

CONTENTS

Compliance Report3

Today's Behavior-Based Safety: *What's Changed? What's in It for You?*3

Promoting Healthy Eating on the Job: *Food for Thought That Could Boost Health in '07*5

Minor Activity in Current Regulatory Agenda12

News

History of Safety Problems Revealed at Texas Nuke Plant2

Study Finds Racial Disparity in Disability2

ASSE Announces New Ergonomics Practice Specialty2

Just Say 'Ahhhh.' Spa Targets Corporate Stress2

More Prudent Picking Can Save Backs, Expert Says12

Trainer's Corner7

New Year's Resolution: Keeping Safety a Top Priority7

Washington Watch8

DHS Urges Resolution: To Be Prepared in 2007; New Guidance from OSHA on Hurricane Recovery, Response; FRA Proposes Increase in Fines for Violating Rail Regulations; more

From the States10

OR: Employers Must Now Report Auto Fatalities Within 8 Hours; NV Insurance Group Fighting Against Work-Comp Fraud; more

BLR[®]
BUSINESS & LEGAL REPORTS
Making your job easier!

OSHA Seeks Comment on Ongoing Improvement Process

OSHA is seeking comments until February 20 on phase three of its Standards Improvement Projects (SIPsIII). This is the third in a series of rulemaking actions to improve and streamline OSHA standards and lessen regulatory burdens without reducing employee protections.

With SIPsIII, OSHA says it wants to improve standards by revising confusing, outdated, duplicative, or inconsistent requirements. The changes will help employers better understand their obligations. The anticipated outcome, according to the agency, is to increase compliance, ensure greater

safety and health for employees, and reduce compliance costs and paperwork.

Changes to 11 standards are being considered. The agency is also seeking comments on updating medical testing and industrial-hygiene sampling requirements as part of SIPsIII, and OSHA is considering ways to make training requirements in health and safety standards more consistent. The first two SIPs initiatives were in 1998 and in 2005. Comments may be submitted to <http://ecomments.osha.gov>. (See *Federal Register* Digest elsewhere in this issue.) ^[140, 177]

Employers Fired Up About Snuffing Out Smoking

A new survey by the National Business Group on Health reports that employers ranked smoking among their top three employee-health priorities, along with high blood pressure and obesity. As well, 82 percent of those surveyed said they should take steps to help employees quit smoking. Most participating employers believe establishing smoke-free workplaces is the best way to encourage smokers to quit. However, smoking employees surveyed said they think smoking-cessation benefits are the best strategy employers could offer.

Another key finding of the survey of 508 employers and 510 employees is the amount of lost productivity associated with smoking. Nearly half the smokers reported taking between three and six smoke breaks per day. More than two-thirds said these last between 5 and 15 minutes each.

The National Business Group on Health has developed a practical, step-by-step tool for assessing and implementing the best preventive health benefits—including smoking cessation. There's information at <http://www.businessgrouphealth.org/prevention/purchasers/index.cfm>. ^[157, 175]

Supervisor Charged in Forest Service Fatality

A Spokane television station reports that a criminal complaint has recently been filed against a crew boss in a forest fire that killed four U.S. Forest Service (USFS) employees in July 2001. According to KXLY.com, a federal prosecutor has identified Ellreese Daniels as

the individual responsible for the four deaths in the Thirty Mile blaze near Winthrop, Washington. According to the news report, the charges include four counts of involuntary manslaughter.

(continued on page 2)

(continued from page 1)

A crew led by Daniels relieved an overnight crew fighting the raging wildfire on July 10. Daniels reportedly took two crews up the canyon where they were trapped by the fire and forced to retreat. The fire ultimately jumped the river and burned two squads of firefighters.

In the criminal complaint filed in U.S. District Court in Spokane, Daniels was characterized as “grossly negligent ... in a reckless disregard for human life ... knowing of circumstances [that] might place the lives of firefighters in danger.” OSHA issued serious and willful notices in connection with the incident. [34, 61, 201]

History of Safety Problems Revealed At Texas Nuke Plant

An employee complaint has led to investigations that suggest a years-long pattern of accidents and safety violations at the Pantex nuclear weapons plant near Amarillo, Texas. According to a report by Cox News Service, in one instance, a tool supporting a nuclear warhead gave way when a worker removed the wrong part and the weapon nearly fell to the ground.

The U.S. Department of Energy, which operates the facility, reported in April 2005 that a “negative trend” might be developing at the plant. That report was issued following the first in a series of safety violations for which the plant’s operator, BWX Technologies, was cited and fined.

The \$100,000 fine was announced in November 2006. This was also around the time Pantex employees wrote a letter expressing concern about conditions they believed could lead to an accident “almost too awful” to address. Cox reports that the employee letter is being reviewed by BWX and the federal government. [95, 131.8, 186]

Study Finds Racial Disparity in Disability

Authors of a St. Louis University study found differing workers’ compensation settlements for groups of black and white employees suffering from back pain. Their research was published in the December issue of the *Journal of Pain*. Authors Dr. Raymond Tait and Dr. John Chibnall reviewed the cases of 1,500 Missouri workers whose claims for back pain were settled between January 2001 and June 2002. The workers were questioned 21 months after their settlements.

According to Tait, whites were four times more likely than blacks to have surgery for lower-back problems. And those who had surgery received larger settlements for their injuries.

The study authors also said they were surprised to learn that people who receive higher disability ratings for job-related back injuries don’t necessarily fare worse over time than those who get lower ratings. That is, they found that people with higher disability ratings, suggesting more impairment, did not necessarily have worse levels of function than those with lower ratings. [15, 41, 157, 207]

ASSE Announces New Ergonomics Practice Specialty

The American Society of Safety Engineers (ASSE) has announced formation of a new ergonomics branch. Its purpose is to enhance the professional development of ASSE members and to address the rising number of injuries related to poor ergonomics. ASSE hopes to create a “knowledge-exchange platform to capture the membership’s body of knowledge and to develop a delivery system by which members will have easy access to this knowledge.”

