

# Occupational Health Management™

*A monthly advisory for occupational health programs*

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## Nurses still can perform respirator compliance, but fight may not be over

*State licensing boards still say what's OK for nurses to do*

A federal court has upheld the ability of occupational health nurses to perform the measures required in the Occupational Safety and Health Administration's (OSHA) respirator standard, much to the consternation of some physicians, but the fight may not be over yet. Occupational health nursing leaders say the court ruling is a tremendous victory, but there may be more battles yet to come.

The U.S. 11th Circuit Court of Appeals recently decided to deny a petition challenging OSHA's Respiratory Protection Standard (29 CFR 1910.134), filed by the American College of Occupational and Environmental Medicine (ACOEM) in Arlington Heights, IL. ACOEM had requested a review of language that allows nonphysician licensed health care providers to perform requirements of the respirator standard.<sup>1</sup>

The issue had been simmering for a while, with occupational health physicians contending that nurses should not be allowed to conduct the examinations and monitoring required in the standard.

## EXECUTIVE SUMMARY

A recent court ruling means that occupational health nurses can continue to perform the duties outlined in the federal respiratory protection standard, as long as the state licensing board determines that those activities fall within the scope of practice. It appears most state boards will allow qualified nurses to perform the activities.

- The ruling was in response to an effort by occupational health physicians to block nurses from performing activities they say should be done only by physicians.
- It is not likely that the ruling will be challenged.
- Other standards now might include similar provisions allowing greater nurse involvement.

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Physicians have said that such activities fall more properly within the realm of a physician. With support from the Washington, DC-based American Nurses Association, leaders with the American Association of Occupational Health Nurses (AAOHN) in Atlanta strongly opposed ACOEM's action and insisted that nurses are fully capable of performing the activities outlined in the respirator standard. AAOHN president **Deborah DiBenedetto**, MBA, RN, COHN-S, ABDA, says the recent court ruling is important in ensuring that occupational health nurses can work to their full potential.

"This is a tremendous victory for registered nurses and other professionals trained to provide surveillance," she says. "The court has recognized that nurses with the expertise, competencies, and training can provide safe, effective surveillance of occupational exposures. States hold the responsibility to regulate the scope in which nurses practice, and trained surveillance is well within our scope."

In turning down ACOEM's request, the court found that "the standard essentially defers to state law on the question of who may provide the medical evaluation services" and that everyone had received adequate warning of the standard's wording before it was issued. ACOEM had argued that the definition of "physician or other licensed health care provider [is] inherently circular and ambiguous, and employers cannot be certain whether they are in compliance with the standard." The court ruled that ACOEM's claims in that regard were "wholly without merit."

### ***State issues still to be determined***

More than 6 million work sites nationwide are required to comply with the standard, so the question involves divvying up a substantial amount of occupational health work. Most employees who wear respirators work in manufacturing and construction.

The respirator standard requires surveillance activities that include determining if an employee is fit to wear a respirator and ensuring proper fit

of the respirator on the worker. The standard also requires someone to administer the employer's respirator program, including training the workers and keeping track of scheduled assessments.

The debate over the respirator standard gained momentum when the final standard was released in January 1998. ACOEM almost immediately challenged the standard in court and asked OSHA to set aside the language that allowed nonphysicians to perform compliance activities. However, **Kae Livsey**, RN, MPH, public policy and advocacy manager with AAOHN, tells *Occupational Health Management* that the debate is about more than just this one standard. The outcome of the fight could have an impact on other OSHA standards, Livsey says.

"Previous standards issued by the agency required physician oversight for everything," she says. "For our membership, this respirator standard means that finally the agency is recognizing that they are qualified to do a lot of these things. It does not mean we are trying to become doctors, but it shows some recognition of what our folks are capable of doing and are, in fact, doing."

### ***ACOEM president disappointed***

The president of ACOEM tells *OHM* that the group is disappointed with the court ruling. **Robert McCunney**, MD, MPH, director of environmental medicine at the Massachusetts Institute of Technology in Boston, says ACOEM fought the wording in the respirator standard because members thought that physicians were best suited to help employers ensure compliance.

"ACOEM is primarily concerned with the provision of the highest quality care to working people, and this decision centers on what we call scope of practice issues," he says. "ACOEM will continue to advocate for the highest quality health care for the working population, and we feel that regulated examinations should be provided by the providers with the greatest amount of training. We recognize the quality care that nurses provide, but on the other hand, we recognize that physicians generally have

## ***COMING IN FUTURE MONTHS***

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## OSHA delays record-keeping rule, possibly enforcement

**O**ccupational Health Management learned that the federal Occupational Safety and Health Administration (OSHA) in Washington, DC, will delay the release of the new record-keeping rule until an unspecified date later this year.

