

American Society of Safety Engineers

Professional Development Conference June 28-July 1, 2009



Session No. 101A

Overview

Regulatory Compliance Requirements

American Society of Safety Engineers

Professional Development Conference June 28-July 1, 2009



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OSHA Regulations & Compliance Guidelines



Compliance vs. Intelligence

The lesson of the Titanic

- **The ship WAS in compliance with regulations!**
 - 1890s British Maritime Safety Law
 - *One life boat per 715 tons*
 - *Maximum tonnage addressed: 10,000 (14 life boats)*
 - Regulations never updated as ships got heavier
 - *Titanic “in compliance” (exceeded by 3%) with 17 life boats*
 - *Titanic weighed in excess of 45,000 tons (needed 64 life boats)*

OSHA Regulations & Compliance Guidelines



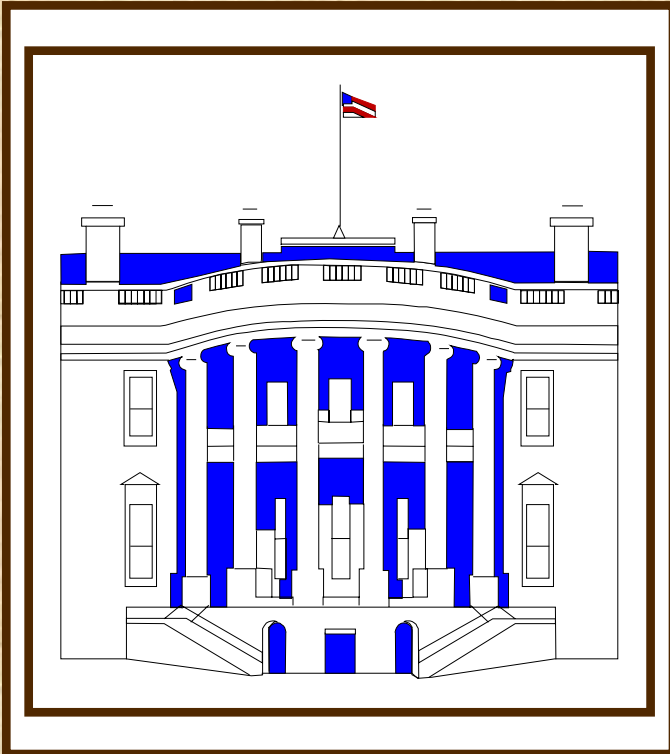
Compliance vs. Intelligence

Regulatory requirements

- **Regulations are considered the “minimum”**
 - **Compliance with the “minimum” is no excuse for intelligent engineering**
 - **We must often exceed the “minimum” to ensure optimum protection of people, property and the environment**

No one gets cited or fined for being more safe than the minimum required by law. Think about it!

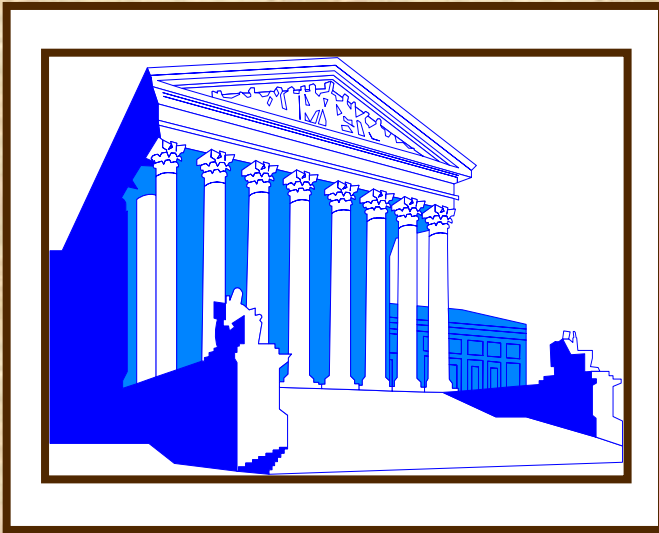
OSHA Regulations & Compliance Guidelines



EXECUTIVE BRANCH

- **Action:**
 - **Manage Agency**
 - *Provide direction*
 - *Set agendas*
- **Control:**
 - **Appoints Director**
 - **Develops budget**
 - **Holds VETO power**
 - **Can also remove Director**

OSHA Regulations & Compliance Guidelines



Important

The Courts cannot initiate any action until a lawsuit has been filed

JUDICIAL BRANCH

- **Action:**
 - Review Agency
 - *Adjudicate appeals*
 - *Resolve disputes*
- **Control:**
 - Interprets statutes
 - Sets precedence
 - Decides case law

OSHA Regulations & Compliance Guidelines



LEGISLATIVE BRANCH

- **Action:**
 - Create Agency (by Act)
- **Control:**
 - Statutory Mandate
 - Commerce Clause
 - Delegation Doctrine
 - Procedural Mandate
 - Statutory Amendment
 - Informal Controls
 - *Appointment Approvals*
 - *Budget Approvals*

OSHA Regulations & Compliance Guidelines



Understanding OSHA

- **The Occupational Safety & Health Act of 1970 (PL 91-596)**
 - **Occupational Safety & Health Administration (OSHA)**
 - **Regulate and Enforce**
 - **National Institute for Occupational Safety & Health (NIOSH)**
 - **Research and Recommend**
 - **Occupational Safety & Health Review Commission (OSHRC)**
 - **Adjudicate and Interpret**

OSHA is the *only* entity created under the OSH Act given the power of the LAW!