The new branch will be co-sponsored by ASSE’s Industrial Hygiene and Engineering Practice Specialties. ASSE leaders believe it should ultimately lead to discussion and design of new ways to reduce soft-tissue injuries. For more information, visit <http://www.asse.org>. [13.25, 51]

Just Say ‘Ahhhh.’ Spa Targets Corporate Stress

ESSpa Kozmetika Skincare, a Pittsburgh spa, has introduced a corporate spa program to help combat workplace stress. The business notes that depression, absenteeism, and other health problems are on the rise as employees are asked to work more and longer than ever before. Health insurance is costly and addresses actual illness and “besides, doctor visits are rarely considered as fun and relaxing as a trip to a spa,” ESSpa literature states.

ESSpa CEO and Director Eva Sztupka says her spa’s corporate membership is intended to help business owners reduce their own pressures and those of their employees. She offers a flat fee program, which permits a business owner to send any two people (employees, clients, recruits, etc.) per week to the facility for a year.

Sztupka points out that following the dot-com bubble burst, employers cut benefits like on-staff chefs and other fancy amenities. Now, she says, the goodies are gone and the stress remains. Offering corporate spa benefits can help businesses realize a competitive advantage in employee recruitment, retention, and productivity. [180]

(more news on page 12)

Robert L. Brady, J.D., *Publisher*; Margaret A. Carter-Ward, *Editor in Chief*; Judith A. Ruddy, *Managing Editor*; Eleanor McKernan, *Editor*; Evelyn Sacks, *Associate Editor*; Corinne Weber, Sandra Fisher, *Proofreaders*; Darlene Francis, *Product Manager*; Rebecca MacLachlan, *Graphic Designer*; Sherry Newcomb, *Layout Production*. Contact Customer Service for reprints at 800-727-5257, ext. 2301. OSHA Compliance Advisor is issued by BUSINESS & LEGAL REPORTS, INC. Editorial and business offices are located at 141 Mill Rock Road East, P.O. Box 6001, Old Saybrook, CT 06475-6001. ©2007 Business & Legal Reports, Inc.

Issued 24 times per year. Subscription price: \$349.95 annually. Periodicals postage paid at Old Saybrook, CT 06475-9998.

Authorization to photocopy items for internal or personal use, or the internal or personal use of specific clients, is granted by Business & Legal Reports, Inc., provided that the base fee of U.S. \$0.50 per copy plus U.S. \$0.50 per page is paid directly to Copyright Clearance Center, Customer Service, 978-750-8400, or check CCC Online at: <http://www.copyright.com>. For those organizations that have been granted a photocopy license by CCC, a separate system of payment has been arranged. ISSN #0896-9949.

Compliance Report

Today's Behavior-Based Safety:

What's Changed? What's in It for You?

Behavior-based safety, or BBS, is nearly 30 years old, with the theories behind it dating back several decades. Thousands of workplaces have implemented the accident-reduction strategy, which has traditionally centered on employee observation and feedback to ensure safe work practices. BBS, like any worthwhile management system, has grown and changed over the years.

That evolution is the subject of this Compliance Report. It tells the story through two industry pioneers who have both made changes in their approaches, and a large contractor who's proven that BBS can succeed in the complex environment of construction. You may wish to compare your experiences with theirs, or use their advice to create or improve your own BBS initiative.

Dr. Scott Geller, Safety Performance Solutions, Inc.

Dr. Scott Geller is one of the founders of the behavior-based safety movement and says he coined the term in 1979. Geller is founder and senior partner in the consulting firm Safety Performance Solutions (SPS). As well, he is Alumni Distinguished Professor at Virginia Tech. In the late 1970s, Geller was working for Ford, where he helped the automaker get employees to make a huge turnaround in changing a significant safety behavior—using seat belts.

As Geller recalls: "The people at Ford said, 'You've been so successful with this, how about coming inside and working on employee safety?' And that's how behavior-based safety started." Over the years, the BBS consulting practice he developed became one of the largest and most well-known, with a roster of clients that includes Coca-Cola, Eli Lilly, Westinghouse, Kraft Foods, and many other top corporations. As the

company grew, its partners were primarily individuals who had studied with Geller at Virginia Tech.

He credits the success of the behavior-based approach to its emphasis on employee involvement: "This was the first time that line and hourly workers got involved. Safety had always been about following rules and regulations, but now for the first time employees felt they could really do something." Another factor in the popularity of the method was the separation of behaviors from attitudes, Geller says. "Just because someone was doing something wrong did not mean that they were a bad person with a bad attitude." That was a significant distinction at the time.

Key Principles

The SPS method is rooted in a number of key principles. Among them is the focus on behavior and defining the problem in behavioral terms. Another is understanding that prior conditions direct behavior, but consequences motivate behavior. Geller also emphasizes a belief in positive, rather than negative, consequences. This translates into a strong emphasis on avoiding failure. As well, the process is rooted in the scientific method. That means practitioners define and observe a problem, intervene, then test to see if the intervention has worked. If the behavior is not changing, something else needs to be tried and tested.

As BBS and Safety Performance Solutions grew, Geller became aware that the method suffered from some misperceptions. These were especially articulated by some labor leaders who faulted the BBS method for placing blame on workers when, labor believed, management actions, equipment, and conditions were in fact the cause of accidents.

"They [labor] missed the fact that we weren't just talking about employee behavior, but we were also talking

Lean Behavior- Based Safety

According to ProAct Safety, "*Lean BBS is a modified implementation of traditional BBS that utilizes aspects of performance and quality systems to reduce the typical internal resource requirements of a BBS process. Lean BBS focuses on leveraged use of resources. This leaner model is as easy to implement as the packaged programs and as powerful as the original versions of BBS.*"

ProAct cites advantages to the evolved process, including:

- ✓ Lower internal resource requirements,
- ✓ Lower cost,
- ✓ Shorter start-up time,
- ✓ Less disruption to operations, and
- ✓ Less resistance from workers and unions.

about management behavior." Geller acknowledges that some consultants who helped companies establish programs did not see a role for management. To address these and other concerns, Geller developed an evolution of the method, which he calls people-based safety (PBS).

People First

According to Geller, who has just written a book on the topic, people-based safety includes much of the focus and steps involved in BBS, but it goes further. The people-based process emphasizes the human dynamic more than the original process. For example, PBS emphasizes that those involved need to consider the feelings, attitudes, and perceptions of those on the receiving end.

