

# Occupational Health Management™

*A monthly advisory for occupational health programs*

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## Home office workers need guidance even if OSHA doesn't require inspections

*OSHA opens can of worms with home office debate*

**E**ven though federal safety officials hastily backed down from their statement that home office workers were subject to the same safety regulations as any other employee, there still are many questions left unanswered about how occupational health professionals should intervene. The feds may not require inspections of home offices, but that does not mean you have no role to play in the safety of telecommuters.

To the contrary, say some experts in occupational health and telecommuting, an occupational health professional can play a valuable role in establishing safety and health guidelines that protect the worker from injury and insulate the employer from liability. Despite the Occupational Safety and Health Administration's current stance, it still is possible for employers to require home inspections as a condition of telecommuting. Occupational health providers may want to discourage that practice because it can be counterproductive, some say.

Home office workers can be exposed to many of the same hazards found in a traditional workplace, says **William Patterson, MD, FACOEM, MPH**, chair of the Medical Policy Board at Occupational Health and Rehabilitation in Wilmington, MA. The role of the occupational health professional may be different with telecommuters than with employees in the workplace, he says, but there still is work to be done.

"I would favor having companies educate employees about how to be safe in their homes," he

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says. "I think you will get into a lot of difficulty, unnecessarily, if you start talking about going into people's homes the same way you would in an employer's office or factory setting. But that does not mean you have to forego any safety and health efforts with these people working at home."

There are at least 10 million telecommuters in the United States, and maybe as many as 20 million, according to the 100,000-member American Telecommuting Association, an advocacy group for telecommuters in Washington, DC. Those numbers include employees working from home at least two days a week, using computer e-mail, fax, and other methods to stay in touch. Independent contractors and vendors are not included, and they generally are not subject to the company's safety regulations in their own workplaces.

Home offices are nothing new, and occupational health professionals have considered the health and safety implications for years. The issue came to a rapid boil, however, when OSHA issued a compliance advisory saying that home offices were subject to all the health and safety regulations applicable in the employer's main workplace.

### ***Inquiry letter started the controversy***

A credit services company wrote to OSHA in August 1997 to ask for clarification of how OSHA rules applied to telecommuters and received a reply Nov. 15, 1999. The letter from Richard Fairfax, director of the directorate of compliance programs with OSHA, was firm in stating that employers have an obligation to ensure the home office is a safe work environment.

The letter did make certain allowances for the nature of the home office, however. Fairfax stated in the letter that OSHA would not expect a home office to have two means of egress from a fire as would be required in a workplace setting, for instance, unless the work done in the home created a heightened risk of fire. One of the most contentious issues involved inspections of the home office, and the Fairfax letter fueled that fire by saying the employer may need to conduct periodic safety checks. OSHA inspectors also may visit, he wrote, but such inspections were called unlikely.

The compliance directive created a huge controversy, with the public and many employers fixating on the exaggerated idea of OSHA inspectors storming into employees' homes to look for

frayed extension cords, missing fire extinguishers, and house cats sleeping in the hallway where workers could trip and fall.

Within a few weeks, Secretary of Labor Alexis Herman officially rescinded the letter. "The letter has caused widespread confusion and unintended consequences for others," Herman said. "Therefore, OSHA is withdrawing the letter today."

Soon after, Assistant Secretary for Occupational Safety and Health Charles Jeffress underscored OSHA's position before the House subcommittee, saying that OSHA has no intention of inspecting home offices. He did, however, draw an important distinction between home offices and other types of work performed at home. **(See story, p. 28, for more on Jeffress' comments.)**

Patterson says the true occupational health issues were overshadowed by the controversy over OSHA and employer representatives entering a private home. Some telecommuting advocates argue that the home office should be considered a private space beyond the reach of safety inspections, but Patterson says that attitude may not serve the worker well in the long run. He does not advocate home office inspections necessarily, but he says there are legitimate concerns.

"You have to ask who is benefiting from the home office arrangement, and it's really both the employer and the employee benefiting," he says. "So you can't just say it's all to the employee's benefit and that absolves the employer of liability. If a person trips on a cord at home and falls, is that a workers' comp injury? The answer is yes, it could be."

In that regard, the home office is no different from a conventional workplace in terms of the employer's obligations and why the employee should be willing to comply with safety directives, he says.