The rule originally was to be published this month with an effective date of January 2001. A spokesman for OSHA director Charles Jeffress tells *OHM* that the rule will not be released until later in the year. OSHA offered little explanation for the delay, except to say that the agency needed more time to finalize the rule before publishing it.

"It's likely that the effective date also will be changed as well," says **Frank Kane**, spokesman for Jeffress. "We don't know just yet, but it seems to follow that the effective date will have to be changed if we don't get the rule out until later in the year." ■

wider training and are more experienced."

With the respirator standard, the physician's expertise is most in demand for the medical review required prior to a person being able to wear a respirator, McCunney says.

That examination is crucial for ensuring the safety of respirator use, he says, and the examination can uncover a wide range of potential problems. In that situation, a physician's expertise offers a substantial benefit over a nurse's. A qualified physician should do any regulated medical evaluation, he adds.

"We value the important role and contributions of nurses, especially those with advanced training as nurse practitioners, but it's our position that such examinations, at the very least, ought to be supervised by a physician," he says. "The college will not pursue further legal options in the wake of this ruling; however, we will continue to promote the goal of providing the highest quality health care for working populations."

While the AAOHN sees the court ruling as a great victory, Livsey cautions that it does not end the debate. The court ruling only means that the federal government finds it acceptable for nurses to perform the compliance activities, and states still can say otherwise.

Federal rules do not prohibit nurses from performing the compliance activities, but the language in the respirator standard defers to state licensing boards to determine whether the activities fall within the nurses' scope of practice in that state.

Each state licensing board determines its scope of practice independently, so it is possible that some state boards would look at the required activities and determine that the state's nurses should not be allowed to perform them. That position would leave the activities to the doctors in that state.

Livsey says she has received several determinations from state boards around the country saying that these activities do fall within their scopes of practice for nursing. Other states are still making that determination, with local AAOHN chapters lobbying for the boards to fall in line with the federal ruling.

Livsey knows of no state boards rejecting the nurses yet, but she says she expects the fight to continue for a while. Even if the debate over the respirator standard is settled, the same fight may erupt over any other standard newly issued by OSHA.

"The battle is not over yet," she says. "In addition to working with these states, we will continue to work with OSHA because we very much want to see OSHA adopt this language as a matter of policy. As it is, we have to fight this battle from scratch every time they adopt a new standard."

### Reference

1. *American College of Occupational and Environmental Medicine v. Department of Labor*, CA 7, No. 98-1519 (March 5, 1998). ■

### SOURCES

For more information on the respirator standard, contact:

- **American Association of Occupational Health Nurses**, 2920 Brandywine Road, Suite 100, Atlanta, GA 30341. Telephone: (770) 455-7757. Web: [www.aaohn.org](http://www.aaohn.org).
- **American College of Occupational and Environmental Medicine**, 1114 N. Arlington Heights Road, Arlington Heights, IL 60004. Telephone: (847) 818-1800. Fax: (847) 818-9266. Web: [www.acoem.org](http://www.acoem.org).

## Reader Question

### Who's in charge here? Me or the EMT?

**Question:** I am a certified occupational health nurse working at an employer's job site, a medium-sized manufacturing facility. I am in charge of the overall occupational health and safety program, working with a local physician, and the company also employs a certified emergency medical technician (EMT) on site.

There are times when I think it is prudent to have the EMT present as I assist an employee, such as one who is reporting breathing difficulty or when I respond to an injury event. The company's position is that the EMT is in charge when we work together, but I feel that I should call the shots. Is there a clear answer as to who's in charge? Does it change depending on whether the situation is just a cautionary exam or a full-fledged emergency?

**Answer:** Who's in charge may depend on the exact situation, but the fact that you're asking the question indicates a need for better communication and cooperation, suggests **William Patterson**, MD, FACOEM, MPH, chair of the Medical Policy Board at Occupational Health and Rehabilitation in Wilmington, MA.

While Patterson says he understands the nurse's reluctance to simply step aside when an EMT walks in the room, he notes that there are some situations in which the EMT may be better qualified to lead the clinical response to an emergency.

"I am inclined to agree that it does matter what kind of situation it is. A full-fledged emergency may be better handled by an experienced EMT who may have more practice and training in CPR" and other emergency measures, Patterson says. "On the other hand, someone with shortness of breath — which could be asthma, anxiety, heartburn, or something else — might benefit more from an experienced nurse who takes the time to do a detailed history."

