

Occupational Health Management™

A monthly advisory for occupational health programs

INSIDE

- Program requires testing policy before service. 14
- Workshops to ensure confidentiality in collecting specimens 15
- **Warning:** Y2K could affect safety and health 16
- Responding to Y2K computer woes. 17
- Form simplifies hazardous exposure paperwork. 18
- Adapt this form for your program 19-20
- New forklift standard . . . 21
- Department of Labor defends Cooperative Compliance in court. 22
- Feds support safety whistle-blowers 23
- Employer fined for trenching violation 24

**FEBRUARY
1999**

**VOL. 9, NO. 2
(pages 13-24)**

American Health Consultants[®] is
A Medical Economics Company

Drug-testing policy workshops boost business, help clients avoid problems

Many employers hesitate because they worry about legal problems

Testing employees for drug and alcohol use is popular with many employers, and many others would start testing if they could get past the many questions regarding legal issues and other concerns. One occupational health provider is reporting success with free workshops in which employers learn how to write a drug-testing policy and institute a proper program in their workplaces.

The workshops are not difficult to produce, and the provider benefits because the employers usually seek testing services through the occupational health program after the workshops.

Employers welcome the workshops because they are aware of the many legal concerns with workplace testing and don't feel comfortable jumping into a testing program on their own, says **Mary Ann Gaster, RN, BSN, COHN-S**, director of occupational health services at FirstHealth of the Carolinas in Pinehurst, NC. Her occupational health program has been offering occasional workshops since August 1998.

"We believe strongly that companies shouldn't just do drug testing without talking through the options," she says. "The workshops let them think through the process and decide what they want to do as a company. They get to ask a lot of questions and hear about issues they may not have even considered before." (See story, p. 14, for more on **requiring employers to have a drug policy.**)

Gaster's program stipulates that companies have a drug-testing policy in place before it will provide drug-testing services, so the workshop is a way to help employers formulate that policy without necessarily doing it for them. The workshops are now scheduled quarterly, and the program

EXECUTIVE SUMMARY

- Encourage employers to adopt a proper policy before testing employees.
- The workshops can be offered at little cost.
- Occupational health programs may see increased testing business from employers.

invites all the employers who have expressed interest up to that point. So far, the workshops have included about five people each. All of the invited employers have been existing clients of the occupational health program, but Gaster says potential clients also could be invited.

The workshops are not intended to sell employers on the idea of drug testing if they are not already interested, says **Otto Rogers**, MD, FACEP, medical director of occupational health services and the clinic's medical review officer for drug testing. The attendees are already on the verge of testing, but they need a formal policy in place before going ahead or they need to get past a few concerns.

"We've found in the marketplace that a lot of employers believe in the concept of drug testing and decide to talk it up with the board of directors or the owner, but then it stops there," Rogers says. "Everyone's interested but afraid of the policy side of it. Even if you give them a sample policy, they get stalled because of fears about implementing the program."

The workshops are held at a nearby office of the affiliated employee assistance program (EAP). FirstHealth works closely with the EAP to put on the workshop and also in managing the

drug-testing programs for clients.

"We give them a sample policy and explain why it is the way it is, along with all the options for random testing and other ways to go with their testing program," Gaster says. "We also explain how we collect samples, and I go step by step in explaining the procedure and how we implement it all in the workplace." (See p. 15 for another planned workshop series addressing occupational health staff who collect the samples for drug testing.)

The EAP counselor also makes a pitch for providing EAP services to the employees, and the employers are provided a sample second-chance agreement for employees testing positive.

The meeting usually is scheduled from 11 a.m. to about 2 p.m. and includes time for questions from the attendees. Gaster notes that the attendees learn a lot from talking with each other about their concerns and hearing how other employers are implementing testing programs.

FirstHealth provides a lunch at no cost to the attendees. Gaster estimates that the workshop takes about 90 minutes of staff time to prepare.

Gaster has found that most workshop attendees follow through by instituting a testing program in the workplace.

Warn about lawsuits when discussing drug policy

If you call FirstHealth of the Carolinas in Pinehurst, NC, to request drug-testing services, someone is going to ask you what sort of drug-testing policy you have in place. If you don't have a good answer, you probably won't get testing services.

The occupational health clinic has a firm policy requiring a good drug-testing policy before providing testing services, says **Otto Rogers**, MD, FACEP, medical director of occupational health services and the clinic's medical review officer for drug testing. The clinic doesn't just turn away employers without a drug policy; it offers to help them formulate one properly. But Rogers says he does have to say no to some requests for immediate testing.

"We get calls all the time from employers who have a suspected drug user, and they want us to come over and test," he says. "The first

thing I do is ask what policy they have in place for testing, and if they don't have one, I absolutely refuse to do it at that point. I invite them to get together with us so we can talk about it, and they usually understand after I explain some of the reasons why it's not a good idea to just jump into the testing."

