www.thedailygreen.com/green-homes/eco-friendly/toys>

# **U.S. AND CHINESE PRODUCT SAFETY AGENCIES ANNOUNCE AGREEMENT TO IMPROVE THE SAFETY OF IMPORTED TOYS**

In a cooperative effort to ensure the safety of children's toys, the U.S. Consumer Product Safety Commission (CPSC) announced an agreement with its product safety counterparts in the Chinese government aimed at stopping the use of lead paint in the manufacture of toys and addressing other product safety issues. At a "Consumer Product Safety Summit" held today in Washington, D.C., CPSC made known that China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) has agreed to take immediate action to eliminate the use of lead paint on Chinese-manufactured toys exported to the United States. Lead paint on toys sold in the United States has been banned since 1978.

In addition to the lead paint agreement, the two agencies announced work plans for cooperation in four product categories: toys, fireworks, cigarette lighters, and electrical products. The work plans provide a roadmap for bilateral efforts to improve the safety of these products, which represent some of the most frequent hazards under CPSC's regulatory jurisdiction.

CPSC Acting Chairman Nancy Nord stated that the work plans show "significant forward progress" in the agency's efforts to bring Chinese-made consumer products into line with U.S. safety rules.

"This is an important signal from the Chinese government that it is serious about working with CPSC to keep dangerous products out of American homes," said Acting Chairman Nord. "We will be looking for meaningful cooperation on the ground - that means not just with the Chinese government, but also with industry at both ends of the supply chain."

The summit also resulted in an agreement by AQSIQ to increase its inspections of consumer products destined for the United States and to assist CPSC in tracing hazardous products to the manufacturer, distributor and exporter in China. The two agencies will review the plans' effectiveness within one year to identify possible areas for improvement <http://www.cpsc.gov/BUSINFO/workplans.pdf>

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## ***Interesting Facts***

*Flight delays cost the U.S. economy at least \$15 billion last year, Transportation Secretary Mary Peters said. During the first 11 months of 2007, 1.6 million passenger flights were at least 15 minutes late, for a total delay time of 170 years.*

# ELECTRONIC PRODUCT PURCHASING, RECYCLING, AND DISPOSAL

Computer equipment that is environmentally friendly will be available to large volume purchasers soon. Large manufacturers now offer products that meet the Electronic Products Environmental Assessment Tool (EPEAT) standard. EPEAT registered computer products have reduced levels of Cadmium, Lead, and Mercury and are easier to upgrade and recycle. They also meet the government's energy Star guidelines for energy efficiency.

EPEAT promotes continuous improvement in the environmental design of electronic products and informs purchasers of the environmental criteria of electronic products. EPEAT may eventually expand to include individual consumer purchasers.

You can view more information about the EPEAT standard, the database of EPEAT registered products and the list of participating manufacturers at:  
<http://yosemite1.epa.gov/oppt/eppstand2.nsf/Pages/ListTables.html?Open&Computer%20Store&Computers&Type=A>

**E-Scrap Solutions** a full service Computer and Electronics processing and recycling company in Cleveland Ohio.

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For more information visit, [www.ESCRAPohio.com](http://www.ESCRAPohio.com)

# OSHA REVISES RESPIRATOR STANDARD

Newly Assigned Protection Factors (APFs) for respiratory protection are incorporated in revisions to OSHA's Respiratory Protection Standard. APFs are numbers that indicate the level of workplace respiratory protection that a respirator provides. OSHA amended their respiratory protections standard by adding the long-awaited table of Assigned Protection Factors, and clarifying the concept of Maximum Use Concentration:

Assigned protection factor (APF) means the level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified by this section.

Maximum use concentration (MUC) means the maximum atmospheric concentration of a contaminant from which an employee can be protected when wearing a respirator. The MUC can be determined by multiplying the APF specified for a respirator by the required OSHA permissible exposure limit, short-term exposure limit, or ceiling limit. When no OSHA exposure limit is available for a hazardous substance, an employer must determine an MUC on the basis of other published exposure limits and informed professional judgment.