The refreshed method is based on the acronym ACTS, which stands for "acting, coaching, thinking, and seeing." According to Geller, the first two steps are behavior-based, and the last two are oriented toward the individual. Geller says there's a

(continued on page 4)

greater emphasis on improving self perception. The idea is that making safer, smarter choices can make people feel better about themselves.

“It’s the difference between mindful influence vs. mindless habit,” explains Geller. He wants those influenced by people-based safety to wear their seat belts or safety harnesses not because failure to do so will result in a scolding or a reduction in pay. Rather, he wants individuals to perceive themselves as safety-minded people who understand the consequences of their actions.

Terry Mathis, ProAct Safety

Terry Mathis is co-founder of the Houston-based consultancy ProAct Safety. Like Scott Geller, Mathis has helped some of the nation’s leading employers reduce incidents through behavior-based approaches. ProAct clients include familiar names like Starbucks and Georgia Pacific, as well as employers in the petrochemical industry and many in the public sector, including NASA.

In response to changes in the business climate in recent years, Mathis has altered the behavior-based process his firm offers. One of these factors is the smaller number of people around to conduct observation and feedback compared with the past. In today’s leaner manufacturing environment, there are far fewer “warm bodies” available to participate. What’s more, Mathis believes it may not be preferable to involve everyone at a company in the process, as was common throughout the 1980s and 1990s.

Not only are all workers not equally able or equipped to participate, but the demands of the tasks involved, including leadership, and behavioral analysis, may outstrip their training. Other problems with traditional BBS, according to Mathis, include labor dissatisfaction, the relatively slow start-up time, and the costs of running large-scale programs.

Leaner, Not Meaner

Mathis believes that ProAct is moving in a direction that’s “in touch

with the reality of the business world.” He believes some proponents of BBS have moved toward more psychological strategies, while others continue to be rooted in the behaviorism of their origins. Some programs are so large that they are “resource hogs,” which is hard to justify in today’s cost-conscious business world. Mathis says: “The world is ‘leaned down,’ with most companies doing well to run the plant, much less spare people to be on a team and do observations.”

People-Based Safety

Dr. Scott Geller of Safety Performance Solutions describes his newest offering like this: *“People-based safety applies the psychology of human dynamics to enrich the culture in which people work, thereby improving job satisfaction, work quality and production, interpersonal relationships, and occupational health and safety. Most organizations that have implemented a behavior-based observation and feedback process have made great strides in achieving an injury-free workplace. However, the typical behavior-based approach does not address the person domain of safety, including people’s attitudes, beliefs, and personalities.”*

In pursuit of a leaner BBS, Mathis and his colleagues looked carefully at the process. Their goal was to identify unnecessary steps and activities that could be eliminated without sacrificing effectiveness, similar to the process involved in lean manufacturing. They came up with a number of alterations, including smaller teams, shorter checklists, and an emphasis on “quick wins, not moving a whole culture.” ProAct Safety has developed what it calls “rapid cycle improvements.” These seek to achieve success in a particular area or in response to a particular problem, rather than to reshape an entire workplace culture.

Other alternatives to traditional observation and feedback include:

- Sweep observations, which are relatively quick, large-scale audits to identify unsafe behaviors.
- Observation without coaching. An observer looks for items on a

checklist and shares them, but does not necessarily deliver coaching.

- Focusing on a specific group, such as new employees.
- Use of small teams of just a few observers. Fewer observations are conducted, but the focus is on problem areas, and the method saves money over the cost of operating large teams.

As an example of how this altered BBS process works, Mathis points to work ProAct has done with Sandia National Laboratories in New Mexico. Sandia is a Department of Energy-owned research facility that works on technology-based solutions to enhance national security. Says Mathis, “When you walk into Sandia National Labs they have 9,000 people and a dozen different cultures. And some are incredibly resistant to change.” So instead of trying to influence the entire organization, his team looked for a “beachhead”—a single division where a behavior-based process could be most successful.

The unit selected housed about 1,300 groundskeepers, plumbers, and carpenters and was the source of about 70 percent of the labs’ accidents. “So by addressing 1,300 people, we reduced overall accidents by 50 percent and we didn’t have to make radical changes. The old [BBS] model says, ‘Let us draw you a picture of utopia.’ The new model says, ‘Let’s find a quick win where we can make a difference,’” explains Mathis.

Linbeck Construction

Linbeck Construction is a Houston-based general contractor that specializes in construction of complex, often technical facilities. The company started in business in 1938 and operates regionally with about 250 full-time employees and others as needed. Linbeck has had a behavior-based safety process in place for about 4 years. The journey, and lessons learned, were the subject of an interview with Manuel Colaco, Linbeck’s director of risk management, and Ches Bromley, a job superintendent active in the process.

Colaco’s job involves maintaining safety statistics. “In 2002,” he recalls, “the statistics were strong but they

were not improving in the way our culture wanted to improve. So late that year I and another of our senior project superintendents attended a seminar on BBS." At the time, few large contractors had successfully implemented behavioral programs, but that didn't diminish Colaco's enthusiasm. He talked with his CEO, gained support, and began working with consultants at Quality Safety Edge (QSE), an international firm based in Texas. "We wanted a bottom-up program, something that people in the field would buy into, something they helped develop," he says.

To that end, a QSE specialist helped create a design team of Linbeck employees who would, with the consulting group's help, design a BBS program tailored to workers constructing a new branch of the Federal Reserve Bank in Houston. Colaco says creating programs that fit the needs of individual projects and making participation totally voluntary are hallmarks of Linbeck's BBS program.

The design teams, led by hourly workers, determine details of the program based on the environment and tasks. They also target the ideal percentage of employees who may participate. An initial goal for 50 percent of employees to conduct one observation per week might increase over time to 75 percent conducting three per week.

As Linbeck's BBS initiative evolved, one of the best parts for Colaco was no longer having to play safety cop. Now, employees observe and watch out for one another. Observations are carried out with the emphasis on positive interaction between the observer and the observed. And when hazards are observed, the goal is to quickly reduce or eliminate them. Observation sessions are kept short and the forms are not overly complex. Colaco says

he uses the data from the completed observations in toolbox safety talks.