Rogers explains that the employer would be exposing itself to great legal liability by testing employees without a formal policy in place and that FirstHealth would be volunteering to share some of that liability if it conducted the testing. Once he starts explaining how easily the employee could sue and how much money is at stake, the employer usually is not so eager to do the testing without a proper policy.

"I say, 'You might as well call your attorney right now because you're going to have problems if you don't have a policy in place,'" Rogers says. "I suggest you think about the net worth of your company, and then call your attorney to tell him that's what the employee is going to be suing for.' That tends to get the point across." ■

"They had interest already, and they know that everyone else is testing," she says. "If they don't test, they know they're getting the leftover work force, and it's a tight labor market now."

Employers are reminded to check with their attorneys before implementing a testing program, and the occupational health program and EAP offer to serve as resources while the employers implement the testing. There is no hard sell regarding the occupational health program's testing services, but Gaster explains what services are offered and encourages the attendees to ask for any needed assistance.

"We find that most of our attendees do the drug testing through us," she says. "Our message is that if you're going to drug testing, you should do it the right way. We can help you do that." ■

Workshops for collection staff ensure good practice

Collections are the weakest link in any drug testing program, and the staff that do the collections usually receive little formal training, says **Otto Rogers**, MD, FACEP, medical director of occupational health services at FirstHealth of the Carolinas in Pinehurst, NC. For that reason, Rogers plans to implement a series of workshops to formally train his occupational health staff in how to collect samples for drug testing and process the paperwork.

The testing itself is closely regulated, and as long as you use a certified laboratory and a medical review officer (MRO), there is little chance of major errors occurring in those areas, Rogers says. But there is ample opportunity for errors in the collection and paperwork process, largely because staff handling those functions often just learn informally on the job. Even though some of the staff are extremely good at handling the drug testing paperwork, there sometimes is not the consistency that Rogers would like to see in the 13 FirstHealth clinics covering four counties in North Carolina.

"It doesn't happen often, but it's a disaster when the paperwork is screwed up," he says. "You have to throw it all out and call the employer to say there's been a goof. It makes for bad relations with the employer."

Rogers notes that processing drug-testing paperwork is no easy task. Even though he has

been an MRO for 15 years, he avoids processing the paperwork himself because he is not sufficiently familiar with that part of the drug-testing program.

"I find someone who does it on a regular basis," he says. "I tell them, 'I know my part as the MRO, but you fill out the paperwork, or I'll screw it up and the whole thing will be for naught.'"

Confidentiality of paperwork is crucial

In particular, Rogers is concerned about the confidentiality of drug-testing paperwork. He has seen some providers treat drug-testing results as no more sensitive than a common blood test report. For example, they leave the paperwork lying around in a common area where any staff and possibly patients could see them. Rogers recalls an incident at an urgent care center he once managed where a patient's chart was left lying on a counter. Another patient saw a notation that the patient had had an elective abortion in the past.

"The patient who had the abortion came from a very fundamentalist family, and this was a small town where the news spread quickly. There was a big fallout from that," he says. "I could see the same thing happening with drug-test results, with someone seeing that a co-worker or a cousin tested positive for marijuana."

Without formal training, the occupational health staff also might inadvertently report positive results to any contact at the employer, rather than the individual designated to receive those reports. To counter those problems, Rogers plans to institute a series of workshops at each of the FirstHealth clinics in which he and others will provide training on the collection process and explain specific policies on how to handle the resulting paperwork. Confidentiality will be a major focus, he says. ■

SOURCES

For more information on drug policy workshops, contact:

Mary Ann Gaster, Director of Occupational Health Services, or **Otto Rogers**, Medical Director, FirstHealth of the Carolinas, 5 Avimore Drive, Pinehurst, NC 28374. Telephone: (910) 215-6052. Fax: (910) 215-6055. E-mail: Bmagaster@wave-net.net.

Y2K problem can hit you, clients hard if unprepared

The year 2000 (Y2K) computer problem, also called the millennium bug, is known by most business and health care leaders as the glitch that could lead to devastating consequences on Jan. 1, 2000. While your hospital or corporate office may be addressing the problem on a large scale, occupational providers are being warned that they have special risks to deal with from the Y2K problem.

Because occupational health providers deal so much with systems, equipment, and procedures designed to ensure the safety of workers, the federal Occupational Safety and Health Administration (OSHA) is warning that they should pay special attention to the ways in which the Y2K problem will affect safety systems. In a special warning issued recently, OSHA states "Serious safety and health problems are among the many concerns facing employers."

Other safety experts caution that it is not enough to depend on your hospital or corporate Y2K solutions. Employers will look to you for advice on how to protect their workers.