## Table of Assigned Protection Factors (APFs).

Employers must use the assigned protection factors listed below to select a respirator that meets or exceeds the required level of employee protection. When using a combination respirator (e.g., airline respirators with an air-purifying filter), employers must ensure that the assigned protection factor is appropriate to the mode of operation in which the respirator is being used.

<b>Table 1 - ASSIGNED PROTECTION FACTORS <sup>5</sup></b>				
<b>Type of Respirator <sup>1, 2</sup></b>	<b>Quarter Mask</b>	<b>Half Mask</b>	<b>Full Facepiece</b>	<b>Loose-fitting Helmet/hood</b>
<b>Air-Purifying Respirator</b>	5 <sup>3</sup>	10	50	N/A
<b>Powered Air-Purifying Respirator (PAPR)</b>	N/A	50	1,000 <sup>4</sup>	25 / 25 / 1,000
<b>Supplied-Air Respirator (SAR) or Airline Respirator</b>				
Demand Mode	N/A	10	50	N/A
Continuous Flow Mode	N/A	50	1,000 <sup>4</sup>	25 / 25 / 1,000
Pressure-Demand or Other Positive-Pressure Mode	N/A	50	1,000	N/A

<b>Self-Contained Breathing Apparatus (SCBA)</b>				
Demand Mode	10	50	50	N/A
Pressure-Demand or Other Positive-Pressure Mode	N/A	10,000	10,000	N/A

**Notes to Table Above:**

- [1] Employers may select respirators assigned for use in higher workplace concentrations of a hazardous substance for use at lower concentrations of that substance, or when required respirator use is independent of concentration.
- [2] The assigned protection factors in Table 1 are only effective when the employer implements a continuing, effective respirator program as required by this section (29 CFR 1910.134), including training, fit testing, maintenance, and use requirements.
- [3] This APF category includes filtering facepieces, and half masks with elastomeric facepieces.
- [4] The employer must have evidence provided by the respirator manufacturer that testing of these respirators demonstrates performance at a level of protection of 1,000 or greater to receive an APF of 1,000. This level of performance can best be demonstrated by performing a WPF or SWPF study or equivalent testing. Absent such testing, all other PAPRs and SARs with helmets/hoods are to be treated as loose-fitting facepiece respirators, and receive an APF of 25.
- [5] These APFs do not apply to respirators used solely for escape. For escape respirators used in association with specific substances covered by 29 CFR 1910 subpart Z, employers must refer to the appropriate substance-specific standards in that subpart. Escape respirators for other IDLH atmospheres are specified by 29 CFR 1910.134 (d)(2)(ii).

**Maximum Use Concentration (MUC):**

- \* The employer must select a respirator for employee use that maintains the employee's exposure to the hazardous substance, when measured outside the respirator, at or below the MUC.
- \* Employers must not apply MUCs to conditions that are immediately dangerous to life or health (IDLH); instead, they must use respirators listed for IDLH conditions in paragraph (d)(2) of this standard.
- \* When the calculated MUC exceeds the IDLH level for a hazardous substance, or the performance limits of the cartridge or canister, then employers must set the maximum MUC at that lower limit.

Effective date: Paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of this section became effective November 22, 2006.

# OSHA ISSUES FINAL RULE ON EMPLOYER PAID PPE

On November 15, 2007, OSHA announced a final rule on employer-paid personal protective equipment (PPE). Under the rule, all PPE, with a few exceptions, must be provided at no cost to the employee. OSHA anticipates that this rule will have substantial safety benefits that will result in more than 21,000 fewer occupational injuries per year. Here are a few highlights:

- OSHA discarded the Atool of the trade@ approach that could have left employees paying for virtually any protective item they wear.
- OSHA refused to require employers to pay for all PPE, refused to exempt high turnover industries, and did not exempt protective gloves.
- OSHA did not exempt welding PPE, including masks, aprons and gloves.