"I think it's reasonable for society to address this problem," Patterson says. "OSHA made a mistake in claiming such a broad regulatory authority, and it properly backed off. But now I think a lot of anti-OSHA critics are using this as a club to beat OSHA with."

In particular, Patterson says, opponents of the hotly debated ergonomic standard proposal are seizing the current controversy as a way to criticize OSHA. Ergonomics would be a major component of any home office safety initiative, so opponents of the proposed ergonomics standard are pointing to the home office debacle as an

## Home inspections rare, but not unheard of

Employer inspections of home offices are rare, but some employers do go that route, say some telecommuting professionals. A better solution might be photographic proof that the office is safe.

Home inspections are a relatively new trend in telecommuting, says **Robert Moskowitz**, president of the American Telecommuting Association, an advocacy group for telecommuters in Washington, DC.

Most employers are unwilling to enter a private home for a safety inspection, but more companies have been willing to make that move in recent years, he says. Some employers like the idea of home inspections because it allows them to say that they discharged their obligations and made a good faith effort to make sure the workplace is safe and healthy, he explains.

Other companies have found success with using photographic proof that the home office is safe. Some companies have a provision in their telecommuting agreement that the worker will provide photos that show the home office meets the standards.

For instance, the telecommuter must provide multiple photographs of the home office that show the proper type of chair, desk, and accessories. The photos might show the type of lighting, overall views that would include stray wires and clutter, and photos of the worker sitting at the desk in an ergonomically sound position.

*[For more information, contact:*

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example of how intrusive OSHA would be if the standard were enacted.

An expert on telecommuting tells *Occupational Health Management* that occupational health providers should learn from OSHA's mistake and take a more positive approach with ensuring the safety and health of home office workers.

As general manager of US West Extended

Workplace Solutions in Denver, **Jim Miller** oversees the home office work of US West employees and also provides consulting services to other companies with home office workers. US West has nearly 20,000 employees working at home, out of a total 59,000.

"The reason the OSHA statement ruffled so many feathers is that it was a statement of rules made for a manufacturing environment 30 years ago," Miller

says. "And the biggest problem with the original OSHA approach was that it was filled with 'shalt nots.' If you just turn that around, as

those of us who are parents have learned to do over time, you get along a lot better."

In other words, Miller says occupational health professionals and employers should approach home office workers with the benefits of providing a safe work environment rather than a stern declaration that you will not tolerate a messy home office.

Patterson agrees, saying the first principle of preventing injuries in the workplace is joint labor/management attention to the issue. "That principle also applies to the home office, so you start with a labor/management dialogue and see what sort of interventions would make sense for that particular workplace," he says. "Your approach is important. The way that OSHA appeared, intentionally or unintentionally, is not the right way. They didn't say 'let's talk about it.' They just made a statement."

OSHA's backtracking was welcomed by **Gail Martin**, director of the International Telework Association and Council in Washington, DC. Martin's group represents telecommuters, and she says her members were wholeheartedly against the idea of OSHA and occupational health providers controlling their home offices.

"Hallelujah!" Martin responded on the day Jeffress announced OSHA's new position. "This is absolutely wonderful. Our position has always been that you make a safe environment through education and training. It's perfectly fine to address safety in the home office, but it should not be by having people go into the home and inspect it. You have to trust."

*"It's perfectly fine to address safety in the home office, but it should not be by having people go into the home and inspect it. You have to trust."*

Telecommuters reacted so strongly to the original OSHA position because it posed a threat to their privacy, she says. Americans tend to be very protective of their personal life outside of work, and a home office does not change that, she adds.

"You may be very organized in your work life, an ideal worker, but if a supervisor comes in to your home and sees a lifestyle different from his, my fear is that could influence how the worker is judged," Martin says. "It's against the law to ask about your marriage and kids, those kinds of things, but you expose all of that when a supervisor visits your home. You're crossing that sacred line of workplace and home division."

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## OSHA chief says most home workers not covered

Some of the confusion over federal regulation of home workers was cleared up recently by the head of the Occupational Safety and Health Administration, Assistant Secretary for Occupational Safety and Health Charles Jeffress. He spoke before the Subcommittee on Oversight and Investigations Committee on Education and the Workforce in the House of Representatives.

