

Malter EHS Updates

Volume 6, Issue 4

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Disaster Recovery and Employee Safety

Hurricane Katrina, recent flooding in Atlanta, earthquakes in California, and tsunamis in the South Pacific are all recent reminders of how merciless and unpredictable Mother Nature can be. Those who study climate change have predicted a surge in natural disasters in the absence of restructuring and tightening environmental policy around the globe. When and where the next disaster will strike, whether created by man or by nature, is anyone's guess. For employers, who are obligated to keep their employees safe during working hours, disaster preparedness is critical.

This article outlines employers' obligations to protect employees before, during, and after an emergency and offers recommendations to employers in the following areas: 1) preparing for an emergency; 2) taking action during an emergency; and 3) cleaning up and re-summing business after an emergency.

Preparing for an Emergency

OSHA requires all workplaces with more than 10 employees to develop a written Emergency Action Plan (EAP) to identify and coordinate necessary employer and

employee actions during an emergency. At a minimum, the EAP must include the following elements:

- Means of reporting emergencies (fires, floods, etc.);
- Evacuation procedures and assigned exit routes;
- Procedures to account for all employees following an evacuation;
- Procedures to be followed by employees who must remain behind to attend to critical plant operations before evacuating;
- Rescue and/or medical duties for employees who are assigned and trained to perform them; and
- Names or job titles of people who can be contacted for more information about the plan,

29 C.F.R. § 1910.38. In addition to these required elements, it is recommended that employers also consider including the following in the EAP:

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Special points of interest:

- www.osha.gov
- www.dol.gov
- www.malterassociates.com
- www.nature.org
- www.seyfarth.com

To access links in this newsletter click on the link or "Ctrl + left click" to follow the link.

OSHA's Fall 2009 Regulatory Priorities

The regulations outlined in the U.S. Department of Labor's Semiannual Regulatory Agenda are meant to improve the lives of workers throughout their working careers, including ensuring a safe and secure workplace.

OSHA's major projects to implement the Secretary of Labor 's vision are:

Airborne Infectious Diseases. OSHA is interested in protecting the nation's 13 million healthcare workers from airborne infectious diseases. Most current infection control efforts are intended primarily for patient protection and not for worker protection.

Occupational Injury and Illness Recording and Reporting Requirements. OSHA is proposing to revise its regulation on Recording and Reporting Occupational Injuries and Illnesses (Recordkeeping) to restore a column on the OSHA 300 Injury and Illness Log that employers will check when recording work-related musculoskeletal disorders (MSDs). The MSD column was removed from the OSHA 300 Log in 2003. The Agency will issue a proposed rule in January 2010.

Cranes and Derricks. On October 9, 2008, OSHA issued a comprehensive proposed revision of the Cranes

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Disaster Recovery and Employee Safety (continued)

- The location of the nearest hospital or emergency medical center;
- The type of alarm system used to notify employees of an emergency;



• Procedures for protecting information including procedures for storing or maintaining critical documents and records;

- The location and permissible uses of protective equipment such as portable defibrillators, first aid kits, dust masks, fire extinguishers, etc.
- The location of televisions or radios for further information during a disaster.

Ensuring the development of an effective EAP also requires the employer to train employees to understand their roles and responsibilities under the plan. When conducting this training, the employer must address literacy, language, and cultural barriers to ensure that the training is effective. Employers also must document the training.

Responding to an Emergency

Communication during an emergency is critical to maintain organization and prevent panic and injuries. For example, not all emergencies require an evacuation of the workplace. In some cases, such as flooding, storms, or the release of biological or chemical agents, staying indoors is safer for employees. The first questions most people ask during an emergency is "should I stay or should I go?" Employers can guide employees as to the appropriate course of action by having an alarm system that emits a different signal for "evacuate" emergencies than for "stay put" emergencies. Alternatively, the alarm

system could be programmed to give specific verbal instructions following the initial alert. Employers must consider the needs of disabled employees (e.g. those who are hearing or visually impaired) in selecting any alarm system.

Employers should have an effective means of communicating with employees about the following during an emergency:

- Whether to evacuate or stay put;
- How and where to get information about the emergency itself;
- What areas of the building to avoid;
- How and when it is safe to return to the work area; and
- How and when it is acceptable to contact family members and loved one.