Computers may not recognize year 2000

The Y2K problem has been the bane of health care providers and business leaders since they first realized, years ago, the impact that it could have on medical equipment. Experts are particularly worried about the impact on critical equipment such as respirators and defibrillators, which could fail to operate properly if their internal computers do not recognize the year 2000. Many

EXECUTIVE SUMMARY

The federal government is warning that the year 2000 (Y2K) problem could be a serious problem for employers and occupational health providers. You should take action immediately to minimize the damage.

- Many different types of equipment are threatened, not just computers.
- The problem could cause safety equipment to fail.
- Employers will look to occupational health providers for advice.

computers, and other equipment with internal computer chips, were designed only to recognize the last two digits of a year, assuming that the first two are 19. So when the date rolls over to 2000, the computers are susceptible to huge errors or complete shutdown.

That problem is being addressed with varying degrees of effectiveness by most health care providers and employers, but OSHA cautions that some safety systems could be overlooked. In particular, OSHA lists these areas of concern:

- fire sprinklers;
- alarms of all sorts;
- lighting;
- robots;
- air monitoring devices;
- hazard communication databases;
- heating and air conditioning;
- underground storage tank monitors;
- security systems;
- elevators;
- generators.

Some problems with those systems are inevitable even if providers and employers are seriously addressing the problem right now, says **William McDonough**, MPAH, ARM, FASHRM, vice president and national health care risk management practice leader for Johnson & Higgins National Health Group in Boston. He speaks frequently on the Y2K problem. He and another expert addressed the potential implications at the recent meeting of the American Society for Healthcare Risk Management (ASHRM) in San Diego.

McDonough predicted there will be plenty of incidents in which ventilators shut off or infusion pumps work improperly, for example, and patients will be injured. Safety systems will fail as well, and in all types of work settings. Health care providers are concerned mostly about the danger to patients, but occupational health providers must look at the risks in a wide range of industries.

"There will be deaths, no doubt about it," he told the risk managers. "These are the things that should be keeping you awake at night."

Many of his words of caution are underscored by **Tony Montagnolo**, MS, vice president of technology planning for ECRI, the independent health care research institution in Plymouth Meeting, PA. Montagnolo confirms that the number of potential Y2K problems in any one facility is almost impossible to calculate because there are so many devices that have embedded computer chips that could be affected. Even if the device

appears to be not much of a "computer," it may depend on an embedded chip that will be affected.

The first step is to inventory an employer's equipment, or your own, to determine what items might be affected by the Y2K problem. Remember to include anything with an electrical cord as a potential Y2K victim because of embedded chips.

Your inventory should result in a high-, medium-, and low-risk assessment that you can use to prioritize testing and repairs. Montagnolo says high risks are "things that will kill you quick," like machinery that could activate in error. Medium risks are "things that will kill you slow," and low risks are "things that probably won't kill you even if they malfunction." **(For advice on helping clients with Y2K problems and testing computer equipment, see stories below and at right.)** ■

Be careful: Some Y2K tests can backfire

Once you get to the testing phase in addressing year 2000 (Y2K) problems, be careful. Experts tell stories of employers who were trying to check equipment for Y2K problems and found that their tests backfired on them. In one case, a hospital was testing an MRI unit and rolled the date up to Jan. 1, 2000. Once they saw how the machine responded, they tried to set it back to the correct date. It wouldn't go back.

In another case, a hospital tried to test an entire operating room and ambulatory surgery center by shutting it down on a Friday night, says **William McDonough**, MPAH, ARM, FASHRM, vice president and national health care risk management practice leader for Johnson & Higgins National Health Group in Boston.

The tests went fine over the weekend, and it opened for business on Monday morning. But then an infection control nurse did a routine check and found lots of bad bugs and mold. The problem? They had shut down the heating and air conditioning system during test, and the normally stable OR temperatures fluctuated.

"They had to close the OR and ambulatory surgery center for nine days, and their CEO was very upset," he says. "Always include the infection control nurse in plans like this. It's an example of how far reaching the Y2K problem can be."

The federal Occupational Safety and Health Administration also cites an incident in which an employer determined that the Y2K glitch would have caused all the fire sprinklers in the facility to activate. In other situations, the problem could cause fire alarms and fire suppression systems to shut down. ■

Too late to contract Y2K help, but here's advice

Employers are likely to seek advice from their occupational health providers when addressing the year 2000 (Y2K) problem, especially if you are their main source of information about safety issues and safety systems.

You won't be able to solve the problem or answer all their questions, but you should be ready to steer the client toward the right path for minimizing Y2K damage.