Jeffress stressed that "the Department of Labor strongly supports telecommuting and telework." He also pointed out that the Occupational Safety and Health Act of 1970 requires every employer to furnish to each of its employees "employment and a place of employment, which is free from recognized hazards."

"There is no provision in the law that excludes workplaces that are located in a home," Jeffress said. "However, as I will explain, OSHA holds employers responsible only for work activities in home workplaces other than home offices, for

example, where hazardous materials, equipment, or work processes are provided or required to be used in an employee's home."

Jeffress then made these statements:

- "We believe the OSH Act does not apply to an employee's house or furnishings."
- "OSHA will not hold employers liable for work activities in employees' home offices."
  - "OSHA does not expect employers to inspect home offices."
  - OSHA does not, and will not, inspect home offices."

However, Jeffress noted that employees in home offices still must be included in record keeping. Approximately 20% of employers, because of their size or industry classification, are required by the OSH Act to keep records of work-related injuries and illnesses.

Jeffress said those employers continue to be responsible for keeping such records, regardless of whether the injuries occur in the factory, on the road, in a home office, or elsewhere, as long as they are work-related.

### ***OSHA classifies home offices separately***

The OSHA chief drew a distinction between home offices and other types of home-based work. For home-based manufacturing operations, employers are responsible for hazardous materials, equipment, or work processes which they provide or require to be used in an employee's home, Jeffress says. OSHA will only conduct inspections of hazardous home workplaces, such as home manufacturing, when OSHA receives a complaint or referral.

"Current OSHA rules are consistent with these principles, and we would expect future rules would be as well," he said. "The bottom line is, as it has always been, that OSHA will respect the privacy of the home and expects that employers will as well."

He noted that certain types of work at home can be dangerous, citing two examples from California:

**1.** In May 1998, 17 people were injured when fireworks being manufactured in a home exploded and destroyed the house.

**2.** Investigations in California last year revealed that at least a dozen Silicon Valley electronics manufacturers had assigned piece-work assembly to employees working in their

homes. The operations commonly involved the use of lead solder and acid flux, and investigators found the home workers unprotected from hazards relating to the inhalation of soldering fumes.

Even so, inspections of home workplaces are exceedingly rare. Jeffress pointed out that OSHA performs approximately 35,000 inspections per year, but there have been only three cases when OSHA actually entered an employee's home to conduct inspections:

#### **1. Manns Bait Manufacturing (1978)**

An employee of this Eufaula, AL, company worked at home casting lead-head jigs for fishing lures. Surrounded by her children, she poured and trimmed the jigs at the family's kitchen table. She had no training in lead hazards, nor was she aware that exposure could result in miscarriage or birth defects, damage to the central nervous system, and delays in cognitive development for children. The inspection found the kitchen surfaces to be contaminated, placing the entire family at risk.

#### **2. Capco Inc. (1985)**

Employees of this Grand Junction, CO, company were removed from their jobs building electronic capacitors after an OSHA inspection in 1984 revealed high blood lead levels. Afterward, they began working for the company off-site at their homes.

In response to complaints from seven workers, OSHA inspected the homes of three employees in 1985. Compliance officers found workers using unguarded crimping machines, which could result in amputations. Workers were also handling adhesives without protective gloves, which could lead to dermatitis, liver damage, or cancer.

#### **3. B & B Metal Processing (1991)**

Employees at this Newton, WI, company processed scrap metals. In 1991, after an employee was admitted to the hospital to treat high blood levels of lead, based on a complaint, OSHA inspected and found lead exposure levels 100 times the permissible exposure level.

Because the company failed to provide shower rooms for workers or laundering facilities for their lead-contaminated clothing, workers were required to take contaminated clothing home. Workers encouraged OSHA to inspect their homes for possible contamination. ■

# Formal policy should be part of home agreement

The best way to approach safety and health in the home office is with a formal agreement that outlines the employee's responsibilities, says **Jim Miller**, general manager of US West Extended Workplace Solutions in Denver, who oversees the home office work of US West employees.

A telecommuting arrangement requires a great deal of coordination between the employer and the employee, covering everything from working hours to communication methods and data backup. The health and safety of the employee should be included in that agreement, he says.

