



# Environmental Investigations **ALERT**

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## OSHA TARGETS HIGH-HAZARD WORKPLACES

**O**SHA Administrator Charles Jeffress, speaking at the North Carolina Statewide Safety Conference on May 9 in Greensboro, NC, discussed his agency's plan to crack down on industrial sites with high injury or illness rates. The new Site Specific Targeting (SST) Plan includes unannounced "inspections and stiff penalties" in an attempt to "get the attention" of sites whose injuries well exceed the national average.

The SST Plan, Directive Number 99-3, will initially focus on 2200 worksites with a lost workday injury and illness rate above 16 per 100 full-time employees. All workplaces on the targeted list are to be inspected by December 31, 1999. Jeffress concedes that "OSHA recognizes that an elevated lost work day injury and illness rate does not necessarily indicate a lack of interest in safety and health," but adds, "... whatever the cause, a high rate (of injury) is costly to your company in both personal and financial terms. Employers who lack expertise in workplace safety and health are urged to seek outside consultation to initiate a successful program."

The SST plan was launched in April when OSHA's efforts to implement its Cooperative Compliance Program (CCP) were blocked by a federal court decision. While voluntary compliance is preferred, Jeffress noted that compliance is unlikely, as 70% of manufacturers have no established health and safety program. Without a written plan to protect employees from workplace hazards, enforcement is the only option available to ensure compliance. Jeffress warns, "Workplaces with high injury and illness rates are on notice" (that OSHA will investigate their operation in the near future).

### ALSO IN THIS ISSUE:

- ◆ **New Industrial Truck Training Requirements**
- ◆ **EPA Simplifies Facility Response Planning**
- ◆ **Proposed Safety & Health Program Rule**
- ◆ **Workplace Violence**
- ◆ **Pending Internal Audit and Whistleblower Protection Legislation**

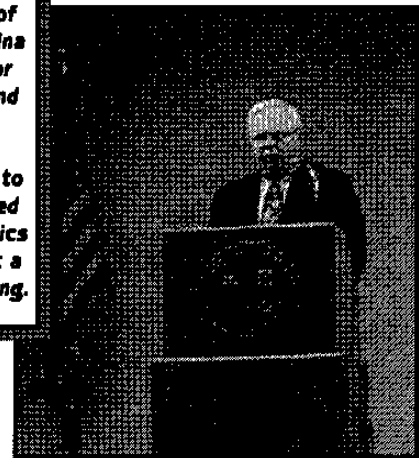
## ERGONOMICS IN NORTH CAROLINA

**N**early 650,000 workers every year suffer serious injuries and illnesses caused by exposure to overexertion, repetition or other physical stress. It is estimated that work-related musculoskeletal disorders (WMSDs) result in more than one-third of all lost workday injuries and illnesses. When all factors related to ergonomics are considered, the cost for US businesses failing to take appropriate action is estimated at \$65 billion.

OSHA's federally proposed ergonomic rule has gained momentum as Congress has vowed not to "block or delay" proposed regulations. When enacted, the new ergonomic standard will be tough and far-reaching in its effects on companies, but some speculate that the proposal may be slowed by a two-year National Academy of Sciences study.

North Carolina, however, is pushing forward with its own proposed regulation. Published May 3, the new standard is now the subject of informal public hearings throughout the state where employees and employers have been given the opportunity to debate the merits of enforced ergonomics. The hearings have drawn many North Carolina employees wishing to add their testimonies regarding their debilitating

**Mr. Phil Kirk,  
President and  
Secretary of  
North Carolina  
Citizens For  
Business and  
Industry,  
speaks in  
opposition to  
the proposed  
NC Ergonomics  
Standard at a  
recent hearing.**



injuries, which they attribute to repetitive stress. Opponents of the proposal are mainly North Carolina industry representatives who voiced strong objections during the recent hearings. The majority of these objections address the vagueness of the proposed regulation's language, including undefined or immeasurable ergonomic stress factors, which leave many to believe that enforcement of the ergonomic standard will lie solely in the interpretation of the individual inspector.