These are some points that you can pass on when asked for help with Y2K, offered by **Tony Montagnolo**, MS, vice president of technology planning for ECRI, the independent health care research institution in Plymouth Meeting, PA; and **William McDonough**, MPAH, ARM, FASHRM, vice president and national health care risk management practice leader for Johnson & Higgins National Health Group in Boston:

1. It's probably too late for an employer to contract with a computer consultant to fix the Y2K problem.

There just aren't enough qualified consultants to go around. At this point, an employer is better off concentrating on an internal response to the problem. That could include hiring a full-time computer professional, but they are in short supply too.

SOURCES

For more information on Y2K problems, contact:
William McDonough, Vice President, Johnson & Higgins National Health Group, 200 Clarendon St., Boston, MA 02116. Telephone: (617) 421-0200.
Tony Montagnolo, Vice President of Technology Planning, ECRI, 5200 Butler Pike, Plymouth Meeting, PA, 19462. Telephone: (610) 825-6000.

2. Realize that any alteration to your equipment absolves the manufacturer of liability — and most equipment has been altered.

In most facilities, about 90% of your software has been “tweaked” to customize it to your needs, McDonough notes. Contracts almost always state that the manufacturer has no responsibility for subsequent problems once you do that. “That means you cannot count at all on passing liabilities back to the vendor,” he says.

3. Don't depend too much on compliance letters from vendors.

You've probably already thought about getting compliance letters from vendors that attest to their Y2K readiness. That's fine, but don't count on them too much. You also need to seek independent validity testing and third-party endorsement. ■

Form simplifies report to employer on evaluation

A worksheet used by an occupational health provider in North Carolina may streamline much of the paperwork required to screen workers for certain hazards, while also ensuring that you perform all the required examinations for any particular client's employees.

The Provider's Written Opinion Report of Medical Evaluation is a form used by **Ada Fisher**, MD, MPH, chief of occupational health services at the Veterans Affairs (VA) Medical Center in Salisbury, NC. She and her colleagues developed the form in private industry in 1990, and Fisher adopted the form for the VA center in 1997.

The components of the form are aimed at the issues of concern to VA employees, but Fisher says any occupational health program in private industry could modify the form easily. **(See the form, pp. 19-20. Because the VA is a federal organization, no copyright permission is required for you to use or adapt the form.)**

The form is intended for the occupational provider to use as a single report on an employee's medical evaluation that covers all the possible exposures in that person's workplace. For the VA center, that includes 18 exposures, from acetic acid and asbestos to tuberculosis and waste anesthetic gases. The occupational health provider can check

off which of these work exposures applies to the worker being examined and then add the results of the examination.

“This one is my favorite form. With one form, you get over a dozen exams,” Fisher says. “The charts get really thick really fast when you add a separate form for each exam, even if the results are all negative. With this one sheet of paper, you can answer all of these questions for all of these exposures all at once.”

Form addresses OSHA-required questions

Fisher also notes that the single form could be helpful for providers with tight budgets for new forms. Rather than having to print a new form for each client, a single evaluation form can be printed with the most common workplace exposures, and the provider can check off the ones that apply.

If a single client is large enough or has significantly different exposures in the workplace, it might be worthwhile to print an evaluation form that is tailored to that one client. But even then, Fisher notes that you can put all of those client's multiple exposures on a single form.

In addition to marking which exposures apply to the worker, the form also has four boxes that prompt the provider to provide information mandated by the federal Occupational Safety and Health Administration (OSHA).

“When you read the OSHA legislation, there are four basic questions that have to be answered for anybody,” Fisher explains. Those questions are:

- Did you find any abnormalities in the exam?
- Do any of those put the worker at risk for the exposures in the workplace?
- Does the employee require restrictions?
- What are the recommendations for follow-up?

The form allows the provider to note that all of those findings were negative or to detail the findings and specify the follow-up dates.

To comply with OSHA regulations, the form

(Continued on page 21)

EXECUTIVE SUMMARY

One form can be used to report on your examination of a worker for possible exposures at work.

- The form streamlines required paperwork.
- It helps ensure that necessary screens are not overlooked.
- The form can be adapted for any clinic or client.