Making It Measurable

One focus of the Linbeck program is giving observers quantifiable measures to help assess if a behavior they're observing is risky. For example, the checklist category for ladders and scaffolds offers detailed descriptions of how to determine if the feet of a scaffold are on a level surface, and the proper ratio of ladder-to-task height. In the area of electrical safety, checklists offer assistance with how to determine if a power cord is compromised, the lockout-tagout status of electrical panels, and proper use of power tools. Many of these definitions and descriptions are maintained in a database and used on the checklists to give observers objective criteria.

These and other program features have yielded exceptional results on Linbeck projects. One of the most talked about is a long-term job still under way at the Co-Cathedral of the Sacred Heart, a new European-style cathedral that will serve as the headquarters for the Galveston/Houston Catholic Archdiocese. Subcontractors have gotten in on the act, too, establishing their own BBS systems based on the Linbeck model. The contractor has also seen excellent results on smaller, short-term projects, demonstrating that BBS can be successful on smaller, temporary jobsites. At jobs where only one employee is present, he or she is trained in self-observation.

Employees report improved safety at home as well as on the job as a result of their involvement in the BBS program. At one Linbeck jobsite, the total incident rate dropped from 30 to 6.5; that rate was sustained for at least 15 months following implementation. Another site reduced its already-low incident rate of 5.0 to 3.0. At the cathedral, now more than 50 percent complete, there have been

Behavior-Based Safety

Terry McSween, founder and CEO of the firm Quality Safety Edge, offers this definition of behavior-based safety: "*Behavioral safety ... is simply the use of behavioral psychology to promote safety at work and at home. Behavioral safety typically involves creating a systematic, ongoing process that clearly defines a finite set of behaviors that reduces the risk of injury within an organization, collects data on the frequency and consistency of those behaviors, and then ensures feedback and reinforcement to ensure support of those behaviors. In a behavioral process, employees usually conduct observations and provide feedback on safety practices within their work areas.*"

no accidents on the job since March 2005, with more than 62,000 hours of work completed.

Beyond the numbers, Colaco and Bromley say behavioral safety has created a "family-like atmosphere" with residual benefits. "Now our people know it's OK for two guys to talk about safety," they say. Colaco also points out that in the days before BBS, it was not common for people to talk across trades. But that's changed, with more positive interaction among the various tradespeople.

Linbeck officials say the program reinforces strong corporate values including collaboration. Workers are better able to focus on collective goals like delivering quality work on time, on budget, and done safely.

Is BBS for YOU?

Change can be invigorating for individuals. The same can be said for safety processes, according to those interviewed for this report. They have not been afraid to evolve and grow in their approaches to behavior-based safety. What about you? [15.5, 29, 30, 45]

Promoting Healthy Eating on the Job:

Food for Thought That Could Boost Health in '07

It's difficult to control, or even influence, the many factors that affect employee health. But some employers are finding they can make a difference

when it comes to the food their workers eat on the job, especially if they operate cafeterias, canteens, or vending machines. The experts

suggest that healthy-eating programs can be an excellent step to promoting overall healthy lifestyles.

Caring about what your workers consume is not only the right thing

(continued on page 7)

OSHA Regulatory Agenda

(from the December 11, 2006 *Federal Register*)

Subject—29 CFR	ANPRM	NPRM	Final Action
----------------	-------	------	--------------

[Prerule Stage]

Beryllium, Occupational Exposure to—1910—complete SBREFA panel report 3/07			
Crystalline Silica, Occupational Exposure to—1910, 15, 17, 18, 26—complete peer review of risk assessment by 4/07			
Emergency Response & Preparedness—1910—request info 5/07			
Excavations—1926.650-652—Sec. 610 review due to end 12/06			
Hazard Communication—1910,-15, -17, -18, 26, 28 review ANPRM comments by 2/07	9/12/06		
Ionizing Radiation—1910.1096—further info sought; stakeholder meeting 4/07			
Lead in Construction—1926.62—end review 3/07			
Methylene Chloride—1910.1052—610 review to begin 12/06. end 6/08			
Power Presses, revision and update of standards—1910.217	12/06		
Standards Improvement, Phase III [*]	12/06		
Supplier's Declaration of Conformity—comment review by 12/06			

[Proposed Rule Stage]

Confined Spaces (Construction)—1926.36—SBREFA report done	3/05	2/07	
Cranes & Derricks—1926—negotiated rulemaking ended 7/30/04; SBREFA report completed 10/17/06		10/07	
Explosives—1910.10—standard update		3/07	
Fire Protection (shipyards) —1915, additional updates issued by NFPA after previous direct final rule		10/17/06	
Nationally Recognized Testing Laboratories—CFR[x] revised approach to fee schedule		4/07	
Shipyards Employment (working conditions)—1915 Subpart F		1/07	
Standards Improvement—1910, 15, 17, 18, 26—update to national consensus standard. Withdrew earlier final rule 2/18/05; final action 9/13/05, effective 11/14/05. New NPRM and Final Rule:		11/24/04 12/06	12/06
Walking/Working Surfaces—1910 Subparts D, I + Personnel Fall Protection Systems x		(4/90) 10/07	

[Final Rule Stage]

Electrical Power Transmission & Distribution, Protective Equipment—1910, 1926—public hearing comment period ended 7/14/06		6/15/05	7/07
Electrical Standards—1910, Subpart S—revise, update	4/5/04	1/07	
Employer Payment for Personal Protective Equipment—1910, -15, -17, -18, -26—limited reopening 7/08/04		3/30/99	5/07
Longshoring & Marine Terminals—1917, -18—reopened VTL record; public hearing held 7/29/04		(6/94) 9/16/03	6/07
Procedures for Handling Discrimination Complaints under Federal Employee Protection Statutes—24—interim final rule comment period to end 3/07			interim final rule 2/07

[Long-Term Actions]

Hearing Conservation, Construction—1926.52—next action still [*]	8/5/02		
--	--------	--	--

[Completed Actions]

New York State Plan Certification—29 USC 667			8/16/06
Respiratory Protection—1910.134 added assigned protection factors and amendments to final rule		(5/82) 6/06/03	11/12/06

SBREFA= Small Business Regulatory Enforcement Fairness Act; boldface = new [*] = undetermined
See the corresponding article "Minor Activity in Current Regulatory Agenda," on the bottom of page 12.

Trainer's Corner

New Year's Resolution: Keeping Safety A Top Priority

With the arrival of the new year, it's a good time to reflect on the success of your safety program during the past year. Was safety a top priority for everyone in your organization? Did you manage to meet objectives, or do you perhaps need to undertake some new initiatives in 2007?