"They recognize upfront that they have responsibilities to create a home environment that is free of hazards and liability to the employer," Miller says. "It doesn't matter if they're working at home, on the road, or in a field in Montana. They're employees of US West, and they have a responsibility for safety and health. They must recognize that."

*"This is a topic that is not even on the radar screen for a lot of employers, and that's not OK."*

The employer should not take a lackadaisical attitude just because the employee is outside the conventional workplace, and neither should the employer be afraid to impose some health and safety requirements, Miller says. The employee is still working for the company (as opposed to an independent contractor), so it is reasonable to impose some restrictions and requirements. The employer's potential liability is a major motivator, he says.

"A good written agreement shifts the locus of responsibility from the employer to the employee, which is where it should be," Miller says. "If we are going to respect the employee's privacy by not coming into the home office and inspecting the way we might here in an office building, the employee has to take some responsibility as well. That's only fair because the employer bears responsibility for any workers' comp injuries that occur in the home office."

Miller says his company has never encountered a significant workers' comp claim related to home office work, and other sources say they do not know of any workers' comp claims for

injuries in the home. But occupational health and telecommuting experts agree that any injury occurring in the home office and reasonably related to the work would be considered a compensable injury.

The telecommuting agreement used by US West does not require home office visits, but it does reserve the right to do so. The company rarely exercises that option, but might if there were a significant workers' comp claim from a home office worker.

If a visit were to find that the employee had not fulfilled his or her obligations to create a safe working environment, that could provide the company with a defense against a workers' comp claim, Miller says.

"Part of the policy is that a home office visit is never one on one. There always are two people from the [main] office and as many people as the home office worker wants to be there," Miller says. "Otherwise, you'd get into whole different type of risk if you have one-on-one visits in someone's home."

Occupational health providers should work closely with the risk management department at an employer to demonstrate the potential benefits and risks of a telecommuting arrangement, he says. The risk managers will be the ones who pay attention to the potential for workers' comp claims and other expenditures from a home office arrangement, so they will be able to influence an employer's efforts to formulate a policy and provide education.

Most employers are not attuned to the potential health risks of home office arrangements, says **William Patterson**, MD, FACOEM, MPH, chair of the Medical Policy Board at Occupational Health and Rehabilitation in Wilmington, MA.

## **Better awareness in industry sector**

Employers in industry are always more conscious of the need for occupational health care than are white-collar employers, and that is no different when it comes to telecommuting, he notes. Most telecommuting is done by employees of white-collar, information management companies rather than those in manufacturing. You may face an uphill battle in convincing employers that telecommuting needs your attention.

But as telecommuting becomes more common, Patterson says occupational health professionals should look for the opportunity to ensure the

health and safety of those workers just as you would with any other employee population. That will require some modifications to your typical approach, he says, with an emphasis on education more than anything else.

“This is a topic that is not even on the radar screen for a lot of employers, and that’s not OK,” Patterson says. “Employers with a substantial number of people working at home should pay attention to it, and we have a role to play in helping them do that.” ■

## NIOSH warns of faults with SCSRs used for escape

A type of self-contained self-rescuer (SCSRs) commonly used in American industry may not provide adequate protection, according to a warning from the National Institute for Occupational Safety and Health (NIOSH) in Cincinnati.

NIOSH recently issued an alert to inform users of CSE Corp. SR-100 SCSRs, approved by NIOSH and the Mine Safety and Health Administration (MSHA) with approval number TC-13F-239, of a problem found in some of these SCSRs, which were manufactured prior to June 7, 1994. The problem could prevent them from providing effective protection.

MSHA reported to NIOSH Dec. 8, 1999, that a miner who either donned, or attempted to don, an SR-100 SCSR during a brief electrical fire in a mine, suffered smoke inhalation requiring medical treatment at a hospital. A deteriorated breathing tube on the apparatus that was opened by the miner prevented the unit from providing adequate protection from the smoky atmosphere. The SR-100 SCSR opened by the miner during the mine fire was manufactured in 1991.

### *Other self-rescuers checked*

In an effort to determine if this was an isolated incident, MSHA opened additional SR-100 SCSRs at the mine where the fire occurred and identified three other units containing breathing tubes in an unusable condition.