The final rule contains a few exceptions for ordinary safety-toed footwear, ordinary prescription safety eyewear, logging boots, ordinary clothing and weather-related gear. The final rule also clarifies OSHA's requirements regarding payment for employee-owned PPE and replacement PPE. OSHA estimates that employers already pay for approximately 95% of these types of PPE.

This action creates a clear and consistent policy across OSHA's standards, reducing confusion about the items for which employers are required to pay. The rule provides an enforcement deadline of May 15, 2008 to allow employers time to change their existing PPE payment policies to accommodate the final rule.

The rule does not create new requirements regarding what PPE employers must provide. It does not require payment for uniforms, items worn to keep clean, or other items that are not PPE. The final rule also clarifies OSHA's intent regarding employee-owned PPE, and replacement PPE:

- If employees choose to use PPE they own, employers:
  - \* Need not reimburse the employees for the PPE;
  - \* Cannot require employees to provide their own PPE;
  - \* Must ensure that the equipment is adequate for hazards.
- The employer must pay for replacement PPE used to comply with OSHA standards.
- When an employee has lost or intentionally damaged PPE, the employer is not required to pay for its replacement.

# EMPLOYER / CONTRACTOR RELATIONSHIPS CLARIFIED BY OSHA

Our clients initiated many discussions with us about this issue over the years. Here is a section of an OSHA directive to their Compliance Officers who perform inspections. You'll find it interesting, and it backs up our advice to always insist that contractors incorporate the applicable regulations by reference in all contracts. Also, be certain to get current certificates of liability [including employers' liability, or Stop Gap coverage] and Workers' Compensation insurance.

Here's what OSHA says:

## Shared Responsibility

Both contractors and their host clients are responsible for complying with the OSHA regulations. OSHA considers personnel providers/contractors who send their own employees to work at other facilities (e.g., utility workers) to be employers whose employees may be exposed to hazards. There is a shared responsibility between the contractor employer and the host client for ensuring that employees are protected from workplace hazards (e.g., training, personal protective equipment (PPE), and medical surveillance).

Although the contract-employer maintains a continuing relationship with its employees, it is the host client who creates and controls the specific workplace hazards. The host client, therefore, has the primary responsibility for such protection; however, the contractor-employer has a continuing responsibility under the Occupational Safety and Health Act of 1970(OSH Act).

## Contracts

It is in the interest of the contractor-employer to ensure that all steps required in the OSHA standards have been taken by the client employer to ensure a safe and healthful workplace for the contracted employees. Written contracts with clients should clearly describe the responsibility of both parties in order to ensure that all requirements of the standards are met (e.g., training, PPE, and medical surveillance)

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### **Quotable Quotes**

*A common mistake people make when trying to design something completely foolproof is to underestimate the ingenuity of complete fools. – Author Douglas Adams*



# EPA UPDATE

## **Methyl Ethyl Ketone Delisted as a Hazardous Air Pollutant**

U.S. EPA amending the list of hazardous air pollutants (HAPs) contained in section 112 of the Clean Air Act (CAA) by removing methyl ethyl ketone (MEK). This action is being taken in response to a petition submitted by the Ketone Panel of the American Chemistry Council on behalf of MEK producers and consumers.

U.S. EPA has made a determination that there is adequate data on the health and environmental effects of MEK to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

It's important to know that although MEK has been delisted as a HAP under the air program, it is still subject to regulations under other programs, such as hazardous waste, wastewater, and emergency reports.

## **New Procedure for Disposing of Solvent Contaminated Rags**

The Ohio EPA, Division of Hazardous Waste Management (DHWM) recently rescinded a written policy on the management of solvent-contaminated rags. Under that policy, rags contaminated with a solvent constituent that is a listed hazardous waste solvent (F001 through F005) had to be regulated as a listed hazardous waste when disposed of, regardless of how the solvent got on the rag.

DHWM reviewed the policy and concluded that rags contaminated with a listed solvent constituent do not fall within the listing description for spent solvents. As a result, the policy is no longer in effect.