The American Association of Occupational Health Nurses (AAOHN) in Atlanta supports that position to some extent and says that nurses and EMTs should work collaboratively in the workplace. The AAOHN goes a step further,

however, and says that nurses should be in charge when medical judgment is required in the workplace. (See the **AAOHN position statement and a related story on the EMT side of the issue, both on p. 113.**)

If there is conflict in this regard, Patterson suggests that the supervising occupational medicine physician should be consulted to help you sort out how the EMT and the occupational health nurse can best work together. He questions where the conflict originates, because that can affect the way the matter ultimately is resolved. If the EMT is insisting that he or she is in charge, then the problem could be a lack of communication that leaves the EMT feeling out of the loop. If ignored, some people respond by stepping back into the shadows, while others may feel compelled to step forward and assert themselves, just as a matter of pride. Also remember that the EMT may genuinely be worried that he or she is shirking responsibilities by not taking charge of an emergency, or perceived emergency.

In those situations, improved communication could make the EMT feel a valued part of the occupational health team, and it also could relieve the EMT of some of the obligation he or she feels.

If management is insisting that the EMT is in charge, that is a different sort of communication problem. In that case, Patterson suggests that the occupational health physician needs to intervene. He or she should convey to management how the EMT and occupational health nurse work together and how one or the other may call the shots in different situations. Remember that management may have pushed for the EMT's autonomy simply because there was no communication from the physician to management explaining the arrangement. A lay manager may assume that an EMT is more qualified than a nurse. In the end, though, Patterson says management must not make this decision.

"It is not management's responsibility to decide who treats whom," he says. "That is a medical question." ■

### SOURCES

For more information on communication between EMTs and nurses, contact:

- **William Patterson**, Occupational Health & Rehabilitation, 66B Concorde St., Wilmington, MA 01887. Telephone: (978) 657-3826. Fax: (978) 657-5705. E-mail: Wbpnehc@aol.com.

# EMT says nurse should lead in most situations

Occupational health nurses tend to say they should be in charge of medical care at a work site even if an emergency medical technician (EMT) is on site, and that view is supported from the EMT side of the issue.

**Paul Ezelle**, EMT-P, is an EMT-paramedic and president of Ezelle Medical Services in Mobile, AL. Ezelle also is co-chairman of the industrial division of the National Association of Emergency Medical Technicians in Clinton, MS. He works with industry clients to set up on-site EMT programs and often encounters conflicts between EMTs and occupational health professionals.

"This is an inherent problem across the country. It's wasted time and energy," he says. "Nurses can be threatened by paramedics in industry, but really they are two different creatures and should not be threatened by each other. A paramedic's main function is in an emergency, whereas the nurse has

a great deal more to deal with on a daily basis."

When Ezelle sets up emergency response plans for his client companies, he usually designates the on-site occupational health nurse as the team leader. (If there is an occupational health physician on-site, the physician obviously has authority over the other medical personnel.) That decision does not always go over well with the EMT, he says, but Ezelle bases that decision largely on the relative experience of the two professionals.

In most industrial settings, Ezelle says the EMT will be someone trained in emergency medicine but whose main job is something else within the facility, as opposed to an EMT who has spent years "in the streets" gaining knowledge and experience. The occupational health nurse, however, is likely to be someone with years of experience in a hospital setting or other occupational health work, he says. That means the occupational health nurse should take the lead in most situations, he says.

"But don't forget that the EMT has skills that the nurse does not have, such as extricating a patient from machinery," he says. "The nurse

## EMTs Working with Occupational Health Nurses

*EMTs, including paramedics, in the workplace — an AAOHN position statement*

Recognizing that cooperation between registered professional occupational and environmental health nurses and emergency medical technician (EMT) personnel is essential for ensuring high-quality emergency care. The American Association of Occupational Health Nurses (AAOHN) supports a collaborative relationship between its members and the emergency medical services (EMS) community. AAOHN believes, however, that in situations requiring professional judgment and direction, the registered professional occupational and environmental health nurse should be responsible for health services in the workplace.

### Rationale

Occupational and environmental health nurses are registered health professionals employed in business, health care, industry, academia, or government to preserve, protect, and restore the health and safety of workers and to ensure a safe and healthy work environment through application of scientific nursing process and nursing diagnosis. Paramedics/EMTs are certified health care providers who facilitate the safe transfer of ill or injured persons to appropriate emergency health care systems following triage and stabilization according to medical protocols.