DO NOT INCLUDE THIS DOCUMENT IN A PATIENT'S MEDICAL RECORD

PROVIDER'S WRITTEN OPINION REPORT OF MEDICAL EVALUATION

*** This form is to be completed by the examining health care provider.**

To:	EMPLOYEE'S NAME	SOCIAL SECURITY NUMBER	DATE OF EVALUATION
Exposure(s) at Work <i>The citations below refer to the Occupational Safety and Health Standards for general industry (29 CFR 1910), or other applicable regulations relevant to affected workers.</i>			
<input type="checkbox"/> Acetic Acid	<input type="checkbox"/> Chemical Laboratory [1910.1450]	<input type="checkbox"/> Formaldehyde [1910.1045]	<input type="checkbox"/> Radiation Exposure
<input type="checkbox"/> Asbestos* [1910.1001]	<input type="checkbox"/> Confined Space Entry [1910.120]	<input type="checkbox"/> Laser Users ANSI	<input type="checkbox"/> Respirator [1910.134 (3) (5) (i)]
<input type="checkbox"/> Blood Borne Pathogens [1910.1030]	<input type="checkbox"/> Drivers DOT	<input type="checkbox"/> Lead [1910.1025]	<input type="checkbox"/> Security Officers (OPM)
<input type="checkbox"/> Cemetery Workers (Pesticides, Herbicides)	<input type="checkbox"/> Ethylene Oxide [1910.1047]	<input type="checkbox"/> Mercury [1910.252]	<input type="checkbox"/> Tuberculosis (1910.134)
<input type="checkbox"/> Antineoplastic Monitoring (Cytotoxic & Hazardous Drugs) [Publication 801.1 Workplace Guidelines for Personnel Dealing with Cytotoxic (Antineoplastic drugs)]			<input type="checkbox"/> Waste Anesthetic Gas
<input type="checkbox"/> Other (specify) _____			
Pertinent results of your medical evaluation are attached to this form. Your medical evaluation revealed the following abnormalities:			
<input type="checkbox"/> None	Specify _____		
You have the following medical conditions which may place you at greater than normal risk from the exposures checked above:			
<input type="checkbox"/> None	Specify _____		
You require the following restrictions on work, on exposures at work, or on the use of personal protective equipment:			
<input type="checkbox"/> None	Specify _____		
Further medical evaluation is recommended as follows:			Follow-Up-Dates:
<input type="checkbox"/> None	Specify _____		_____
* If you are exposed to asbestos, you should be aware that the combined effects of smoking and asbestos exposure may increase your risk of lung cancer.			
The above employee has been informed of the results of his/her medical evaluation and of any conditions which may have resulted from the alleged occupational exposure(s) which require further explanation or treatment.			
PROVIDER'S SIGNATURE		DATE OF SIGNATURE	
PROVIDER'S PRINTED NAME		TELEPHONE NUMBER	
PROVIDER'S ADDRESS	CITY	STATE	ZIP
EMPLOYEE'S SIGNATURE		DATE OF SIGNATURE	

Report Mailed to Employee By:	Date:
-------------------------------	-------

Distribution: 1 - Occupational Health 2 - Employee
3 - Safety/Industrial Hygiene 4 - Supervisor/Human Resources

PROVIDER'S WRITTEN OPINION FORM - INSTRUCTIONS

The Occupational Safety and Health Act (OSHA) standards for many exposures require that the examining health provider issue a written opinion after completing a mandatory medical evaluation of the employee under surveillance. Certain Veterans Affairs (VA) positions such as security personnel are also scheduled for mandatory examinations by the Office of Personnel Management (OPM). The OSHA standards for many exposures require that the examining health provider issue a written opinion after completing a mandatory examination. To enhance compliance with OSHA, mandated examinations and those done in accordance with VA requirements, certain information is required to be included in the written opinion. **A copy of this written opinion must be provided to the employee.** The Occupational Health Services departments Provider's Written Opinion form should satisfy these requirements for a variety of different medical surveillance examination requirements.

In addition, an "Exposure Matrix" of current OSHA and VA requirements for the medical surveillance evaluation of employees can be developed for the employee. The employee, so designated was examined in accordance with current regulations for his/her job category.

The examining physician will follow these steps to complete the proper medical evaluation and issue a Written Opinion in accordance with VA policy and OSHA Regulations, as well as:

1. Use information provided to identify the employee's specific job surveillance requirements.
2. Obtain the appropriate Exposure Matrix information for the job. This will tell you specifically what components are required for your evaluation of the employee.
3. Perform the medical evaluation.
4. Complete the Provider's Written Opinion Form. The applicable surveillance examination should be checked at the top of the form. A summary of the required medical evaluation will be made available. Use the next four sections to:
 - a. Note any abnormalities which may be related to the employee's exposure(s).
 - b. Note any condition which may place the employee at greater than normal risk from the exposure(s).
 - c. Recommend restrictions on work, exposures, or personal protective equipment as appropriate.
 - d. Recommend further medical evaluation based on the examination as necessary.
5. Sign and date the form.
6. A copy of the form should be given to the employee in person. The employee should sign and date the form. If the employee's copy is to be mailed, the person mailing the form should initial the form and specify the date it was mailed.
7. Copies will also be given to Safety/Industrial Hygiene and Human Resources. (These copies will not contain any confidential medical information).

(Continued from page 18)

includes a special warning that workers exposed to asbestos may increase their risk of lung cancer if they smoke. The back of the form provides instructions on how to use the form, as well an explanation of why the examinations were conducted.