Picking Up the Pieces

Once the proverbial dust settles after an emergency, hazards to employees can still remain. For example, downed power lines in a flooded parking lot can injure or kill employees leaving the building after the storm passes. Hazards are even greater for employees who are tasked with cleaning up after an emergency. Employees who are actually performing clean-up work after a flood, storm, earthquake, or other disaster may be exposed to one or more of the following hazards:

- Exposure to hazardous materials

such as asbestos, mold, lead, or chemicals;

- Downed power lines and trees;
- Heat stress;
- Confined spaces;
- Blood borne diseases or other contagions such as West Nile Virus; and
- Structural destabilization.

OSHA has developed specific standards to address many of these hazards. For example, OSHA's Hazardous Waste Operations and Emergency Response standard, 29 C.F.R. § 1910.120, applies to employees who are performing clean-ups of hazardous waste or other hazardous materials. OSHA's asbestos and lead standards require employers to evaluate the level of exposure to employees, provide appropriate protective equipment, and, in some cases, conduct regular monitoring of air quality in the work area. In addition to these specific standards, other more general requirements will also come into play. For example, OSHA's welding and cutting Lockout/Tagout, confined space entry, and fall protection programs may come into play, even if no OSHA standard specifically addresses the type of clean-up activity taking place. Finally, as always, OSHA's General Duty Clause requires employers to provide a workplace free from recognized hazards. Accordingly, even if no OSHA standard applies to a particular activity or hazard, employers may still face citation liability if the hazard is reasonably likely to cause serious injury or death and there is a feasible means of abatement to correct the hazard. Before allowing employees to commence any kind of clean-up work then, the employer must conduct a job hazard analysis (JHA) to identify and address potential hazards.

It is important to note that even employers who hire outside con-

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*Holiday Greetings and Best Wishes for the
New Year from all of us at
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Disaster Recovery and Employee Safety (continued)

tractors to clean up after a disaster must recognize their obligations for worker safety. OSHA's "multi-employer worksite" doctrine allows the agency to issue citations not only to the employer whose employees are actually performing the clean-up work, but also to other employers who either control the means and methods of work of the employees.

Conclusion and Recommendations

It is imperative that employers develop and implement organized and clearly communicated procedures for responding to a disaster. A well-planned and executed emergency response program will help prevent panic, thereby minimizing employee injuries and damage to property. We recommend that employers consider the following:

- Develop an EAP that covers a wide variety of potential emergencies and gives employees clear guidance on what to do in each scenario;
- Be cognizant of hazards employees may face even after the immediate danger has passed;
- Train employees in evacuation plans and other emergency response procedures;

- Conduct a job hazard analysis and review applicable OSHA standards before assigning any employees to perform clean-up work;
- Evaluate the safety record of any independent contractor hired to perform clean-up work, including investigating the contractor's worker's compensation history, its OSHA logs, and its history of citations from OSHA.

Thank you to Mark Lies and Elizabeth Leifel Ash of Seyfarth Shaw LLP for providing this informative article. Questions regarding this article should be directed to Mr. Lies via email at: mlies@seyfarth.com. For more information regarding Seyfarth and Shaw LLP please visit their website at: www.seyfarth.com.

Let Malter Associates assist you with reviewing and updating or establishing your Emergency Action Plan and training employees to fully understand their roles and responsibilities within the plan

If you would like our assistance give us a call at 815—363-5512 or contact us via our website at:

<http://malterassociates.com/malter/contact.aspx>

OSHA's Fall 2009 Regulatory Priorities (continued)

and Derricks standard. OSHA plans to issue the final rule in July 2010.



Crystalline Silica. This rulemaking will update existing permissible exposure limits and establish additional provisions to protect workers from exposures to respirable crystalline silica dust. OSHA plans to publish a Notice of Proposed Rulemaking in July 2010.

Combustible Dust. Deadly combustible dust fires and explosions can be caused by a wide array of materials and processes in a large number of industries. While a number of OSHA standards address aspects of this hazard, the Agency does not have a comprehensive standard that addresses combustible dust. OSHA is engaged in the early stages of rulemaking to develop a combustible dust standard for general industry. OSHA published an Advance Notice of Proposed Rulemaking in October 2009 and is preparing to hold stakeholder meetings in December 2009.



Hazard Communication Standard - Global Harmonization System of Classification and Labeling of Chemicals.

OSHA and other U.S. agencies have been involved in a long-term project to negotiate a globally harmonized approach to informing workers about chemical hazards. The result is the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). OSHA is revising its Hazard Communication Standard to make it consistent with the GHS. The new standard will include more specific requirements for hazard classification, as well as standardized label components which will provide consistent information and definitions for hazardous chemicals and a standard approach to conveying information on material safety data sheets. On September 30, OSHA published the proposal and is preparing for hearings in March 2010.