This now means solvent-contaminated rags that are contaminated with a listed solvent are no longer considered listed hazardous wastes. The one exception to this is in situations where the rag is used to clean up a spill of a used solvent that is a listed hazardous waste; these rags **DO** become a listed hazardous waste.

## **Spill Prevention Control and Countermeasure (SPCC) Update**

In December 2006, U.S. EPA finalized the amendment to the SPCC rules (40 CFR Part 112) to help streamline the requirements for facilities and equipment regulated under the SPCC program. The streamlining measures included self-certification for small operations, alternatives to secondary containment, exemption for more specific activities and a reevaluation of the applicability of SPCC rules to some vegetable oils and animal fats.

In February 2006 rules, U.S. EPA extended the compliance deadlines for facilities to make necessary changes to existing plans or implement new plans until October 31, 2007. U.S. EPA has information about the new SPCC requirements available on its Website [http://www.epa.gov/emergencies/content/spcc/factsheet\\_overview\\_dec06.htm](http://www.epa.gov/emergencies/content/spcc/factsheet_overview_dec06.htm)

A helpful resource is U.S. EPA's *SPCC Guidance for Regional Inspectors*. Although it is intended to be a guidance document for SPCC regulatory inspectors, it includes information that would also be helpful to businesses, including sample SPCC plans. [http://www.epa.gov/emergencies/docs/oil/spcc/guidance/SPCC\\_Guidance\\_fulltext.pdf](http://www.epa.gov/emergencies/docs/oil/spcc/guidance/SPCC_Guidance_fulltext.pdf). (See appendices D, E and F in this document for a sample SPCC plans)

## **Hazardous Waste Manifest System Changes**

U.S. EPA adopted changes to the hazardous waste manifest system effective September 5, 2006. Because Ohio EPA has its own authorized hazardous waste management program and regulations, the majority of federal changes will not take effect in the state until Ohio EPA officially changes its own regulations. The exception to this is the requirement to use the new manifest form. All hazardous waste shipped on or after September 5, 2006 must be shipped using the new hazardous waste manifest form.

*How can I obtain blank manifest forms?* U.S. EPA's Web site has a *Table of Approved Registrants*, with contact information for approved organizations who can print the hazardous waste manifest. According to the U.S. EPA Web site, you can expect to spend between \$.21 and \$1.00 per form, depending on the quantity and the type of form you order. <http://www.epa.gov/epaoswer/hazwaste/gener/manifest/registry/printers.htm>

*When I ship hazardous waste off-site, do I need to send a copy of the manifest to Ohio EPA?* No. Generators and other facilities responsible for shipping hazardous waste off-site are NOT required to send a copy of their manifest to Ohio EPA.

*Where can I get more information?* For more information about these changes, see the Division of Hazardous Waste Management's Web site at <http://www.epa.state.oh.us/dhwm/faqsaboutmanifests.html>.

The Printers' National Environmental Assistance Center has a hazardous waste manifest training video that introduces the new manifest form, highlights the differences between the new and old form and provides specific instructions to generators, transports and treatment/storage disposal facilities. This video is helpful for all types of businesses. View this video at [www.pneac.org/hazwastemanifest/](http://www.pneac.org/hazwastemanifest/).

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### **Quotable Quotes**

*Youth is when you blame your troubles on your parents; maturity is when you learn that everything is the fault of the younger generation. – Bertolt Brecht*

# OSHA UPDATE

## **Disaster Preparedness Resource Available**

Employers and employees involved in cleanup and recovery efforts following natural disasters will benefit from a new "tool" developed by OSHA and the Gulf Coast Chapter of the American Society of Safety Engineers (ASSE). The 2006 Disaster Preparation Resources CD features a compilation of resources from OSHA, ASSE, the Centers for Disease Control and Prevention, and the Federal Emergency Management Agency on ensuring safe and healthful response and recovery operations. The CD will help employers review, develop and update their emergency preparedness plans. E-mail ASSE's Sarajenie Smith at [ssmith@asse.org](mailto:ssmith@asse.org) for a copy, or call (847) 699-2929.