The top copy of the form goes in the employee's medical file kept in the occupational health department, and the second is given to the employee in compliance with OSHA standards. Those copies are identical. If the employee's copy must be mailed, there is a box to indicate the date the form was mailed.

At the VA center, the third page is sent to the safety and industrial hygiene department, and the fourth page is sent to the employee's supervisor or human resources. The filing of the third and fourth pages may vary according to your needs, but one should be sent to the supervisor or employer.

Fisher notes that the third and fourth pages do not contain all of the information on the first and

SOURCES

For more information on the form, contact:

- **Ada Fisher**, Chief of Occupational Health Services, VAMC Salisbury, 1601 Brenner Ave., Salisbury, NC 28144. Telephone: (704) 638-9000.

second pages. The boxes pertaining to the employee's examination abnormalities, medical conditions, and follow-up plans are blacked out because the employee's supervisor should not be given that confidential information. The remainder of the form provides documentation that the employee was screened for certain exposures and explains any necessary restrictions.

(Editor's note: Another form used by Fisher to improve return-to-work orders was featured in the January issue of Occupational Health Management, pp. 4-5.) ■

OSHA training standard to save lives, reduce injuries

Federal safety officials predict that 11 deaths and 9,500 injuries will be prevented, and \$135 million in employer costs will be saved each year, as the result of new safety training requirements for operators of forklifts and other powered industrial trucks. Because the new standards require more training and certification of workers, they also could represent a new consulting opportunity for occupational health providers.

The federal Occupational Safety and Health Administration (OSHA) recently released the training standards for the more than 1.5 million workers who operate such equipment. The new training standards apply to operators in general industry and in the construction and maritime (shipyards, longshoring, and marine terminals) industries. Each year, about 100 workers are killed and almost 95,000 injured in industrial truck accidents, OSHA reports.

Of the estimated \$135 million in annual savings, \$83 million will be saved in reduced direct costs such as medical savings, administration of workers' compensation, and value of lost output. Another \$52 million annually will be saved in reduced accident-related property damage. There will be a cost, however. Total costs of compliance

are estimated at \$16.9 million annually.

The new requirements apply to powered industrial trucks used to carry, push, pull, lift, stack or tier material, but not to vehicles used for earth moving or over-the-road hauling. The new standards require a training program based on the trainee's prior knowledge and skill, types of powered industrial trucks used in the workplace, hazards in the workplace, and the operator's demonstrated ability to handle a powered industrial truck safely.

Evaluation of each operator's performance is required as part of the initial and refresher training and, thereafter, at least once every three years.

OSHA adopted its former powered industrial truck standards in 1971, and the recent changes amount to the first major overhaul of the requirements. Since 1971, various organizations and individuals, including members of Congress, have asked OSHA to improve its training requirements for powered industrial truck operators. The American Society of Mechanical Engineers in New York substantially upgraded its training provisions for such operators and the Industrial Truck Association in Washington, DC, whose members manufacture the trucks, petitioned OSHA to revise its training requirements.

The new standards are published in the Dec. 1, 1998, *Federal Register*. (See editor's note at the end of this story for information on how to

access.) States and territories with their own occupational safety and health plans are to adopt comparable standards within six months. The effective date for the standards is March 1, 1999. The training and evaluation of employees who are hired before Dec. 1, 1999, must be completed by Dec. 1, 1999. The training and evaluation of employees hired after Dec. 1, 1999, must be completed before the employee is assigned to operate a powered industrial truck.

These are some highlights of the new standard:

✓ **Operator selection.** The employer must ensure that the employee is competent to operate a powered industrial truck, as demonstrated by successful completion of a training program and evaluation.

✓ **Training program implementation.** The training shall include formal instruction (e.g., lecture, discussion, interactive computer learning, videotape, written material), practical training (demonstrations performed by the trainer and practical exercises performed by the trainee), and evaluation of the operator's performance in the workplace.

✓ **Training program content.** Topics to be covered in initial training are listed in the standards.

✓ **Periodic evaluation and refresher training.** Sufficient evaluation and refresher training must be conducted to enable the employee to retain and use the knowledge and skills needed to operate the powered industrial truck safely. An evaluation of each operator's performance must be conducted at least every three years. Refresher training is required for any of the following reasons:

- the operator is involved in an accident or near-miss incident;
- the operator has been observed operating the vehicle in an unsafe manner;
- the operator has been determined in an evaluation to need additional training;
- there are changes in the workplace that could affect safe operation of the truck;
- the operator is assigned to a different type of truck.

✓ **No duplicative training.** An employee who

has received training and been found by an evaluation to be competent to perform the duties of an operator does not have to be retrained at specified intervals. However, all new operators must have their performance evaluated.

✓ **Certification.** The employer must certify that the training and evaluation have been done.