Beryllium. Chronic beryllium disease occurs when people inhale beryllium dust or fumes and can take anywhere from a few months to 30 years to develop. OSHA is developing a rule that would update the Permissible Exposure Limit and establish additional provisions to protect exposed workers. OSHA will conduct a peer review of the health effects and risk assessments and plans on initiating the peer review in March 2010.

Diacetyl. Employee exposure to diacetyl causes obstructive airway disease, including the disabling and sometimes fatal lung disease called bronchiolitis obliterans or "popcorn lung." OSHA is currently working on the proposed regulatory text and developing the health, risk and feasibility analysis. The Agency plans to initiate a peer review of the health effects and risk assessments in October 2010.



Walking / Working Surfaces - Subparts D & I. This proposed standard will update OSHA's rules covering slip, trip and fall hazards and establish requirements for personal fall protection systems. The rule affects almost every non-construction worker in the United States. This is an important rulemaking because it addresses hazards that result in numerous deaths and thousands of injuries every year. The proposal is expected to prevent 20 workplace fatalities per year and over 3,500 injuries serious enough to result in days away from work. The Agency plans to issue a proposal in March 2010.

To read more about OSHA's Fall 2009 Regulatory Priorities click on or go to the following link:

<https://www.osha.gov/dsg/2009regulatory-priorities.html>. To read more about the Department of Labor's Semianual Regulatory Agenda click on or go to the following link:

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=21284

MALTER ASSOCIATES can assist you in your efforts to ensure the safety and health of your workers by conducting mock OSHA audits, providing training and education; and encouraging continual improvement in workplace safety and health through the development of proactive safety behaviors and performance metrics.

If you would like our assistance give us a call at 815—363-5512 or contact us via our website at:

<http://malterassociates.com/malter/contact.aspx>



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"Providing innovative solutions to meet today's complex challenges in Health and Safety."

Malter Associates, Inc.

We at Malter Associates, Inc., hope you have enjoyed this issue of Malter Associates EHS Update. We are always interested in what you have to say regarding our services. Please email us at: sroman@malterassociates.com with your feedback. Our Quarterly Update will be filled with news that will benefit our customers and their employees. If you have a topic that you would like to see covered in our next edition please feel free to send your request to: sroman@malterassociates.com This Update and future Updates will be sent to you free of charge. If you would like to contact us regarding a more personalized version for your employee's benefit you may contact David Malter at 815-363-5512.

If you wish to be removed from our email list, please email sroman@malterassociates.com and write "remove" in the subject line. We will remove your name from our list within ten days. . This newsletter provides summaries of OSHA standards-related topics. This newsletter is not meant to determine compliance responsibilities, set forth in the OSHA standards themselves and the Occupational Safety and Health Act of 1970. Policies and procedures established by your facility especially those designed for certain conditions or circumstances should always be closely followed. This newsletter is provide as supplemental information.

OSHA Publishes Weekly Reports of Fatalities and Catastrophes

In support of President Obama's Open Government Directive, OSHA is systematically publishing employer-specific information about occupational fatalities on its Web site. Employers and workers can use this information to help assure worker safety and health in their own workplaces by taking steps to identify dangerous conditions and prevent future accidents.

Click on or go to the following link:

https://www.osha.gov/dep/fatcat/dep_fatcat.html

to view a table providing links to weekly summaries of fatalities and catastrophes resulting in the hospitalization of three or more workers.

Employers must report these incidents to OSHA within eight hours. OSHA investigates all work-related fatalities and catastrophes. Once the OSHA investigation is complete, the summary reports will be updated with webpage links to their corresponding inspections, which lists citation information.

OSHA's Cold Weather Caution

OSHA is reminding employers and employees to take necessary precautions to prevent and treat cold-related health problems, especially those particularly susceptible to the effects of cold. Here are a just a few ways employers can help protect their employees in cold environments:

- Recognize the environmental and workplace conditions that may be dangerous.
- Train workers about the signs and symptoms of cold-induced illnesses and injuries and how to assist.
- In extreme cold, allow employees to take frequent short breaks in warm and dry shelters.
- If feasible, use the buddy system - work in pairs so employees can recognize danger signs and take action.

OSHA's *Cold Stress Pocket Card* is available online. For free copies of this laminated card in English (click on or go to the following link: <http://www.osha.gov/Publications/osha3156.pdf>) or Spanish (click on or go to the following link: <http://www.osha.gov/Publications/osha3158.pdf>)

For more information on Cold Stress visit OSHA's website:

<http://www.osha.gov/SLTC/emergencypreparedness/guides/cold.html>