Hunt down and eliminate hazards.

One initiative that you might consider is to turn the spotlight on workplace hazards. For example:

- Take a second look at the layout and condition of work areas.
- Examine tools and equipment to make sure they are safe for employees to use (and review maintenance schedules to make sure they stay that way).
- Observe the way employees work (you might be surprised at how many unsafe behaviors you observe).
- Check to make sure that appropriate personal protective equipment (in good condition) is readily available to all workers.
- Identify potential fire, chemical, electrical, and other hazards throughout your facility and take action to eliminate these risks.

Emphasize training. Employee training is probably the most

important aspect of any successful safety program.

- Check OSHA standards for training requirements (many regulations have very specific requirements).
- Make sure training sessions are interactive and provide plenty of opportunities for questions and discussion.
- Take advantage of available technology to enhance and expand training options.
- Provide lots of demonstrations and hands-on experience during training sessions.
- Don't forget to provide training for supervisors and managers, too (especially when new regulations, policies, equipment, processes, etc., are introduced).

Encourage employee participation.

If employees at all levels in the organization are actively involved in promoting workplace safety, your safety initiatives for 2007 are much more likely to achieve objectives and improve overall safety.

- Encourage employees to make suggestions about how to improve workplace safety (and then be sure to give their suggestions serious consideration!).

What's more, the camaraderie that comes when employees band together for a cause like improving their health can boost morale and lead to other positive changes.

Nibble on This

Carolyn Somerville of The Wellness Institute of Seven Oaks General Hospital in Manitoba, Canada, suggests several ways to promote healthy eating at work. Among them:

- Replace sweetened beverages in vending machines with bottled water and juice. Make similar substitutions for candy and sweets—e.g., pretzels and health bars.

Why It Matters...

- ✓ The Bureau of Labor Statistics reports that there were more than 4 million nonfatal occupational injuries and illnesses reported in 2005 (the most recent year for which statistics are currently available).
- ✓ Almost 1.3 million of those cases involved days away from work.
- ✓ Also in 2005, 5,702 employees died because of work-related injuries and illnesses.

- Involve employees in problem-solving when challenging safety and health issues arise.
- Rely on safety committees composed of employees from all levels and functions to identify hazards, investigate accidents, and promote safe work habits among your workforce.

Recognize and reward safe behavior.

Finally, don't forget to show your gratitude for the efforts employees, supervisors, and managers are making to create a safer workplace. Use recognition and reward programs to reinforce safe behavior and positive safety attitudes. Talk up safety at every opportunity. Let employees know that their safety is your top priority this year, and ask them to join you in making it *their* top priority as well. ^[187]

Promoting (continued from page 5)

to do. It can help prevent illnesses that chip away at productivity and profitability. It's estimated that dietary factors are linked with 4 out of the 10 leading causes of death: coronary heart disease, some cancers, stroke, and Type 2 diabetes. And obesity and overweight, considered by many to be an epidemic in the United States, are associated with some 300,000 deaths each year. Smart employers are trying to take a bite out of that statistic by getting involved.

Promoting good nutrition does not have to be costly for employers.

- Supply quality drinking water in the coffee or break room.
- Offer juice, water, and tea for meetings as well as other choices.
- Offer bagels and fresh fruits at meetings instead of donuts.
- Equip the break room with a refrigerator, microwave, and toaster. This lets employees prepare or heat up their own food rather than reaching for fast food.
- Occasionally provide fresh fruit and healthy beverages for a mid-day treat.

(continued on page 8)

Chew on These

Helping personnel eat more healthfully can be as simple as instituting some of the ideas mentioned earlier. Or you can get more sophisticated by offering classes in nutrition and healthy cooking. Whatever you do, start by surveying your workforce, possibly with help from your human resources department. Find out if they want general nutrition information or more-specific assistance.

The age of your workforce may influence their interests. A younger population might want help feeding picky children while older workers may wish to know how to prepare heart-healthy meals at home. Other ways you can get involved:

- Create healthy take-home meals for employees to purchase from your food service.
- In smaller workplaces, organize monthly potluck lunches and recipe exchanges that feature healthy choices. Those who do not cook can bring beverages, paper goods, etc. As well as promoting healthy choices, these can become popular social events.

- Show employees you're serious about their nutrition and well-being by inviting them to a healthy breakfast served by your company's top brass.
- Hold a lunch-n-learn series that serves up food-related education while employees eat a healthy meal they've brought or you've provided. Topics might include how to: understand food labels, create a low-fat menu, help overweight kids make wise choices, assess the value of various diet options, or eat well while traveling.
- Hold an occasional healthy lunch swap. Workers draw names and exchange lunches they've prepared. Enterprising employees might include a recipe for an interesting option.

Beware of Meetings!

Everyone knows that workplace get-togethers can be a hotbed of unhealthy food choices. Donuts, stale coffee, and soda are among common offenders. The School of Public Health at the University of Minnesota has published guidelines for healthy eating at meetings, seminars, and other events. Among them:

- When planning meetings, training sessions, or other events where food will be served, consider breakfast choices like fresh fruit, non-fat yogurt, small bagels with low-fat cream cheese, and small muffins.
- For lunch, offer sandwiches made with whole grain breads and healthy toppings like lettuce, tomatoes, sprouts, pickles, mustard, and ketchup. Baked chips or pretzels and fresh fruit are better choices than fried chips and high-fat cookies.
- When selecting catered meals, avoid fried foods and cream sauces and always include a vegetarian option. Serve salads with dressings on the side.
- Consider offering only beverages, not food, at mid-morning or mid-afternoon meetings.

There's a great deal of information on the Internet on the subject of healthy eating. Among resources, the state of California has produced a downloadable brochure that focuses on the workplace. It is at http://www.dhs.ca.gov/ps/cdic/epns/lat5aday/download/Work-site_brochure.pdf.^[80, 202]

(continued on page 12, bottom)

Washington Watch

DHS Urges Resolution: To Be Prepared in 2007

In case you still haven't made a New Year's resolution, the Department of Homeland Security (DHS) has a suggestion. It is to prepare yourself, your business, and your family for a possible emergency.