AAOHN recognizes the community need for an

immediate response to medical emergencies by highly qualified personnel. AAOHN acknowledges that paramedics and EMTs are trained to provide emergency care to the ill and injured. Occupational and environmental health nurses, however, are also prepared to respond to medical emergencies in the workplace.

Paramedics/EMTs and occupational and environmental health nurses collaborate to thwart life-threatening events by instituting appropriate life-support measures. In the process, the distinction between the services provided by paramedics/EMTs and occupational and environmental health nurses becomes obvious. Paramedics/EMTs are trained to stabilize and transport victims of injury and emergency illness. The scope of occupational and environmental health nursing practice, however, includes more than trauma and illness response. In addition to providing medical emergency services, occupational and environmental health nurses use special skills in the prevention, recognition, and treatment of worker illness and injury; effective incident investigation; and subsequent worker rehabilitation. Other services include program management, health education, professional counseling, case management, research, health hazard identification and management, direct care, and responsibilities related to on-the-job employees, and environmental health and safety. ■

## SOURCE

For more information, contact:

- **Paul Ezelle**, President, Ezelle Medical Services, 2321 Highpoint Drive E., Mobile, AL 36693. Telephone: (334) 666-8181.

would be wise to lean on the EMT's knowledge and training in that situation."

If the on-site EMT does have years of experience working full-time on the street as an EMT,

that might change the mix, Ezelle says. The coordination with the occupational health nurse might be different in that situation, he says, with the nurse allowing more latitude for the EMT to participate in non-accident, non-emergency situations. Like occupational health consultants, he says the two parties must learn to cooperate.

"Nurses have to be comfortable in knowing that the EMT is not there to replace them," he says. "Management needs to assure nurses that they're needed and doing important things that are totally outside the realm of the paramedic." ■

## Forklift training deadline is coming in December

Employers and occupational health providers don't have much time left to establish the forklift safety program mandated by a new federal standard. Employees must be trained in the safe use of forklifts by Dec. 1, 1999, and then employers have to follow a safety program to ensure the proper training of workers thereafter.

The good news is that the training and evaluation programs do not have to be burdensome. (**See five tips for complying with standard, p. 115.**) The Occupational Safety and Health Administration (OSHA) in Washington, DC, has left a lot of room for employers and occupational health providers to design their own programs, says **Richard Sauger**, safety specialist with OSHA and author of the new standard.

He tells *Occupational Health Management* that OSHA tried to write the standard in such a way

that employers would find it flexible, while still ensuring that workers are properly trained in the safe operation of forklifts.

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 forklift. OSHA's previous standard for forklifts was adopted in 1971, and various organizations have pushed since then for a new standard that would require training and evaluations.

The rule, 29 CFR 1910.78, was published in the *Federal Register* on Dec. 1, 1998, with an effective date of March 1, 1999. The new training, however, is not required until Dec. 1, 1999. Training for anyone hired before Dec. 1, 1999, must be completed by that date. The training and evaluation of employees hired after Dec. 1, 1999, must be completed before the employee is assigned to operate a forklift. (Marine terminals and long-shoring operations have a longer deadline for training compliance — March 1, 2000.)

Several hazards are addressed by the rule, with the hazards varying with the designs of the forklifts. A counterbalanced high-lift rider truck, for instance, 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. The methods of preventing accidents and protecting the employee will vary according to the type of truck and situation, OSHA notes. To protect the driver of a rider truck in a tip-over accident, for instance, the operator should be trained to remain in the driver's seat and lean away from the direction of the fall.

Sauger says occupational health providers can aid employers by helping them set up a formal training and evaluation program that includes good record keeping. The OSHA standard does not require the use of outside consultants, but he

## EXECUTIVE SUMMARY

The new forklift standard from the federal government requires employers to comply with new training requirements by Dec. 1, 1999. Occupational health providers should make sure their clients are ready to comply.

- The new standard requires training and periodic evaluations for anyone operating a forklift.
- There is little in the way of specific requirements; much of the training particulars are left to the employer and occupational health provider.
- The Occupational Health and Safety Administration may see a forklift accident as evidence that your training and evaluations were insufficient.

## Forklift Standard at a Glance

- ❑ “Forklift” is the common term for powered industrial trucks, though not all are technically forklifts. The rule applies to all powered industrial trucks.
- ❑ More than 1.5 million workers are covered by the rule.
- ❑ About 100 workers are killed each year in forklift accidents, and 95,000 are injured.
- ❑ The new standard is expected to prevent 11 deaths and 9,500 injuries each year.
- ❑ Employers will save \$135 million in related costs as a result of the new safety training requirements for forklifts and other powered industrial trucks.