✓ **Common hazards.** Hazards commonly associated with powered industrial trucks vary for different vehicle types, makes, and models. For example, a counterbalanced high lift rider truck is more likely to be involved in a falling load accident than a motorized hand truck because the rider truck can lift a load much higher than a hand truck. The methods or means of preventing accidents and protecting an employee from injury also vary for different types of trucks. For example, to protect the driver of a rider truck in a tip-over accident, the operator should be trained to remain in the operator's position and to lean away from the direction of fall to minimize the potential for injury.

[Editor's note: The Federal Register notice can be found on the Internet at <http://www.nara.gov/fedreg/index.html>. For more information, call (301) 713-6000. Most public libraries also have the Federal Register.] ■

DOL defends partnership program in court

The U.S. Department of Labor is still fighting for its Cooperative Compliance Program, over the protests of some business leaders who say the program is too punitive and vindictive. The department went to court recently to defend the program. Department representatives called it an effective way to target the most dangerous job sites in America for inspection by the Occupational Safety and Health Administration (OSHA).

COMING IN FUTURE MONTHS

■ Are limited DOT exams OK sometimes?

■ Alternative therapies including massage

■ Dakota First program lowers injuries, costs

■ Mechanism for measuring business volume

■ Surveying client/worker satisfaction

The Cooperative Compliance Program would let employers with the highest injury and illness rates choose between traditional enforcement or partnership with OSHA to reduce hazards and improve workplace safety and health. Labor Secretary Alexis Herman, PhD, told the U.S. Court of Appeals in Washington, DC, that labor partnerships are good for employers while allowing OSHA to make the best use of resources. Among other benefits, employers save workers' compensation costs and cut the likelihood of OSHA penalties, she said.

Most employers greeted the Cooperative Compliance Program with enthusiasm, but some others blocked its implementation with the lawsuit. In November 1997, OSHA invited 12,000 employers with injury and illness rates double the national average or higher to join the Cooperative Compliance Program.

More than 10,000, or 87%, accepted. OSHA called the partnership program a significant step in the agency's effort to work cooperatively with business, rather than perpetuating an image of the dreaded enforcer, and most employers seemed to agree.

But in February 1998, the U.S. Chamber of Commerce and other business groups filed suit in the U.S. Court of Appeals in Washington, DC, to block implementation of the program.

The court granted a stay of the program until it heard oral arguments and reached a decision. Since February, OSHA has pursued an interim enforcement plan that allows targeting of high-hazard work sites but does not offer partnerships to interested employers. The court has not indicated when a decision will be handed down. ■

OSHA Actions

Safety whistle-blowers awarded damages

Forty-one workers who reported workplace hazards in New York and New Jersey have been awarded more than \$210,000 in back wages because they were fired or otherwise penalized. The U.S. Department of Labor supported their damage claims and sent a signal that whistle-blowers will find federal support after the fact.

The workers reached settlements with their employers, supported by the federal Occupational Safety and Health Administration (OSHA). They received a total of \$211,231, according to information from OSHA.

In addition to the back wages, the workers also received remedies such as reinstatement, restoration of vacations and 401K benefits, informal negotiated settlements between the complainants and their employers, and the requirement that employers display posters on the rights of employees.

OSHA regulations prohibit discharging or otherwise discriminating against an employee for filing a complaint or reporting unsafe working conditions.

Workers who believe they have been illegally disciplined for whistle-blowing must contact an OSHA office within 30 days of when they learn of such action, with the exception of truckers, mechanics, and others involved in interstate trucking. They have 180 days. ▼

Occupational Health Management (ISSN# 1082-5339) is published monthly by American Health Consultants[®], 3525 Piedmont Road, Building Six, Piedmont Center, Suite 400, Atlanta, GA 30305. Telephone: (404) 262-7436. Periodical postage paid at Atlanta, GA 30304. POSTMASTER: Send address changes to **Occupational Health Management**, P.O. Box 740059, Atlanta, GA 30374.

Subscriber Information

Customer Service: (800) 688-2421 or fax (800) 284-3291, (cust_serv@ahcpub.com). Hours: 8:30-6:00 M-Th; 8:30-4:30 F.

Subscription rates: U.S.A., one year (12 issues), \$369. Outside U.S., add \$30 per year, total prepaid in U.S. funds. One to nine additional copies, \$185 per year; 10 or more additional copies, \$111 per year. Call for more details. Missing issues will be fulfilled by customer service free of charge when contacted within 1 month of the missing issue date. **Back issues**, when available, are \$62 each. (GST registration number R128870672.)

Photocopying: No part of this newsletter may be reproduced in any form or incorporated into any information retrieval system without the written permission of the copyright owner. For reprint permission, please contact Karen Wehly at American Health Consultants[®]. Address: P.O. Box 740056, Atlanta, GA 30374. Telephone: (404) 262-5491. Fax: (800) 755-3151. World Wide Web: <http://www.ahcpub.com>.