Said DHS Chief Michael Chertoff: "Setting a clear goal to be prepared in 2007 is an easy way for all Americans to be as ready as possible if an emergency occurs." Chertoff urges people to visit the website <http://www.ready.gov>, from which one can click to the related site, <http://www.ready.biz>. Both offer considerable information

about how to prepare for possible attacks, natural disasters, and other types of emergencies. The emphasis of DHS's advice for businesses is to plan to stay in business, talk to employees, and protect one's assets.

The government's newest ready-business initiative is a mentoring program designed for owners and managers of small- and medium-sized businesses. Mentoring guides teach owners and managers about affordable ways to stay safe.

A recent survey by The Advertising Council found that 91 percent of individuals acknowledged the importance of being prepared, but only 55 percent said they had taken any steps toward that goal. A survey of small businesses found that more than 90 percent of

respondents recognized the value of business preparedness, but less than 40 percent said their companies had a plan in place. In November, DHS and the Council released new public service announcements to help spread the message.^[86, 51]

New Guidance from OSHA on Hurricane Recovery, Response

Employees and employers involved in responding to natural disasters may benefit from a new Web-based resource from OSHA. The document is called *Hurricane e-Matrix: Hazard Exposure and Risk Assessment Matrix for Hurricane Response and Recovery Work*.

Recovery work involves a wide range of tasks and operations that can present serious OSH hazards, according to OSHA. The new tool incorporates information on occupational hazards, employer responsibility, recommendations, and sampling/monitoring data. It features 29 individual task- and operation-specific activity sheets to help employers evaluate hazards. Also included is guidance on reducing employee exposures during disaster operations like debris collection, tree trimming, utility restoration, building demolition, etc.

The document is at <http://www.osha.gov/SLTC/etools/hurricane/index.html>. Although it was developed from data and experiences arising out of response and recovery following Hurricanes Katrina and Rita, the tool may be applied to future hurricanes, floods, and other natural disasters. [72, 87, 61]

FRA Proposes Increase in Fines For Violating Rail Regulations

The civil penalty amounts assessed against railroads for violating numerous federal rail-safety rules would be substantially higher under a proposal announced by the Federal Railroad Administration (FRA). Stated FRA Administrator Joseph H. Boardman: "Higher fines across all categories of federal regulations will encourage railroads to focus on safety compliance and improve the rail industry's overall performance." He added that the proposal would double the current guideline civil penalty amounts for most violations.

FRA evaluated each of the more than 2,000 provisions of the rail-safety rules using a five-point severity scale. The measure takes into account the likelihood that an accident or other dangerous event will occur as a result of failing to comply with a particular section of the regs. At the low end of the scale, the amount would be \$1,500; at the high end, the amount would rise to \$8,500. Willful violations would range from \$2,500 to \$11,000. The current maximum of

\$27,000 for grossly negligent violations would remain unchanged. The agency says the proposal supports the National Rail Safety Action Plan, a broad effort to focus on reducing the highest risk causes of train accidents.

In other news, FRA announced results of a study that "provides a strong scientific rationale for evaluating railroad employee work schedules to address worker fatigue." Human-factor errors have been responsible for nearly 40 percent of all train accidents over the past 5 years. An FRA evaluation confirmed that fatigue played a role in approximately one out of four of those incidents.

The researchers set out to determine if a fatigue model could reliably predict an increased risk of human error that could contribute to an accident. A mathematical model for detecting the point at which the risk of fatigue becomes hazardous could be part of a railroad's fatigue plan (a similar approach is currently used by the Department of Defense). The study analyzed 1,400 accidents "and found a strong statistical correlation between the crew's estimated level of alertness and the likelihood that they would be involved in an accident caused by human factors," according to FRA. The study is available at http://www.fra.dot.gov/downloads/safety/dot_fra_ord_0621.pdf. [142, 153]

Military Brass Salute OSHA's Voluntary Safety Programs

Air Force leaders are endorsing OSHA's Voluntary Protection Programs (VPP), which they say reinforce their culture of safety in the air, on the ground, at work, at home, and at play. Said Maj. Gen. Stanley Gorenc, chief of Air Force Safety, "This [safety] is an integral part of our everyday operations, especially as we 'lean' our forces. We need to make sure our productivity is as strong as ever, if not better, and VPP helps enhance that, and is fundamental to the way we do business."

In 2003, former Secretary of Defense Donald Rumsfeld established a military accident-reduction effort. He

charged all services to reduce preventable mishaps by 50 percent. In 2005, he issued another challenge calling for a 75 percent reduction. Among strategies to meet these goals, the Navy, Army, and Air Force are advocating VPP, according to an Air Force press release.

Nine Air Force bases have been established as a baseline for Air Force-wide implementation of VPP. They are: Wright-Patterson, Ohio; Altus, Oklahoma; Tinker, Oklahoma; Holloman, N.M.; Eielson, Alaska; Los Angeles, CA; Hanscom, Mass.; Hill, Utah; and Robins, Georgia. The goal is to generally expand VPP to all major commands and bases.

The need is significant. The Air Force says that there were more than 2,200 injuries in 2005 within its civilian workforce alone. Fiscal Year 2006 was the best ever for aviation safety, based on a significant drop in mishaps and fatalities. But ground safety needs "a more concentrated effort," according to the Air Force. [120, 199]

DHS Targets High-Risk Hazardous Materials in Transit

The DHS has issued a notice of proposed rulemaking to vastly strengthen the security of the nation's rail systems in the highest-threat urban areas. The proposed rule is part of a package of new security measures that will require freight rail carriers to ensure 100 percent positive hand-off of Toxic Inhalation Hazard (TIH) materials, establish security protocols for custody transfers of TIH railcars in the high threat urban areas, and appoint a rail security coordinator to share information with the federal government, as well as formalizing the Transportation Security Administration's (TSA) freight and passenger rail inspection authority.

"A toxic emission from an attack against a chemical facility or hazardous chemicals in transit is among the most serious risks facing America's highest threat areas," said Homeland Security Secretary

(continued on page 10)

DHS Targets (continued from page 9)

Michael Chertoff. “We’re going to take a significant percentage of that risk off the table.”