Source: Occupational Safety and Health Administration, Washington, DC.

notes that employers now will be required to use a more formalized training system and keep up with each individual worker’s training and evaluations. Record keeping also will be an important component, he says.

“The employer should have a lot of motivation to do this training anyway,” he says. “We’re concerned about injuries and safety, but the employer still has to be concerned about property damage and loss from these accidents. The accidents we’re trying to prevent will save them a lot of money related to the injuries but also costs related directly to the loss of product when the driver doesn’t handle the load correctly.” (See **highlights of the revised standard, p. 116.**)

OSHA does not intend to prescribe exactly how the training and evaluation must be conducted, Sauger says. Some companies are offering complete training programs to employers for a fee, but Sauger says employers and occupational health providers should be able to conduct the training on their own. He cautions, however,

### SOURCE

For more information on forklift training, contact:

- **U.S. Department of Labor Occupational Safety and Health Administration (OSHA)**, Office of General Industry Compliance Assistance, 200 Constitution Ave. N.W., Washington, DC 20210. Telephone: (202) 693-1850. Or contact your local OSHA office.

that the intentional flexibility in the standard does not mean OSHA will be easy on violations. An accident will lead inspectors to presume the training was inadequate, as can observations of unsafe operation.

“Ultimately, if an OSHA compliance officer looks at your operation and the operator is operating the truck safely, there is a presumption that this person is adequately trained,” Sauger says. “On the other hand, if that person is not operating the truck safely, that would lead to an assumption that this guy was not trained or was not trained properly. At a minimum, seeing someone operating unsafely will result in faulting you on the evaluation aspect because you allowed it to happen without doing something to stop it.”

OSHA does not specify who is qualified to do the training, only that the person must be competent to do so. (See **story on employees who have received previous training, p. 117.**)

Record keeping is another important aspect of the standard, Sauger says. As part of the training and evaluation process, the employer must document each employer’s participation. The employer must keep the documents on file, but he says the documentation is fairly simple.

For each employee trained and evaluated for forklift operation, the employer must file a certificate for each instance of training, evaluation, or re-evaluation. The certificate must note employee’s name, date of the training, date of the evaluation, and the signature of the person who did the training and/or evaluation. ■

## Comply with forklift rule in 5 easy steps, OSHA says

There are five basic steps to complying with the training and evaluation requirements in the revised federal forklift standard, says **Richard Sauger**, safety specialist with the Occupational Safety and Health Administration (OSHA) in Washington, DC, and author of the new standard. These are the steps he outlines:

### 1. Select employees who can do the job.

Don’t take this step lightly, Sauger says. Not everyone should be driving a forklift. And some people who can safely drive one type of powered industrial truck cannot safely drive another type. Some workers may not be able to stand for long

## Highlights of Forklift Standard

These are some highlights of the forklift standard, 29 CFR 1910.178, that requires training for many workers by Dec. 1, 1999:

- ✓ Employees may be allowed to operate forklifts and other powered industrial trucks while they undergo training and as part of their training, but only under certain conditions. The trainee must be under the “direct supervision” of others who have the knowledge, training, and experience to train forklift operators and evaluate their performance. The trainee must be operating the vehicle in an area where other workers are not endangered and where the setting does not pose a hazard to the trainee.
- ✓ The training must consist of a combination of formal instruction (such as lectures, videotapes, or written materials), practical training (such as demonstrations by the trainer and hands-on exercises by the trainee), and an evaluation afterward.
- ✓ The training program must contain these elements:
  - operating instructions, warnings, and precautions for the types of truck the operator will be using;
  - differences between the truck and an automobile;
  - truck controls and instrumentation, including where they are located, what they do, and how they work;
  - engine or motor operation;
  - steering and maneuvering;
  - visibility, including restrictions due to load;

- vehicle capacity;
- any vehicle inspection and maintenance that the operator will be required to perform;
- refueling and/or recharging of batteries;
- operating limitations;
- any other instructions, warnings, or precautions in the vehicle’s operating manual.

The standard also requires that the training includes a number of workplace-related issues, such as pedestrian traffic and narrow aisles in the employer’s workplace.

- ✓ Refresher training and re-evaluation is required in these situations:
  - The operator is observed operating the vehicle in an unsafe manner.
  - The operator has been involved in an accident or a near-miss.
  - An evaluation reveals the employee is not operating the truck safely.
  - The operator is assigned to drive a different type of truck than those on which he or she was trained.
  - Conditions in the workplace change so that the operator needs further training for safe operation of the truck.