## **Raising Awareness about Suspicious Packages**

The Department of Homeland Security, U.S. Postal Inspection Service, Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco, Firearms and Explosives, recently launched a new "Suspicious Mail or Packages" poster campaign to raise awareness among mailers, businesses and employees about the common characteristics of a suspicious piece of mail and what actions to take in the event one is identified. The poster is available for viewing and printing at <http://www.usps.com/postalinspectors/>, and copies may be obtained from your local post office.

## **New Fact Sheet on Fall Protection Available**

Employers and employees involved in working in and around aboveground storage tanks will benefit from a new fact sheet, a product of the Safe Tank Alliance with OSHA. Fall Prevention for Aboveground Storage Tanks describes how to ensure employee safety by recognizing fall hazards, developing prevention priorities, and using protective equipment. In addition, the fact sheet highlights safe climbing practices, specialized training, and other safety and health tips.

Find it at: [http://www.api.org/ehs/health/upload/fall\\_prevention\\_factsheet.pdf](http://www.api.org/ehs/health/upload/fall_prevention_factsheet.pdf)

## **OSHA First Aid Guide Available**

OSHA recently published Best Practices Guide: Fundamentals of a Workplace First-Aid Program, which outlines the four primary elements in designing an effective workplace first-aid program. These include management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training. The guide also details best practices for planning and conducting safe and successful first-aid training. Find it at: <http://www.osha.gov/Publications/OSHA3317first-aid.pdf>

## **First Aid 'QuickTips' from OSHA**

OSHA requires employers to make first-aid supplies readily available to its employees. The Medical Services standard does not dictate what should be included in a first-aid kit. OSHA recommends employers follow American National Standard Institute Z308.1-1998, Minimum Requirements for Workplace First-Aid Kits. Example include: Absorbent compress, 32 sq. in. [no side < 4"] (1); adhesive bandages, 1" x 3" (16) Adhesive tape, 5 yd. (1); antiseptic, 0.5g application (10) Burn treatment, 0.5g application (6); medical exam gloves (2 pair) Sterile pads, 3" x 3" (4); triangular bandage, 40" x 40" x 56" (1) Employers should routinely survey the needs of their workplace and supplement first-aid kits accordingly. OSHA has more resource information in its Medical and First-Aid Safety and Health Topics page to help employers prevent minor injuries from becoming major ones. <http://www.osha.gov/SLTC/medicalfirstaid/>

## **New OSHA Fact Sheet Highlights Hexavalent Chromium**

OSHA recently published the following new fact sheet, focusing on the Health Effects of Hexavalent Chromium. It offers preventative measures to reduce the harmful physical effects of hexavalent chromium, explains how employees can be exposed to it, and highlights some of the final standard's requirements [http://www.osha.gov/OshDoc/data\\_General\\_Facts/hexavalent\\_chromium.pdf](http://www.osha.gov/OshDoc/data_General_Facts/hexavalent_chromium.pdf).

## **Virtual Library Now Available for Improving Security at the Workplace**

The "Protect Your Workplace" campaign, recently launched by the Department of Homeland Security and the Federal Bureau of Investigation, highlights avenues to protect all businesses, including federal government agencies, from both physical and cyber threats. The program now features a new virtual library housing information, including OSHA resources, on emergency preparedness, business continuity planning and security guidance. [http://www.us-cert.gov/reading\\_room/distributable.htm](http://www.us-cert.gov/reading_room/distributable.htm),

## **Emergency Preparedness 'Quicktips' from OSHA**

Emergencies can be the result of man-made or natural causes, and include hurricanes, floods, tornadoes, explosions, civil disturbances, fires, toxic gas releases, chemical spills, radiological accidents, workplace violence, and unfortunately, terrorism. All too often, people are forced to evacuate their workplace without warning and when they least expect it. Few people can think clearly and logically in a crisis, and that is why it is so important to prepare for an emergency before it happens.