The freight rail industry has already begun to implement several key security measures, such as tracking and substantially reducing the standstill time for unattended freight cars transporting TIH materials in high-threat urban areas, developing site-specific security plans with access controls, and providing security training for employees. Using industry data, TSA will create a tracking system that will allow the federal government to determine the location of railcars carrying TIH materials within minutes.

Once finalized, the proposed rule will address the transport of TIH materials by rail, from start to finish, including predictable standstill points and unpredictable stops during shipment. TIH materials, which are potentially harmful but essential chemicals like chlorine or anhydrous ammonia, repre-

sent less than 1 percent of all rail shipments. In addition to this proposed rule, the Department of Transportation is introducing a proposed regulation that will require railroads to analyze safety and security concerns when determining the route for a freight train carrying certain types of hazardous materials. TSA has the authority to impose up to \$10,000 in fines per security violation, per day. ^[78, 153, 188]

Report Highlights Ways to Manage FMLA Programs

If you’re involved in managing your workplace’s Family and Medical Leave Act (FMLA) compliance program, you may benefit from findings from the 2006 FMLA Leadership Series. The event was a collaboration between Liberty Mutual and the Disability Management Employer Coalition. A white paper based on the series highlights 10 best practices for managing

FMLA and details how employers met those challenges. Liberty Mutual cites a 2005 study that found companies with employees who had taken FMLA leave the previous year spent up to \$21 billion on direct costs like overtime and lost productivity. Among recommendations contained in the report:

- Craft an FMLA policy tailored to your organization. Start with a framework provided by the U.S. Department of Labor and customize it to fit your company’s needs and operations.
- Find the right administrative option—either outsourcing or managing it in-house. Here, too, say the authors of the report, one size does not fit all.
- Define how FMLA integrates with other benefits like sick and vacation time to better manage the real cost of employee absences.

For more information on complying with FMLA, go to www.blr.com. Enter keyword **FMLA**. ^[55, 157]

From the States

OREGON

Employers Must Now Report Auto Fatalities Within 8 Hours

Oregon employers are now required to report fatal work-related motor vehicle accidents to Oregon OSHA. The requirement began January 1, 2007 under recently updated safety and health rules.

Motor vehicle accidents have been the leading cause of fatal workplace injuries in Oregon 4 of the past 5 years. They accounted for 26 percent of compensable fatalities in the workers’ comp system between 2001 and 2005. Commented Oregon OSHA Administrator Michael Wood: “We haven’t done everything we can to create truly safe workplaces in Oregon until we address the largest single source of on-the-job fatalities in the state and in the nation—motor vehicles.” He says tracking and treating such incidents in the same way other workplace fatalities are managed is an important first step.

The state says workplace deaths, including heart attacks, must be reported to Oregon

OSHA at 800-922-2689 within 8 hours of the employer becoming aware of the incident. Accidents that send three or more employees to the hospital must also be reported within 8 hours. An incident that requires overnight hospitalization must be reported by an employer within 24 hours.

There are more details for Oregon employers at <http://www.orosha.org> under “Vehicles” in the alphabetical topic index. ^[122, 138, 154]

NEVADA

Insurance Group Fighting Against Work-Comp Fraud

Builders Insurance Company, one of Nevada’s two largest workers’ comp providers, says employers “must maintain a vigilant eye on both old claims and new claims” in the fight against fraud. The company cites statistics suggesting that of the 40,000 comp cases filed annually in the state, 10 percent may be fraudulent. That’s especially true now, as the construction boom in the state begins to slow down.

The problem, according to the provider, is that a worker’s income potential is better through disability than from unemployment benefits. “And because of this,” says Builders Insurance, “some less scrupulous, less honest workers will invariably opt to try for the bigger paycheck.” Comp is fixed at a maximum of \$4,800 a month in the state.

Employers should be on the lookout for workers who re-open an old claim before getting laid off. Another step employers can take to avoid such employee scamming is to be aware of accidents reported well after they allegedly occurred. Also, look for inconsistencies in reported cases, such as refusing medical attention, then seeking it at a later date, the carrier suggests. Yet another warning sign is spouses who get involved in cases; the claimant has the sole responsibility to handle his or her own case unless a major injury is involved. Employers should also be aware of employees who play sports and claim that an injury that took place on the field was really work-related.

Dave Oakden of S&C Claims Services, which handles claims for Builders, urges employers to make sure that once a claim

has been opened, the injured worker is performing approved light-duty assignments. Failure to show up for alternate duty can be a red flag for potential comp fraud. [125.5, 207]

TENNESSEE

Safety Research Lab Now in New Home in Murfreesboro

A state-run lab that tests samples to ensure that workers are not over-exposed to hazardous chemicals should be even more effective in its new, modern quarters in Murfreesboro. At the lab, operated by Tennessee OSHA (TOSHA), chemists test some 2,000 samples per year from around the state, according to an article in the *Murfreesboro Post*. The lab was formerly housed in a smaller space on the campus of Tennessee State University in Nashville.

Lab Supervisor Sandra Bennett explained to the newspaper that TOSHA industrial hygienists visit workplaces across the state to determine if employees are exposed to any of 700 chemicals. They collect air samples that are turned over to the lab for testing. If chemists working at the lab determine that exposures are beyond established TOSHA limits, the employers are required to reduce the level of the chemical, typically by installing ventilation systems. The process can involve citations.

The lab employs methods similar to those popularized on the TV show *CSI*. Investigators use gas chromatography, atomic absorption spectrometry, and other high-tech testing methods. Lab officials say most of the cases they work on are the result of employee complaints. TOSHA also works from a list of high-hazard employers and those that have permitted excessive exposure in the past. According to the article, the results of state-conducted air-quality inspections are required to be accessible to employees. [23, 102, 185]

MASSACHUSETTS, VIRGINIA

Contractors Cited, Fined for Significant Job-Fall Hazards

OSHA has cited a Massachusetts wood-framing contractor and a Virginia-based developer for allegedly exposing employees to fall hazards at residential construction projects in Newton and Danvers, Mass.,

Shawnlee Construction LLC of Plainville, Mass., faces a total of \$164,000 in fines, and Avalon Bay Communities of Alexandria, Va., was issued \$43,000 in proposed fines. Avalon was project manager and general contractor on both jobs.