If passed, the new standard will require companies to perform a number of additional functions. First, management must encourage employee participation by creating a reporting procedure. Second, job hazard analysis and control require that employers undertake studies to identify possible WMSD hazards in manufacturing operations and provide information relating to high-risk tasks. Third, manufacturers must analyze jobs and eliminate or control WMSD hazards. Finally, OSHA will require companies to establish employee training programs, medical management initiatives and mechanisms for program evaluation. Site-specific ergonomic training must continue to be offered every three years. If companies can demonstrate that present policies satisfy all of the above requirements, they will be allowed to use existing programs which they have previously developed.

In an effort to minimize confusion, EI contacted Margaret Howell, North Carolina Department of Labor Assistant Commissioner of Communications, regarding ergonomics questions most commonly raised. When asked, "How does one determine whether the injury is indeed work related?" Ms. Howell suggests that to ascertain the cause of the injury, employees must be encouraged to report ergonomic injuries (swelling, numbness, tingling) at their onset, so that employers can initiate the following investigative and corrective measures:

1. Compare employee ergonomic injury symptoms to specific job tasks to determine whether or not there is a relationship.
2. Modify elements of the employee's workstation which could cause or contribute to reported repetitive motion injuries.
3. Seek medical advice and treatment.

If initiation of corrective measures do not result in cessation of pain, the employee and a medical professional should review other non-work related activities for possible causes. "Whatever the cause, the situation should be addressed in some fashion so that there is not a threat (to the employee's health) anymore." Ms. Howell adds that advising employers of a problem early allows everyone involved to examine the situation before it worsens into a more debilitating and medically expensive situation. Ms. Howell indicated that the main goal of the proposed standard "has to do with

#### **NEWS UPDATE:**

At press time, the NC House of Representatives had voted favorably to pass State Budget HB 168. Section 14.2 of the budget **eliminates all funds to "develop, implement or enforce an ergonomics program."** The budget, at this time, has not been approved by the state Senate. If the applicable section (14.2) remains in the budget, the ergonomics program cannot receive state funding until the year 2001. Daily legislative updates regarding the state budget can be viewed at the NC General Assembly website: <ftp://legislature.state.nc.us/>. Click on "House Budget Bill" located under the heading "News/Info."

(improving) communication between employees and employees.

Opponents of the ergonomic standard question the criteria for deciding when a job task becomes a violation. Ms. Howell responds by saying that the only determination is when the effort necessary to perform a task results in pain. OSHA fully realizes that the onset of new physical labor or job assignment might require 2-4 weeks of 'work hardening' but should not result in injury. That is why training is **essential in the first 90 days of employment.**"

Ms. Howell concedes that "OSHA fully expects an increase in calls from employees to employers," regarding ergonomic related injuries. She stated that the proposed regulation will be a learning process as much as anything.

Written public comments regarding the ergonomics standard will be reviewed by the NC Department of Labor until July 2 of this year. A substantial amount of criticism may warrant revisions to the regulation. A draft of the ergonomics standard can be viewed on the NCDOL website at [www.dol.state.nc.us/news/ergostd](http://www.dol.state.nc.us/news/ergostd). Mail comments to: Angela S. Waldorf, 4 West Edenton St, Raleigh, NC 27601.

*For more information on Ergonomics please review "ANSI Proposes New Voluntary Ergonomic Standard - OSHA to Follow by June 1999," EI Alert Vol. 8, No. 8. on our website at [www.ei1.com](http://www.ei1.com).*

#### ***ERGONOMICS GOOD ECONOMICS?***

***Advocates promote the following expectations:***

- ♦ ***Reduced lost work time***
- ♦ ***Reduced compensation costs***
- ♦ ***Reduced liability***
- ♦ ***Increase in employee productivity***

## PROPOSED SAFETY AND HEALTH PROGRAM RULE

OSHA has published a draft of its Safety and Health Program Rule (29 CFR 1900.1) expected to be published in the Federal Register this summer. The proposed rule appears on OSHA's website at [www.osha.gov/](http://www.osha.gov/) and is summarized below.