The best way to protect your business and employees is to expect the unexpected and develop an emergency action plan to guide you when immediate action is necessary. OSHA requires most workplaces have an emergency action plan, which at a minimum, should include:

- The methods for reporting fires and other emergencies;
- An evacuation policy and procedure;
- Emergency escape procedures and route assignments, such as floor plans, workplace maps, and safe or refuge areas;
- Names and contact information for individuals both within and outside your company for additional information;
- An explanation of responsibilities under the emergency plan;
- Procedures for employees who perform or shut down critical plant operations or perform essential services that cannot be shut down before evacuating, and
- Rescue and medical duties for any employees designated to perform them.

*Call us for a free review of your existing plan, or for a consultation regarding this critical topic.*

### **Fire Prevention 'QuickTips' from OSHA**

Workplace fires and explosions kill 200 workers and injure more than 5,000 every year. OSHA has a wealth of informational resources, and a few tips, to help ensure that employees remain safe on the job and not become a fire victim. For example, employers should:

- Train employees about fire hazards (fuels and ignition sources);
- Review and practice procedures to take in a fire emergency;
- Assure exit routes are properly marked, and free from obstacles;
- Inspect portable fire extinguishers, and
- Assure frequent and regular replacement of batteries all smoke detectors.

OSHA's safety and health topics page on Fire Safety is a good resource for information to prevent fire-related workplace injuries and fatalities.

<http://www.osha.gov/SLTC/firesafety/index.html>

*Call us for a free review of your existing plan, or for a consultation regarding this critical topic.*

### **FY 2008 Budget Request Includes \$18 Million Increase for OSHA**

The President's budget request of \$490.3 million for OSHA during FY 2008 will allow the agency to improve workplace safety and health through compliance assistance and enforcement, explained Assistant Secretary of Labor for OSHA, Edwin G. Foulke Jr. The President's request includes increases for federal enforcement, federal compliance assistance and cooperative programs.

# BITS AND PIECES

## **Roofer Dies on First Day of New Job**

It was his first day on the job when Michael A. Miller, 19, of Eastlake, fell to his death through a skylight opening on the roof of an industrial building on East 355<sup>th</sup> Street, police said. He was carrying plywood, didn't see the hole and fell more than 18 feet onto a concrete floor, Lt. Thomas Trem said. Miller had worked for a roofing contractor for just a few hours, falling at 8:40 a.m. OSHA rules require covers, railings or other effective means of protecting employees from such openings.

## **The Medical Poisoning of Beethoven**

Was Ludwig von Beethoven poisoned by his own physician? New evidence from a lock of the composer's hair indicates that Beethoven may have died of lead poisoning, as the result of lead-based medical treatments his doctor had intended as cures. During the final four months of his life Beethoven was a very sick man, suffering from painful abdominal swelling and severe cirrhosis of the liver.

In order to relieve him by draining fluid from the belly, Dr. Andreas Wawruch repeatedly punctured the composer's abdomen. Afterward, he applied a lead-based poultice to seal the wound.

A hair sample clipped by an admirer after Beethoven's death reveals that each of these treatments was followed by a spike of lead levels in the composer's blood, hastening his death, which finally occurred on March 26, 1827. His death was due to the treatments, A Viennese forensics expert Christian Reiter tells the Associated Press. But he says Dr. Wawruch shouldn't be blamed, since no one knew at the time that lead was so poisonous.

## **Kittens for Allergy Sufferers**

The biotech firm Allerca has launched a line of hypoallergenic kittens. The cats, which cost around \$4,000 each, have been specially bred not to carry a particular "glycoprotein," which is apparently what triggers people's allergies.

## **Lead, Smoke, and Attention Deficit**

Up to a third of the cases of attention deficit disorders in the United States are caused by toxic lead or cigarette smoke, a ground breaking new study suggests. About 2 million American children have some variety of attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), but the causes remain a mystery.

To test the effects of environmental lead and prenatal smoke exposure, researchers at

Cincinnati Children's Hospital gathered a random sample of children, 8 percent of whom had been diagnosed with attention deficit conditions. They found that kids were four times more likely to develop ADD when their blood samples showed a lead concentration of 2 micrograms per deciliter – just a fifth of the lead concentration that federal standards deem safe for our kids.