*Note: Refresher training need not be a repeat of the entire training that the operator previously received. That is acceptable, of course, but the employer also can provide a refresher only on relevant topics.*

*Source: Occupational Safety and Health Administration, Washington, DC.*

periods in some types of trucks, for instance, and the fatigue could lead to lapses in safety.

Consider the person’s mental state, also. If an employee clearly is a daredevil who just doesn’t take the safety warnings seriously, don’t endanger him and everyone else by giving him the keys to a forklift.

**2. Determine what they need to know to operate the vehicles safely.** This step will depend on what type of powered industrial trucks are in use at the work site, and the specific conditions and hazards present. Remember that there is no universal education for all powered industrial trucks. Employees should be trained on the specific vehicles they will be using, though that may be several types.

**3. Train the employees in the proper way to operate the vehicles safely.** You can train a group of employees at once, but the standard requires training for individual workers. It is not sufficient

to wait until the next round of group training is scheduled and let the worker continue operating a forklift in the meantime. He or she must be trained before allowing the use of a forklift.

**4. Evaluate the operator’s performance to ensure that he or she is using the information you provided.** “Evaluate means you actually watch that person operate the vehicle and you see if it’s done correctly,” Sauger says. “You could set up other methods of testing if you like, but when we say ‘evaluate,’ we’re thinking that you will visually assess whether the operator is putting the information to use.”

**5. Periodically reevaluate the operator’s performance to ensure that the person still is operating the truck safely. Retrain if necessary.** Individual operators will need different levels of attention, Sauger says. Some may need to be reevaluated fairly often, while others are highly skilled and can be trusted on their own for longer

periods. "You reevaluate, hopefully, the day after he starts doing something wrong, before it turns into something dangerous," Sauger says. "It really amounts to just plain old supervision. Proper operation of the truck is important for a number of reasons, so we hope employers would supervise it as closely as they supervise other activities in the workplace."

Each operator must be reevaluated whenever prudent and at least every three years. That is the maximum time period that can pass before reevaluation, Sauger says. OSHA does intend for employers to simply wait three years. And remember that the three-year time period applies to the individual employee, not to the entire work force or a group of employees. Even if you periodically reevaluate operators in groups, the standard requires a maximum interval of three years for every single worker. ■

## No need to duplicate previous training

One good aspect of the new forklift standard from the federal government is that employers do not have to duplicate training the employee received elsewhere, as long as you take reasonable measure to confirm that he or she received the training and then evaluate the worker's safety.

The Occupational Safety and Health Administration (OSHA) expects employers to confirm the training in much the same way they might confirm that a newly hired employee has appropriate skills on a certain piece of machinery, says **Richard Sauger**, safety specialist with OSHA and author of the new standard.

"If you hire someone and he says he can work a certain type of drill press, we'd expect the employer to confirm that before just throwing him on the line and telling him to work," Sauger says. "You'd probably have a supervisor with him for a while to observe and make sure the guy can do what he says he's qualified to do. The same sort of supervision would apply to powered industrial trucks."

For the worker who says she already is trained in forklift safety, you don't necessarily have to conduct your own training immediately. You do have to evaluate the worker's performance on a forklift, and the worker is then subject to the periodic reevaluation. ■

## Chemical maker cited for safety violations

*Penalties total more than \$600,000*

Federal safety officials have cited a chemical manufacturing company near Allentown, PA, for safety violations that they say led to a catastrophic explosion in February. The Occupational Safety and Health Administration (OSHA) proposed penalties of \$641,200 after the explosion killed five workers, including a father and son, and injured two others.

OSHA cited Concept Sciences Inc. (CSI), a specialty chemical manufacturer, for 20 alleged violations, including 11 willful violations for failure to protect employees from the explosive potential of hazardous chemicals. The explosion occurred Feb. 19, 1999, at CSI's manufacturing facility in Hanover Township, PA. Four of the workers killed were employed by CSI; one worker from an adjacent business was also killed in the explosion.

"This is precisely why OSHA established standards to prevent catastrophic incidents involving hazardous chemicals," Secretary of Labor Alexis M. Herman said in announcing the proposed penalties. "CSI management was clearly aware of the requirements of those standards but failed to take adequate safety measures prior to producing a chemical known throughout the industry as potentially explosive."

A troubling aspect of the situation, Herman says, is that CSI management did not provide pertinent information to their employees on the hazards involved in the production process or the explosive nature of the chemical. CSI employed 21 workers at two locations in the Allentown area. Employees were involved in the company's first production run of hydroxylamine, a chemical additive used to produce other chemicals for the microprocessor industry. OSHA's inspection revealed that the explosion occurred at a 2,500-gallon fiberglass reinforced charge tank containing approximately 750 pounds of the hazardous chemical. The tank was being used in the distillation process.