### Management Leadership and Employee Participation

- ◇ Management must regularly communicate with employees and provide current information regarding workplace safety and health.
- ◇ Identify and then delegate safety and health program responsibilities throughout the workplace.
- ◇ Establish a process for hazard reporting and assign at least one supervisor or employee to **investigate and record a near-miss accident, work-related injury, illness or death**. Preventative measures implemented as a result of the incident should also be documented.
- ◇ Provide opportunities for employees to become involved in proper identification and assessment of workplace hazards. Employee representation must be available when establishing the criteria for training and program evaluation.

### Training Requirements

Employees must be advised as to the following:

- ◇ Task-related hazards and how to recognize other potential safety and health risks.
- ◇ Mechanisms designed to control hazards on the job.
- ◇ Protective measures each employee must follow to prevent or minimize exposure to task-related hazards.

### Program Evaluation

The employer must evaluate the effectiveness of the safety and health program:

- ◇ As often as necessary to ensure effectiveness.
- ◇ At least once within the 12 months following the final compliance date.
- ◇ At least once every two years afterward to correct deficiencies identified by the program evaluation.

The purpose of the proposed Safety and Health Program Rule is to reduce the number of job-related fatalities, illnesses and injuries. If implemented in late 2000, the standard will require employers to establish a workplace safety and health program to ensure compliance with OSHA standards and the General Duty Clause of the Act (Section 5(a)(1)).

## UPDATE: NEW INDUSTRIAL TRUCK TRAINING REQUIREMENTS

OSHA has redefined training requirements of forklift and industrial truck operators in an effort to reduce the high rate of injuries resulting from inadequate instruction. The revision, effective March 1, 1999, lists **specific topics** that must be included in **formal training** and **offered by a qualified instructor**.

The new standard specifies 14 different truck-related topics and nine different workplace-related issues for training inclusion. The only sections that may be disregarded are those not applicable to the specific work site. Refresher training is required under the following conditions:

- The driver operates the vehicle in an unsafe manner.
- The operator has been involved in an accident or near-miss incident.
- The operator's evaluation indicates that more instruction is needed.
- The operator is assigned a different type of truck.
- The workplace changes in a manner that could affect the safe operation of the truck.

The employee must also participate in practical operating exercises and demonstrate an ability to safely operate a truck. A document certifying completion of required training must record the date and identity of the evaluator and be retained for future reference. Additionally, operator performance must be evaluated every three years following initial instruction.

**New training requirements must be met** prior to operation of powered industrial trucks if the employee is hired **after** December 1, 1999. Employees hired **before** December 1, 1999, have until that date to complete initial training. This standard applies to all industries that utilize trucks except agricultural operations.

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## EPA SIMPLIFIES FACILITY RESPONSE PLANNING

If your efforts to comply with Facility Response Planning are currently burdened by requirements to provide multiple and redundant environmental and safety plans, a new tool developed by the U.S. Environmental Protection Agency (EPA) may help alleviate your problem. Termed the **Integrated Contingency Plan (ICP)**, or **"One Plan"** as it is also called, EPA provides a new mechanism to legally consolidate multiple plans into one unified whole. While this EPA initiative is strictly a voluntary program, EPA believes that implementation of ICP will lower costs, eliminate unnecessary paperwork, minimize duplication, and greatly simplify the process of developing and maintaining your facility's environmental and safety plans.

As an example of the complexity and diversity of Facility Response Planning compliance obligations faced by many facilities, it is not uncommon to be subject to most of the following federal regulations:

- EPA's Oil Pollution Prevention Regulation (SPCC and Facility Response Plan Requirements) - 40 CFR part 112.7 (d) and 112.20 - .21;
- EPA's Risk Management Programs Regulation - 40 CFR part 68;
- OSHA's Emergency Action Plan Regulation - 29 CFR 1910.38(a);
- OSHA's Process Safety Standard - 29 CFR 1910.119;
- OSHA's HAZWOPER Regulation - 29 CFR 1910.120;
- EPA's Resource Conservation and Recovery Act Contingency Planning Requirements - 40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52.

In addition to the above regulations, many facilities are also subject to state emergency response planning requirements and several additional federal requirements. The net result of these unconsolidated requirements on you and your facility is the accumulation of multiple plans that burden and confuse your personnel with varied and separate needs for continual revisions and updates, thereby elevating costs in time and money.