Subsequently, 328 SR-100 SCSRs originally issued to MSHA inspectors were opened by MSHA and NIOSH at NIOSH’s Pittsburgh

Research Laboratory Dec. 10, 1999. Of these 328, six more were found to have breathing tubes in an unusable condition. To date, 10 SR-100 SCSRs manufactured from 1990 through January 1993 have been found to have unusable breathing tubes.

The breathing tube material was changed in June 1994 from natural rubber to silicone. None of the units manufactured after that date, containing the newer breathing tube material, were found to be in an unusable condition but there has been no finding at this time that the use of natural rubber caused the problem.

The cause of the problem observed on the older breathing tube material has not yet been conclusively determined, NIOSH says.

The manufacturer’s preliminary determination is that exposure to temperatures above the recommended limit of 130 F has caused deterioration of the breathing tubes. The breathing tube is enclosed within the sealed case of the unit, which may not be opened prior to actual use, and there have been no observable differences in the external condition of units found with an unusable breathing tube. Therefore, any CSE SR-100 SCSRs manufactured before June 7, 1994, may contain this critical safety defect and all are subject to corrective action to ensure that they have not been similarly affected.

NIOSH says users of CSE SR-100 SCSR devices manufactured prior to June 7, 1994, should either have the devices retrofitted by the manufacturer, replace each device with a CSE unit manufactured after June 7, 1994, or obtain other approved SCSRs. ■

## Guidelines for on-site drug testing may be accepted

New guidelines under development for on-site drug and alcohol testing may help the tests gain acceptance from government regulatory bodies, says the director of the national organization spearheading the guideline project.

A draft version of the guidelines is scheduled to be released in March, says **David Evans**, executive director of the National On-site Testing Association (NOTA) in Flemington, NJ.

NOTA has been working with others in the field for about six months in an effort to create

standardized training and certification for on-site testing. The on-site, “instant” drug screens are a fairly new development in occupational health, but there are now several manufacturers promoting the test kits. Most of them are promoted for pre-employment testing for alcohol and a wide range of illegal drugs. The test usually is performed with a test card or stick that is dipped in a urine sample, or the sample cup itself contains the testing medium.

The instant tests can be inexpensive, but even if you charge more than for other testing options, many employers are willing to pay for results that come in less than five minutes. The tests originally were developed for use in the criminal justice system in 1990, but then employers and occupational health providers slowly took interest over the next few years. The instant tests are used almost exclusively for pre-employment testing, because that is when the negative test result is most likely, most useful, and needed the fastest.

Evans says NOTA will seek comments on the draft guidelines and then make revisions.

“We expect this to be the basis for certification for on-site test operators,” he tells *Occupational Health Management*. “Some states have required training already, and most operators are trained by the manufacturer. We still foresee most training provided by manufacturers, but we think the guidelines will provide some uniformity and standards that will make on-site testing more reliable.”

The guidelines may make on-site drug and alcohol testing more acceptable to the federal Department of Health and Human Services (HHS), which would in turn make on-site testing an acceptable option for some federally regulated workplace testing. Evans says HHS will not be approving the guidelines because that would require a lengthy regulatory process, but he hopes to get an unofficial blessing from the feds that will give the guidelines some weight in the industry.

The draft guidelines will cover a wide range of topics, from on-site testing procedures and quality control, certifying test results, and chain of custody. The guidelines will include provisions prompted by the federal Department of Transportation guidelines for on-site alcohol testing.

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## Fast-food restaurants can be hazardous for teens

Adolescent workers injured on the job in the restaurant industry are most likely to be working in fast-food establishments, a new study by the National Institute for Occupational Safety and Health (NIOSH) found.

Studying data from a national sample of hospitals over a two-year period, NIOSH estimated that approximately 44,800 occupational injuries to teen restaurant industry workers (ages 14 to 17) were treated in hospital emergency departments across the United States during that time. Of these injuries, an estimated 28,000 or 63% occurred in hamburger, pizza, and other fast-food establishments.

Adolescents working in the restaurant industry, in general, were at six times greater risk of sustaining a work-related burn injury than teens working in any other industry, the study found. Overall, during the period studied, emergency departments treated an estimated 108,000 work-related injuries to teens in all industries.

“As young people prepare to take temporary employment or work extra hours . . . it is important to be aware that adolescents are injured on the job far too often,” says NIOSH Director **Linda Rosenstock**, MD, MPH. “All of us have key roles in preventing these injuries, now and throughout the year.”