The children who had been exposed to smoke while in the womb more than doubled their risk of the disorders as well. This report, Dr. Bruce Lanphear tells the Los Angeles Times, "provides further evidence that we need to find ways to dramatically reduce prenatal tobacco smoke exposures and childhood lead exposures.

### **OSHA Probes Death of Duct Cleaner in Cleveland**

The accidental death of a man who was working inside a duct at the Cleveland VA hospital in March 2007, has brought fall safety to the attention of duct cleaners everywhere. OSHA is looking into the incident that claimed the life of Jason Whitt, 28, who was cleaning air ducts at the Louis Stokes Veterans Administration Medical center when he fell four stories inside a vertical duct. A spokesperson for the Cleveland police, which investigated with Veterans Affairs police, told the Toledo Blade that Whitt and coworkers were about to take a break when he slipped downward.

OSHA construction rules on fall protection calls for the use of personal fall-arrest system for heights of more than six feet, when guardrails, nets or other safeguards are not in place. Fall-arrest systems, typically consist of a full body harness, a lanyard with shock absorber and locking snap hooks, a lifeline, and an anchorage point.

### **Lead Tests Raise Red Flag for Lipsticks**

Parents worried about the dangers of lead in their children's toys, bibs, and homes are about to be confronted with a new potential hazard: their lipstick. The Campaign for Safe Cosmetics is releasing today product test results that found that more than half of 33 brand name lipsticks tested contained lead. The lead levels in one-third of the lipsticks samples purchased in four cities exceeded 0.1 parts per million, the federal limit for candy.

### **Executives Charged With Asbestos Poisoning**

W.R. Grace & Co. and six former executives criminally charged with poisoning Libby, Mont., residents with asbestos lost a bid to challenge a ruling that threw out lower court decisions favoring the defense. A federal appeals court Wednesday declined to reconsider its September opinion overruling trial court limits on government charges and evidence. If convicted, the company may face a fine of as much as \$280 million, according to a Securities and Exchange Commission filing last month. The individual defendants may be sentenced to as much as 15 years in prison.

## Safe At Home!

Baseball fans who watch games from the couch may seem like slugs, but they're less likely to hurt themselves there than anywhere else – provided that they're male. According to a study in the journal *Academic Emergency Medicine*, the average number of emergency room visits by men in New York City was 22 percent lower during the 2000 World Series than at the same time of the day in the weeks that followed.

Unfortunately, the study also showed that women's trips to the ER increased while the series was on, with a spike in psychiatric visits. Researcher David Cheng of the University of Arkansas takes his finding to heart. During a big game, he says, he "might mute the TV to talk to my wife. If it's really important, I might even turn it off."

## Top 10 OSHA-cited Standards

OCTOBER 2004 - SEPTEMBER 2005				
	Cited	Inspected	Penalties	Description
<b>Standards</b>				
19260451	9,409	3,649	\$10,134,110	General requirements
19101200	6,820	3,484	\$1,436,491	Hazard Communication
19260501	6,699	5,975	\$8,106,213	Duty to have fall protection
19100134	4,374	12,831	\$1,185,180	Respiratory Protection
19100147	3,780	2,036	\$3,464,151	Controls of Hazardous Energy (Lockout/Tagout)
19100178	3,056	2,065	\$2,059,037	Powered Industrial Trucks
19100305	2,877	1,790	\$1,350,703	Wiring methods, components, equipment for general use
19100212	2,767	2,231	\$3,620,635	General requirements for all machines
19261053	2,458	1,852	\$1,251,218	Ladders
19100303	2,152	1,622	\$1,144,048	General requirements
<b>Totals</b>	107,908	27,567	\$86,414,990	