The awareness of a need for ICP arose in response to a Presidential Review conducted by EPA as required by Section 112(r)(10) of the Clean Air Act Amendments (also known as the Risk Management Plan Rule). The members of this review board found that the current systems for contingency planning, while technically satisfying their statutory goals, were too complex, confusing, and costly. The findings of the Presidential Review identified a **clear need for simplicity in the contingency planning process**. This realization led directly to the **development of ICP**.

The format of ICP is relatively straight forward and divided into the following three main sections:

*An Introductory Section, designed to provide users with basic information on the plan and the facility it covers.*

*A Core Plan, based on the National Interagency Incident Management System (NIIMS) and Incident Command System (ICS), to provide information that is time critical.*

*An Annex, designed to contain the more detailed supporting information on specific response management functions.*

The short-term costs to assemble and consolidate the above information into an ICP is not extensive considering future benefits. EPA believes that a transition to the ICP format will enable industry to improve economic efficiency, thereby providing savings through lowered facility costs for the preparation, maintenance, submission and updating of a single plan. It is also important to note that **no federal agency will require a response planning format different from that of ICP** and that in the future, **all federal emergency response planning regulations will eventually incorporate the use of ICP guidance**.

*Should you have questions or concerns regarding the development and implementation of ICP, call EI's Environmental Engineering Department at 1-800-717-3472 or visit our website at [www.eil.com](http://www.eil.com) for more information.*

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## WORKPLACE VIOLENCE

With violence seemingly on the rise in our communities, it is no surprise that there is a growing concern for industry to address workplace violence. In fact, violence is the **fastest growing cause of occupational fatalities and the leading cause of death for women at work**. Management should establish that safety is a priority and implement the following:

- Adoption of conduct expectations and issuance of a formal statement of intolerance to inappropriate behavior.
- Staff should be properly trained to detect early warning signs which could lead to violence.
- An avenue for reporting incidences should be established.
- Management should determine the proper procedure to follow upon diagnosis of a possibly dangerous situation.
- Staff should be trained as to appropriate emergency response should an occasion occur.

Although there is not currently a specific standard addressing workplace violence, citations have been issued under violation of the General Duty Clause.

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## OSHA ELIMINATES THE "COMMON EXCUSE" IN RECORDKEEPING

**O**SHA inspectors have determined that they will no longer accept the common excuse of "I didn't know" as an alibi for incomplete recordkeeping. OSHA is planning to launch a major new initiative, called the Occupational Injury and Illness Recording and Reporting Requirements, that will affect both the general and construction industries. Citing interpretations, OSHA hopes its new initiative will simplify the overall process, improve the quality of industry records, meet the needs of many users, and improve the accessibility of company records to workers.

For the individual company in general industry, OSHA's initiative involves the following specific changes: OSHA's 200 Log Form will be replaced with the OSHA CFR 1904, and elimination of earlier guidelines will remove the question and answer format. These changes are expected to simplify the overall system.

Under 29 CFR1926-Construction Safety Regulations, OSHA's new initiative will require construction facilities to comply with the above changes **plus** the following specific requirements. First, OSHA's 101 Log form will be replaced by the OSHA 301 Log. Second, site-controlling construction companies will be required to keep two sets of records; one for their own employees and one for their subcontractors. Third, a number of specific changes are being incorporated into subcontractor records.

There are several aspects of the new guideline that should decrease your company's administrative and recordkeeping burden over the long run. First, OSHA Administrator Charles Jeffress plans to launch a series of outreach and training programs on recordkeeping to ease the transition. Second, OSHA will not be forcing companies to record near-misses as had earlier been proposed. Third, the distinction between "injury" and "illness" will be eliminated, simplifying the process of recording injury. OSHA officials have recently indicated that the deadline for company compliance with the new requirements will probably be pushed back until January 1, 2000. Still, **OSHA is training its inspectors on the stricter procedures and increasing their ability to issue citations to your company.** It is therefore in your company's best interest to begin preparations as soon as possible to avoid being caught unprepared by the impending deadline.