OSHA inspections in June and August found Shawnlee employees at an Avalon Bay project working at heights up to 33 feet without fall protection. Workers at another Avalon project were working without protection at heights up to 22 feet. Noting that falls are the number one killer in construction, OSHA Area Director Francis Pagliuca commented: "Workers' lives are needlessly placed at risk when effective fall protection is absent. While it's fortunate that no one was killed at these worksites, the potential for death or disabling injuries was real and present."

Among the citations issued were two repeats to Shawnlee; the agency had cited the contractor in 2004 and 2005 for fall hazards at other Massachusetts jobsites. The citations against Avalon Bay included one repeat for fall hazards. [48, 54, 116, 198]

PENNSYLVANIA

Brain-Injured Man Settles in Suit Against Four Defendants

A Romanian man who came to the United States to study electrical contracting and was injured in a fall at an Upper Macungie construction site has settled with four defendants for \$2.2 million. He reportedly will receive \$932,000 with the rest going for legal and other fees.

The case involves Gheorghe Teglas who fell in March 2001. According to his lawsuit, he was standing on an elevated mezzanine removing light fixtures at the jobsite. He fell off an unfinished portion of the structure some 15 feet to a concrete floor below. The lawsuit claimed that the mezzanine was negligently installed, there were no warnings of danger, and no appropriate safety measures, such as guided ropes, had been taken to prevent falls.

Teglas reportedly suffered a brain injury and fractures and required multiple surgeries. His lawyers say he can no longer work. Teglas, who does not speak English well, claimed he was placed in an unsafe situation without proper training. Defendants countered that the man was warned of the potential danger.

The defendants in the case included Brandywine Realty Trust, owner of the

property. Originally, the case involved a dozen defendants, but most were dismissed by a court order. Those ultimately involved in the settlement denied wrongdoing or liability in the case.

According to *The Morning Call* newspaper, American companies often serve as hosts for trainees brought into the country under various exchange programs. [54, 107, 143]

CALIFORNIA

Tree Company Stands Tall for Excellence In Safety

Valley Crest Tree Company has been recognized for its safety excellence by the Professional Landcare Network (PLANET). The organization holds an annual safety recognition awards program. Valley Crest received a silver performance award and acknowledgment for no accidents or illnesses and no lost time.

Company President Robert Crudup noted: "Safety is always our number one priority and we make it part of each job and every employee's work day. Our safety program goes beyond the traditional tailgate meetings. We include health fairs, which cover topics like diet, blood pressure, and even safety at home."

Valley Crest is the largest producer of containerized specimen trees in the western United States. In order to participate in PLANET's safety program, companies are required to submit a copy of their OSHA summary logs and their year-end vehicle-insurance claims summary reports. There's more information at <http://www.landcarenetwork.org>. [14, 19, 166]

FEDERAL REGISTER DIGEST

OSHA STANDARDS

Standards Improvement Project, Phase III. OSHA is issuing an announced notice of proposed rulemaking (ANPRM) to initiate Phase III of the Standards Improvement Project intended to improve and streamline OSHA standards by removing or revising individual requirements within rules that are confusing, outdated, duplicative, or inconsistent. Comments must be submitted by February 20, 2007. For access to the docket (S-78B) or to read or download submissions, go to <http://www.regulations.gov>. **Contact:** Michael Seymour at 202-693-1950. **Source:** 71 FR 76623 (December 2, 2006).

(News continued from page 2)

More Prudent Picking Can Save Backs, Expert Says

Picking cases from pallet racking can be tough on employees. Marsh Risk Consulting ergonomics expert Rachel Michael offers solutions even when costly equipment, like vacuum lifts and slide-out racks, is not available. She recommended other strategies for reducing back and shoulder sprain to the publication *Modern Materials Handling*.

Among them:

- Choose the ideal picking method for the task; OSHA suggests several, including layer-by-layer, stair-step, and pyramid.
- Place an illustration by every slot that shows the proper way picking should be done at that station.
- Store fast-moving and heavy items in easy-to-reach locations.
- Use pull hooks to reduce reaching.
- Label products with their weights.
- Identify heavy items by placing them in different-colored bins.
- Install automatic, rather than manual, stretch wrapping.
- Use turntables and other devices that make palletizing easier. ^[15]

(Compliance Report continued from page 8)

Minor Activity in Current Regulatory Agenda

See the OSHA Regulatory Agenda table on page 6.

There were two Completed Actions in this semi-annual agenda, compared with three in April, and one Long-Term Action (Hearing Conservation in Construction), for which August 2002 was the ANPRM date. That is a modest gap compared with the notable wait of some other items (from 8 to 17 years!). That is certainly not as cavalier a handling by OSHA as it may seem, however, because of rapidly changing technologies and the frequent provisions of opportunity for comment by various stakeholders, followed by thorough reviews. The finalization, after 25 years, of assigned protection factors in respiratory protection is a perfect example of that. Fortunately, though, there are far fewer of these long waits for action than have appeared in some previous agendas. Most extensions are for 9 months or less.

There are only two brand-new entries this go-around—for methylene chloride in the Prerule Stage and a revised approach to the fee schedule for nationally recognized testing labs in the Proposed Rule Stage. The total number is slightly less than on the last agenda.

Normally, one would expect that a given topic would proceed from one step to another in the regulatory

Coming Up

- Auto Manufacturing
- Chemical Burns
- Off-Site Training

OSHA COMPLIANCE ADVISOR

Advisory Board

Richard W. Bunch, Ph.D.

Industrial Safety and Rehabilitation Institute
Harahan, LA
bunchisr@aol.com
(504) 733-2111

Chip Darius, President

Safety Priority Consultants, LLC
New Britain, CT
chip@safetypriority.com
(860) 223-5940

Donald M. Espach M.S., CSP President

Safety Leadership Solutions, LLC
don@safetyleadershipsolutions.com
(203) 261-5397

Mark B. Haskins, CSP

Principal Consultant
Practical Safety Solutions, LLC
Old Lyme, CT
mbhaskins@pss-llc.com
(860) 434-5092

William Pfister, President

Safety Training and Consulting, Inc.
Jasper, IN
stac@fullnet.com
(812) 634-1188

process, but occasionally, an item drops back for one reason or another. That, again, tends to be due to technological changes or requests for additional comment. All-in-all, this agenda is not dramatic but does represent meaningful effort and acceptable advance. ^[155]