In general, the restaurant industry and other retail businesses rank high among U.S. industries for risk of adolescent worker injuries. The retail trades employ many of the nation’s working adolescents.

Because statistics are not available on the number of adolescents working specifically in the fast-food industry, researchers lack key data for determining if these teens are at higher risk proportionally than their counterparts in other segments of the restaurant industry. Even in the absence of those measures, the findings from the new study show a need for better training and other steps to protect young workers, Rosenstock says.

The NIOSH study also found that for teens working in fast-food establishments:

- Although males and females had similar injury rates, risks for injury by task and location differed by gender. Adolescent male employees were more likely to suffer burns, lacerations, and other injuries while performing tasks associated

with cooking, while adolescent female employees were more likely to suffer contusions, strains, sprains, and other injuries while completing tasks related to cashiering and servicing tables.

- Nearly half of all burn injuries involved hot grease. Such injuries can be prevented by providing handles on scrapers and other cleaning tools, providing appropriate gloves, allowing grease to cool before it is moved, and training employees in safe work practices, among other precautions, NIOSH suggested.

- More than half of all fall injuries were related to wet or greasy floors. It is important to use slip-resistant floor materials and to keep floors dry and well-maintained, Rosenstock says.

- By age, 17-year-olds suffered the highest proportion of injuries among teens working in fast food (55%), followed by 16-year-olds (38%).

- The majority of injuries to teen workers in fast food restaurants occurred in hamburger restaurants (52.6%), followed by pizza restaurants (12.6%), and chicken/fish restaurants (11.7%).

[For further information, call (800) 35-NIOSH or (800) 356-4674.] ■

## Archer Daniels Midland agrees to \$650,000 fine

*Company creates new VP for safety and health*

The huge conglomerate Archer Daniels Midland (ADM) has agreed to pay \$650,000 in penalties for safety and health violations at its rail car repair facility in Decatur, IL, and to create a new corporate position of vice president of safety and health. The settlement agreement was announced recently by the federal Occupational Safety and Health Administration.

“We are pleased that ADM has agreed to resolve this matter,” OSHA Administrator Charles Jeffress said in announcing the settlement. “The company has already corrected the most dangerous conditions involving serious hazards to its employees who were working in confined spaces without proper equipment and assistance. Even more encouraging is the company’s willingness to improve safety and health conditions at all its facilities nationwide.”

ADM certified in the settlement that the

conditions in the original violations have been corrected and that the vice president of safety and health will be charged with corporatewide authority and responsibility for monitoring the working conditions throughout the company.

OSHA inspected ADM’s rail car facility following an employee complaint that workers were assigned to clean inside rail tank cars without an attendant present.

The confined spaces standard requires the presence of attendants for the sole purpose of monitoring and protecting employees working in a confined space. OSHA inspectors also found that employees working inside the rail cars were wearing body harnesses without attached retrieval lines. Those lines would allow for emergency rescue of employees without exposing others to the confined space.

### ***ADM rolled out corrections companywide***

As a result of its investigation, OSHA cited the company Dec. 2, 1998, for violations of the confined spaces and respiratory protection standards, as well as inadequate storage of flammable and combustible materials. Penalties of \$1.6 million were initially proposed.

“By correcting the initial problem and creating a new position for oversight on safety and health, ADM has taken a significant first step to improve the safety and health of its workers,” Jeffress said. “That tells us they are serious about eliminating safety hazards while, at the same time, showing their employees that management is committed to their welfare.”

Under the settlement agreement, ADM will establish and maintain a trained internal confined space rescue team at the rail car facility and will conduct annual internal safety and health compliance audits of that facility for the next three years. Results of those audits will be provided to OSHA’s area office in Peoria, IL.

ADM also will retain an experienced independent consultant to conduct “wall-to-wall” audits of the rail car facility in 18 months. Following the audit, ADM will develop and implement a written action plan to respond to the findings of the audit.

The settlement also requires the employer to make available at the rail car facility forms for employees to complete (anonymously if they choose) regarding any safety concerns. ADM will evaluate and consider all concerns or suggestions. ADM also must review all written policies

and procedures regarding confined spaces within 30 days and modify such policies as necessary within 45 days. The vice president of safety and health will issue a corporatewide bulletin to all ADM's facility managers in the United States directing them to ensure their site-specific confined spaces policy, procedures, and practices are in full compliance with the OSHA standard.