*If you would like to know more about OSHA's new recordkeeping requirements, please call us at 1-800-717-3472.*

## INTERNAL AUDIT AND WHISTLEBLOWER PROTECTION LEGISLATION

Legislation addressing whistleblower protection has been introduced at both federal and state levels. US Representative Cass Ballenger of North Carolina has sponsored five bills given the collective title of the "Safety and Health Promotion Act." Ballenger states that the central purpose of the Act is "to encourage voluntary efforts by employers and employees to address safety and health by making sure that employers and employees who in good faith seek to ensure that safety and health problems and concerns are addressed are **not penalized for doing so.**"

One bill (H.R. 1439) that specifically seeks to encourage internal audits was described by Rep. Ballenger as being "most useful to improving health and safety when they are based on complete and honest and thorough assessment by the company, and can be used by those in the company who are responsible for health and safety." He adds that "OSHA's current policy of forced disclosure works against all of these." Ballenger stated in an appeal to congress that there is ample evidence that the current disclosure policy is counterproductive to complete and candid assessment and accountability. He continues by saying "OSHA itself has acknowledged that its enforcement policy needs to be changed with regard to safety and health audits."

The second part of H.R. 1439 enhances protection for employees who voice concerns regarding safety and health issues, either to his or her employer or directly to OSHA. Rep. Ballenger states, "The law already provides protections for 'whistleblowers.' What I am proposing to change is the law's current reliance on the Department of Labor to vindicate the employee's rights when he or she feels that they have been violated." Ballenger proposes taking jurisdiction away from the Department of Labor and allowing the individual claimant to take his or her case to the OSHA Review Commission for a hearing and determination. In addition, the bill would extend the time period for employees issuing a complaint from 30 to 60 days.

In state legislation, Senate Bill 370 has now been referred to the House Ways and Means Committee. Titled, "OSHA Witness Statements, Clarifying When Witness Statements Obtained," this bill seeks to prevent disclosure of witness identity before or after final determination of claim unless a statement is needed to enforce an OSHA law.



## HCFC ALLOWANCE OPTIONS CONSIDERED

A system for the eventual phase-out of HCFCs (hydrochlorofluorocarbons), the short-term replacement for CFCs (chlorofluorocarbons), is now under consideration by the EPA. Due to the fact that HCFCs have shorter atmospheric lifetimes than CFCs, it is believed that these alternative chemicals contribute less to stratospheric ozone depletion. While the approved use of HCFCs as a replacement for CFCs was critical in the phase-out of CFCs, HCFCs still contain chlorine which is detrimental to the environment. The EPA must now consider options to eliminate production and use of HCFCs by 2030.

Manufacturers and distributors of HCFCs will want to take advantage of the opportunity to comment on suggested allowance options. The first option separates allowances into production and consumption allowances, depending upon whether the company produces, imports or exports the chemical. Production industries would expend both production and consumption allowances. Importers would utilize consumption allowances only and exporters would gain consumption allowances. A second option presented by EPA would use only one kind of allowance giving equal allowances to industries regardless of whether they produce or distribute the chemical.

## EI TRAINING CALENDAR

### JUNE

- June 2 Hearing Conservation- Refresher Course
- June 2-4 Hearing Conserv. & Audiometric Testing
- June 15 ADAction Plan
- June 15-16 Hazwoper- First Responder Awareness
- June 16 Hazwoper- 8-Hour Refresher Course
- June 17 Fundamentals of Occupational Health/Safety
- June 21-25 Certified Safety Professional Preparation

### JULY

- July 2 Electrical Safety (Qualified Person) and Lockout/Tagout
- July 8-9 Spirometry and Pulmonary Function Testing
- July 12-16 Complying with OSHA
- July 15 AdAction Plan
- July 16 Ergonomics 101
- July 16 Office Ergonomics
- July 19-20 Cumulative Trauma Disorders
- July 23 Process Safety Management of Highly Hazardous Chemicals
- July 27 'Competent Person' Excavation & Trenching Safety
- July 27 Laboratory Safety & Compliance Standard
- July 28 Hazard Communication
- July 28-29 Advanced Occupational Safety & Health

If you would like more information regarding training courses, please call EI at 1-800-727-3472 or e-mail Valarie Hix at [vhix@ei1.com](mailto:vhix@ei1.com).