Opinions expressed are not necessarily those of this publication. Mention of products or services does not constitute endorsement. Clinical, legal, tax, and other comments are offered for general guidance only; professional counsel should be sought for specific situations.

Editor: **Greg Freeman**.

Publisher: **Brenda Mooney**, (404) 262-5403, (brenda.mooney@medec.com).

Managing Editor: **Joy Daughtery Dickinson**, (912) 377-8044,

(joy.daughtery@medec.com).

Production Editor: **Ann Duncan**.

Copyright ' 1999 by American Health Consultants[®]. **Occupational Health Management** is a trademark of American Health Consultants[®]. The trademark **Occupational Health Management** is used herein under license. All rights reserved.

Editorial Questions

For questions or comments, call **Joy Daughtery Dickinson** at (912) 377-8044.

OSHA fines Tarco \$126,000 for violations

Trenching and excavation targeted

Despite the increased attention in recent years to the hazards of trenching and excavation, employers continue to expose workers to danger by not complying with federal safety standards. Federal safety inspectors are trying to keep up by handing out significant fines, with the latest levied against companies in Colorado and New Hampshire.

Studies estimate that 100 employees are killed in excavation-related incidents each year in the United States. The latest fines against employers suggest that the government is willing to take strong action against violations even if there is no accident on-site and no injury to workers.

Inspectors cited Tarco in Arvada, CO, for two willful violations of the Occupational Safety and Health Act related to trenching and excavation hazards. The proposed penalties total \$126,000.

The violations and the penalties were issued by the federal Occupational Safety and Health Administration (OSHA) after an inspection of an excavation site in Edgewater, CO, on June 8, 1998. The inspection was initiated by a referral from the Edgewater Police and Fire Departments when a Tarco employee was partially buried by a cave-in. According to a report by John Healy, OSHA area director in Englewood, the violations resulted because the employer failed to provide adequate sloping, shoring, shields, or equivalent systems to protect employees from cave-in hazards; further, the employer allowed accumulations of water in the excavation.

Healy says the competent person on-site knew of the cave-in hazard and failed to remove the employees from those potentially life-threatening conditions.

In another case, OSHA cited Piscopo Contracting of Winnisquam, NH, for an alleged willful violation of the Occupational Safety and Health Act at a Bristol, NH, excavation work site and has proposed penalties totaling \$27,500.

According to **David May**, OSHA area director for New Hampshire, the alleged violation was discovered during an inspection conducted Nov. 25, 1998, at a water main installation site in Bristol. The inspection was conducted under OSHA's national emphasis program, which targets trenching and

EDITORIAL ADVISORY BOARD

Consulting Editor:
William B. Patterson,
MD, FACOEM, MPH
Medical Director of
Massachusetts for Occupational
Health & Rehabilitation
Wilmington, MA

Judy Colby, RN, COHN-s, CCM
President, California State
Association of Occupational
Health Nurses
Program Director
The Workplace
Simi Valley Hospital and
Healthcare Services
Simi Valley, CA

Annette B. Haag,
RN, BA, COHN
Past President, American
Association of Occupational
Health Nurses
President
Annette B. Haag & Associates
Simi Valley, CA

Virginia Lepping,
RN, MBA, COHN
Executive Vice President
Providence Occupational
Health Services
Granite City, IL

Charles Prezzia,
MD, MPH, FACPM
General Manager
Health Services and
Medical Director
USX/US Steel Group
Pittsburgh

Pat Stamas, RN, COHN
President
Occupational Health and Safety
Resources
Dover, NH

Melissa D. Tonn,
MD, MBA, MPH
Medical Director
Occupational Health Services
Memorial Hermann
Healthcare System
Houston
Presbyterian Healthcare System
Dallas

excavation work sites for unannounced spot inspections.

Piscopo Contracting had seven employees working on site at the time of this inspection. The inspection found two employees working in a 7-foot-deep excavation that lacked protection against a possible collapse of its side walls, May reports.

He notes that the size of the fine proposed in this case reflects OSHA's classification of the citation as willful, the most severe category of OSHA citation. OSHA issues willful citations only when information indicates that the employer knew what safeguards were required to protect workers yet apparently elected not to supply them.

OSHA cited the same employer on Sept. 25, two months to the day before the inspection, resulting in the fine for a violation of the same OSHA safety standard at an excavation work site in Rochester, NH. No collapse occurred in either instance.

Specifically, the company is being cited for one alleged willful violation, with a proposed penalty of \$27,500, for allowing employees to work in an excavation that was not protected against collapse by shoring, sloping of the soil, or other effective means.

Both companies can contest the fines assessed by OSHA. ■