ADM's corporate headquarters and numerous facilities are in Decatur. The company, which processes and merchandises agricultural commodities and products, employs about 14,000 workers nationwide. Approximately 45 workers are employed at the rail car repair facility. ■

## Double fatality in tunnel results in \$410,900 fine

After a six-month inspection, the federal Occupational Safety and Health Administration has cited four contractors in connection with the deaths of two workers in a sewage outfall tunnel beneath Boston Harbor and has proposed a total of \$410,900 in fines against those companies.

OSHA cited Norwesco Marine, an underwater diving contractor based in Spokane, WA, which was under contract to remove diffuser bulkheads from the far end of the tunnel. OSHA proposed \$203,500 in proposed penalties for two willful and 11 serious violations.

Black Dog Divers, a Portsmouth, NH, diving contractor that was providing subcontract labor to Norwesco, faces \$25,400 in proposed penalties for 13 serious violations.

Kiewit-Atkinson-Kenny, JV of Winthrop, MA, the general contractor for the outfall tunnel project, faces \$91,000 in proposed penalties for one willful and three serious violations.

The fourth employer, ICF Kaiser Engineers of Massachusetts, of Winthrop, MA, was the project's construction manager. That company faces \$91,000 in proposed penalties for one willful and three serious violations.

On July 21, 1999, employees of Norwesco and Black Dog were removing bulkheads located 9.5 miles into the tunnel when a malfunction occurred in their respirator system. A Norwesco employee and a Black Dog employee who were in a transport vehicle monitoring three employees working

farther out in the tunnel collapsed from insufficient oxygen.

The three other workers changed over to their alternative air supply and were able to exit the tunnel and return to the surface with the stricken workers, but the injured workers subsequently died.

**Ruth McCully**, OSHA's New England regional administrator, says the inspection found that the tunnel lacked sufficient ventilation to provide life-sustaining amounts of oxygen to the workers. McCully explains that the bulkhead removal was part of the completion of the tunnel's construction and, as such, is covered under the OSHA standard which requires that fresh air be provided to workers engaged in underground construction.

A mechanical ventilation system that supplied fresh air to workers had been in place during earlier phases of construction, but was taken out prior to the bulkhead removal and not replaced, McCully says.

Rather than use the required ventilation system, the contractors decided to utilize a respirator system, says **Brenda Gordon**, OSHA area director for Boston and southeastern Massachusetts, whose office conducted the inspection and issued the citations. "This respirator system was woefully inadequate in numerous ways and failed. As a result of these deficiencies, two men died and three others were put at risk."

### *Shared responsibility for ventilation*

Kiewit and Kaiser shared the responsibility for removing the ventilation system and have been cited for a willful violation for the lack of ventilation. Norwesco and Black Dog were issued serious citations for this violation.

Norwesco, which designed and built the respirator system, was cited for a willful violation of the respiratory protection standard for the multiple inadequacies and deficiencies in that system. Those deficiencies included inappropriate or inadequate hoses, hose fittings, gas mixers, and breathing regulators, as well as inoperable or disabled alarms and lack of an in-line monitoring system.

A second willful citation was issued to Norwesco for its failure to remove workers from the oxygen-deficient tunnel after repeated instances of breathing resistance and leakage occurred in the respirators. Black Dog was cited for a serious violation of this standard.

All four contractors were also cited for serious

violations for failing to ensure that adequate illumination was provided for the work area and for failing to provide direct communication between the excursion workers and the surface.

The workers in the tunnel had no direct contact with the surface until they returned to the transport vehicle. ■

## Company fined for trash gate violations

The Occupational Safety and Health Administration has cited Columbia Forest Products, Indian Head Division, for alleged willful, serious, repeat, and other than serious violations of the Occupational Safety and Health Act following the death of a worker at its Presque Isle, ME, production facility. OSHA has proposed penalties against the company, which manufactures hardwood veneers, totaling \$258,200.

According to **C. William Freeman III**, OSHA area director for Maine, the alleged violations were discovered during an inspection initiated in response to a fatal accident.