Pure hydroxylamine has explosive energy roughly equivalent to that of TNT, according to OSHA. The explosion destroyed the building, and the walls collapsed inward onto the workers inside. CSI denies the charges, and a company spokesman says it has adequate safety training

and may contest the proposed fines. "CSI emphatically denies that it has ever intentionally taken any action that was a known violation with 'plain indifference to the law,'" according to a statement released by the company.

Of the 20 violations cited, 11 were alleged willful violations of OSHA's process safety management (PSM) standard, as well as provisions of the hazard communication standard, related to the allegation that the employer did not notify workers of the explosive potential. The PSM standard establishes requirements to prevent, or minimize, the potential for fire or explosion caused by dangerous chemicals. Hazard communication addresses the potential hazards of chemicals and establishes procedures to communicate those hazards to employees through material safety data sheets and other means.

The 11 willful violations, with a total proposed penalty of \$616,000, are composed of various groupings of individual requirements of both standards. They include: failure to compile process safety information; inadequate process hazard analysis and operating procedures; failure to train

employees on operating procedures and the physical hazards of chemicals; lack of a pre-start-up safety review; process equipment deficiencies; and failure to develop mechanical integrity procedures.

OSHA also issued nine alleged serious violations to CSI, totaling \$25,200, and cited the company for these problems:

- lack of employee participation in a PSM program;
- failure to adopt safer work practices;
- no injury and illness logs for contract employees;
- inadequate mechanical maintenance training;
- deficiencies in chemical hazard evaluation procedures;
- improper labeling of chemical containers.

Willful violations are those committed with an intentional disregard of, or plain indifference to, the requirements of the Occupational Safety and Health Act and OSHA regulations. A serious violation is defined as one in which there is a substantial probability that death or serious physical harm could result, and the employer knew or should have known of the hazard. ■

## Company fined \$223,000 after shipyard worker dies

The Occupational Safety and Health Administration (OSHA) has cited Atlantic Marine for safety violations that led to the death of one worker and injuries to two others. The agency proposed penalties totaling \$223,000 for three willful and four serious safety violations at the company's shipyard in Mobile, AL.

According to **Lana Graves**, OSHA's Mobile area director, Atlantic Marine has had 28 inspections since 1972, including three involving fatalities. Inspection of a Mobile accident in 1990 resulted in citations for violations similar to the most recent citations. After being denied entry on the day of the accident, OSHA was permitted on-site the following day, Feb. 15, 1999, to begin an inspection. "The fatality site had been completely dismantled before our investigator was allowed access to the accident scene," Graves says.

Through interviews and observations, OSHA investigators were able to determine that day shift employees had rigged a ship's steel hull plate for repairs the day prior to the accident. On the day the accident occurred, a five-ton manual chain-fall hoist failed while hoisting the steel

plate. It was replaced with a lesser capacity hoist, and the lift continued. At the time of the accident, at least three workers were under the suspended hull plate, which weighed approximately 16 tons. One employee was crushed and two others were injured when the hoists' load chains broke and the hull plate fell to the floor of the dry dock.

OSHA cited Atlantic Marine for three willful violations with penalties totaling \$195,000, for allowing employees to ride on and work under hoist-suspended loads. The company was also cited for failing to ensure that loads were safely rigged before being hoisted so that employees could operate the hoists from a remote or other safe location. Additional penalties totaling \$28,000 resulted from four serious related violations.

"We categorized these citations as willful because the employer knew there was a hazard and took no action to protect workers," Graves says. "Even though the company's employee handbook explicitly prohibited it, our investigation revealed that employees routinely rode on and worked under loads suspended from hoists. In this case, the manner in which the hull plate was rigged required employees to stand on the plate to operate the hoists. In addition, the plate could not be fitted to the hull of the ship without going under the suspended load. With the hoists overloaded, this was a prescription for disaster."

Graves says supervisors, as well as rank and file employees, rode on and worked under hoisted loads routinely even though they were aware of OSHA's standards and the company's written prohibitions.

According to the OSHA area director, the industry practice is to use scaffolding or other platforms to raise these type loads when using manual hoists, or to use air tuggers equipped with pendant controls that allow the operator to raise the load from a safe distance. Also, it is industry practice to place shoring underneath the steel plates to support the loads prior to allowing employees to work underneath them.