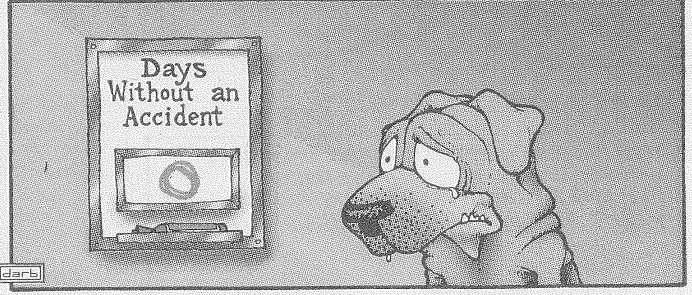
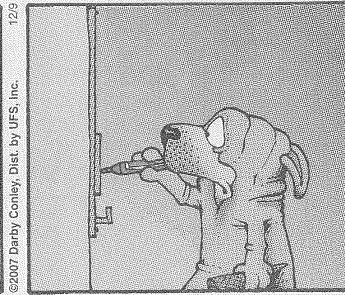
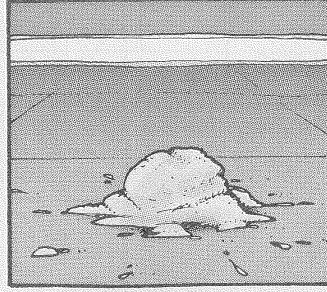
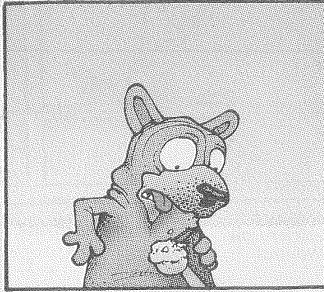
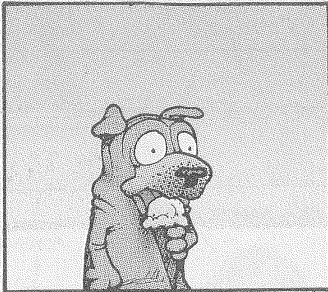


## What a Way to Go

- 900... Number of people killed each year by people who run red lights
- 250... Number of people killed each by their children
- 150... Number of people killed each year by food allergies
- 100... Number of people killed each year by space heaters
- 90..... Number of people killed each year in traffic accidents by road debris
- 40..... Number of people killed each year by super hot tap water
- 37..... Number of people killed by falling vending machines from 1978 to 1995
- 32..... Number of children killed by falling televisions from 1991 to 1998
- 18..... Number of people killed by mountain lions since 1890
- 16..... Number of people killed by collapsing sand holes from 1990 to 2006
- 3..... Number of people who died from the "ignition of melting of nightwear" in 2003

### GET FUZZY

BY DARBY CONLEY



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darb



4050 West 150th Street  
Cleveland, OH 44135  
Telephone: 216-252-2120  
Facsimile: 216-252-2044

11/2/06

Mr. Peter M. Dell  
Creative Solutions  
P.O.Box 1390  
Mentor, OH 44061-1390

Dear Pete:

I wanted to let you know how happy I am with the services you have provided to Scranton Associates over the last several years. This past October we had a surprise OSHA inspection of our facility. The inspection was extremely thorough. Our employee hazard communication program, emergency response plan, sickness and injury reporting, forklift certification, respiratory protection program (including the air quality testing that you had arranged for us) were all reviewed by the OSHA inspector. Everything was perfect. There was not even a single issue that needed improvement.

I have always taken very seriously my obligation to provide a safe workplace for my employees as well as trying to stay on top of the regulations. I could not have accomplished these objectives without your invaluable assistance. Certainly we plan on continuing to stay on top of all the required regulatory requirements, and look forward to working with Creative Solutions on a continuing basis.

Thanks again for all the assistance you have provided to Scranton Associates. A perfect OSHA inspection certainly makes us look great, in addition to making me feel good about our compliance with all the applicable regulations. Please feel free to use us as a reference for anyone interested in regulatory compliance. You do a great job, and have been an invaluable resource for us.

Sincerely,

SCRANTON ASSOCIATES, INC.

A handwritten signature in cursive script that reads "Lee A. Cavano".

Lee A. Cavano

Vice President