### *Employee was caught in the gate*

The accident occurred July 15, 1999, on the plant's "8-foot line" — a line of equipment which processes 8-foot logs by peeling 8-foot-long sheets of veneer from rotating logs. Wood scraps fall through a trash gate, located at the bottom of the machinery, which can be rotated to open and close. At the time of the accident, an employee was cleaning scrap wood from beneath the machinery when a second employee, unaware of the first worker's location, activated the trash gate. The first employee became caught between the rotating gate and the machinery's steel beam framework.

"The design and location of the trash gate is such that the only effective way of protecting employees against being struck by the gate when it moves is to shut down and lock out its power source before employees service or work in close proximity to it," Freeman says.

"That was not done here. Nor had employees received training in how to isolate and lock out the valve, which powered the gate, nor had the company conducted a required annual review of its lockout procedures that would have identified

these safety deficiencies," he adds.

"In addition, various moving parts of the veneer machinery and its conveyor's systems were not guarded against accidental employee contact, and guardrails were not provided for employees working at upper levels of the machine to prevent them from falling into the veneer machinery," Freeman says.

He notes that those citations were all classified as willful, the most severe category of OSHA citation, issued only when OSHA believes, based on its inspection, that an employer knew what safeguards were required to protect workers yet apparently elected to ignore them.

"These hazards were neither hidden nor unknown," he says. "At least one other employee had been injured by this gate earlier this year, and three other workers had been injured in similar circumstances on another, similar, production line. In addition, many of the machine-guarding deficiencies cited here are similar or identical to hazards cited by OSHA during a 1995 inspection of this plant."

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### Editorial Questions

For questions or comments, call **Elizabeth Connor** at (404) 262-5457.

Freeman says the company was also cited for several alleged serious violations involving ladder safety, energy control procedures, and other machine-guarding issues.

“This case is a textbook example, as well as the most compelling example, of the necessity for isolating and locking out machines’ power sources before servicing them,” he says. “Proper procedures, equipment, training, and review could have prevented this accident.”

These are the citations and proposed penalties:

- Four alleged willful violations, accounting for \$235,000 of the proposed fines for:
  - failure to shut down and lock out the valve that powered the trash gate;
  - failure to provide updated lockout training to employees and failure to conduct an annual review of company lockout procedures;
  - failure to guard veneer machinery and conveyor systems against accidental employee contact;
  - failure to provide guardrails for employees working at elevations in order to prevent falls into machinery.
- Seven alleged serious violations, with \$23,000 in penalties proposed for:
  - unguarded pinch points on a reel buggy;
  - a metal ladder without uniformly spaced rungs;
  - no documented energy control procedures for the trash gate;
  - lockout devices not indicating employee’s identity;
  - slings not inspected daily and slings’ rated capacities not attached;
  - veneer clippers not adequately guarded;
  - disconnecting means not labeled. ■

## OSHA defends employee fired for reporting hazards

An employee of a residential treatment facility for the mentally challenged in New Paltz, NY, who alleged that he was illegally fired for reporting a hazardous workplace condition, has been vindicated by the U.S. Labor Department. He will have all references to being fired removed from his personnel files and receive \$15,000 in back wages.

According to **Patricia Clark**, New York regional administrator of the Occupational Safety

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and Health Administration, the complainant was employed as a resident manager at Gateway Community Manor in New Paltz, a not-for-profit agency devoted to the training and development of mentally and physically challenged adults.

He was terminated from his position in April, 1998, after he expressed concerns for himself and other staff members regarding exposure to blood-borne pathogens in connection with conducting a blood test on one of the residents.

In a consent judgment entered by the U.S. District Court, Northern District of New York, the defendant, Gateway Community Industries Inc., denied that it violated any provisions of the Occupational Safety and Health Act but agreed to pay \$15,000 in back wages to the complainant, who has moved to California, as well as expunge all references to suspension or discharge from his file.

The court order, signed Nov. 12 by District Judge David Hurd, also requires the defendant to not discharge or otherwise discriminate against any employee for filing a complaint under the Occupational Safety and Health Act.

OSHA enforces whistle-blower protections that prohibit discharging or otherwise discriminating against any employee because he or she filed a complaint or reported unsafe working conditions under the Occupational Safety and Health Act, the Surface Transportation Assistance Act, the Asbestos Hazard Emergency Response Act, and other statutes. ■