Atlantic Marine employs 624 workers in Mobile and about 1,050 nationwide. Their Jacksonville, FL, shipyard also performs ship repairs. The company can contest the citations. ■

## Guam company cited after fatal trenching accident

The Occupational Safety and Health Administration (OSHA) has issued a citation for a serious violation against a contractor at Andersen Air Force Base in Yigo, Guam, following an investigation into a fatal workplace accident in April at the base's replacement fuel line project.

OSHA issued a serious citation and an other-than-serious citation with a penalty of \$2,800, to Nova/Fedrick AJV of Barrigada, Guam. The violations include failure to train employees in recognizing and avoiding unsafe conditions while working next to a chain-type trenching machine and failure to replace cracked and broken windshield glass on the machine.

Nova/Fedrick AJV employee Candido Edelo Edu, age 22, died on April 23 when he was beginning a 90-foot-long trenching operation. Edu was working on the blind side of the trenching machine within 1 to 2 feet in front of the unit when the accident occurred. As Edu shoveled material back into the trench, the dirt bank where he stood caved in, and he fell into the trench and was fatally injured by the trenching machine.

The accident might have been prevented by training the employee on how to safely work near the trenching machine, according to **Leonard Limtiaco**, the OSHA enforcement director who supervised the investigation. Limtiaco says Edu was working too close to the equipment. OSHA

regulations require that employees be trained in safe operation of equipment. Limtiaco says a sign was posted on the trenching machine warning workers to not work too closely when it was operating.

OSHA is also investigating a second accident that occurred Aug. 11 involving Nova/Fedrick at the same construction site. Limtiaco said the victim of the second accident appears to be related to the worker killed in April.

In a second case, OSHA has issued citations for two serious violations and three repeat violations against a contractor working on the \$40 million Micronesia Mall expansion project in Dededo, Guam. OSHA issued citations for two serious violations, each with a \$2,500 penalty, and three repeat violations, with fines of \$100,000, to Pacific Crown Construction, based in Tamuning. OSHA cited the company for serious violations of its safety standards by failing to provide employees with face protection while they handled pneumatic hoses used in pouring concrete and for failing to protect employees from falling through holes in form work

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for cast-in-place concrete.

OSHA also issued citations for three repeat violations for the same or similar hazards observed during a January 1998 inspection of work by Pacific Crown at the mall project. OSHA officials found that the contractor failed to provide fall protection for employees working on an elevated platform, exposing the workers to a more than 15-foot fall onto concrete reinforcing steel rods; failed to provide employees with stairs or ladders for access to an elevated work area, forcing workers to climb the frame work of the scaffolding to reach their work area; and failed to provide fall protection for employees working at the edges of the second-level parking lot, approximately 34 feet above ground level.

Limtiaco notes that falls from heights are one of the four leading causes of deaths and serious injuries in the construction industry. OSHA cited the company in October 1998 for failing to provide fall protection after an employee fell to his death when a scaffold tipped over. ■

## OK to cheat workers' comp, say one-third of workers

As long as they still feel some pain, more than a third of workers recently surveyed say it is acceptable for them to stay home and receive workers' compensation benefits even when their doctors say they should return to work.

The results come from a survey of 1,004 adults called Public Attitude Monitor 1999, conducted by the Insurance Research Council in Malvern, PA. The survey shows that 35% of respondents think that behavior is almost always acceptable. That figure is twice as high as the 17% of respondents who said the same thing in a 1992 survey.

IRC senior vice president **Elizabeth Sprinkel** says the results could indicate a change in the public's attitude toward occupational health.

"This change in attitude may be attributable to greater skepticism about medical decisions or possibly greater reliance on the individual's personal assessment of his or her amount of pain and ability to perform job duties," Sprinkel says.

The news is not all discouraging, however. In the same survey, more than 90% of the respondents thought that other fraudulent workers' comp activities are usually not or almost never acceptable.

Copies of the study are available for \$10 each.

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## Job-related fatalities fall to all-time low, data show

Work-related fatalities declined 3% in 1998 to the lowest level since the U.S. Bureau of Labor Statistics in Washington, DC, started tracking the data in 1992.

The number of work-related fatalities in the United States totaled 6,026 in 1998, down from 6,212 in 1997. That is the lowest figure for job-related fatalities since the bureau started collecting data in 1992. Much of the decline can be attributed to an 18% drop in job-related homicides, especially in the retail trade, the bureau reports. In 1998, 286 people were killed in retail jobs, compared to 395 in 1997. Since 1994, homicides have fallen 46%, the bureau reports.

The leading cause of work-related deaths continues to be highway crashes, accounting for 24% of all work-related fatalities. About 40% of those 1,431 deaths in 1998 were among truck drivers. ■