OSHA Regulations & Compliance Guidelines

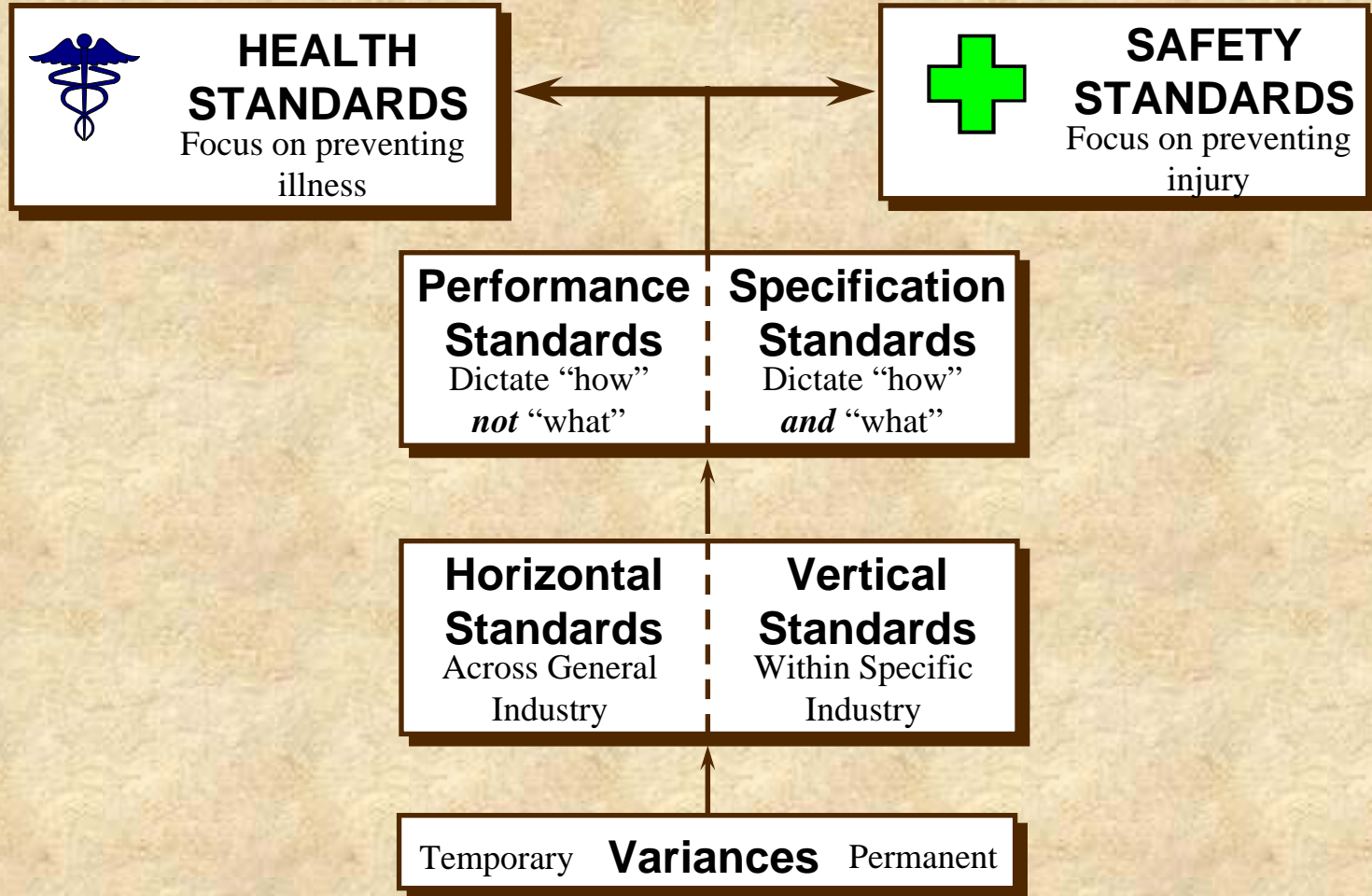


About Federal Regulations

- **First announced in the Federal Register (FR)**
 - Issued daily by Federal Agencies (such as OSHA, EPA)
 - The “First-Look” at a new regulation
- **Incorporated into the Code of Federal Regulations (CFR)**
 - Title 29 (“Labor”), Part 1910 (“General Industry”)
 - Expressed as 29 CFR 1910 (for Safety - General Industry)

Regulations and Standards Prescribe the *Minimum* Required Actions in a Given Situation

OSHA Regulations & Compliance Guidelines



OSHA Regulations & Compliance Guidelines



When is an Employer in “Violation?”

- **OSHA has the initial burden to prove:**
 - The standard applies to the cited employer;
 - The standard’s requirements were not met;
 - Employees were exposed to hazards as a result, and
 - The employer knew or, with the practice of reasonable diligence, *should have known* of the existence of the noncompliance condition(s)

If the above criteria are met, OSHA has established a prima facie case. The employer must now prove otherwise.

OSHA Regulations & Compliance Guidelines



What are Variances?

- **Permanent Variances:**
 - Workplace must be as safe as it would be under compliance
 - Narrow in scope, may specify alternative compliance methods
 - Can be modified or revoked by OSHA, if in affect <6 months
 - **Other Criteria:**
 - *Employer has burden of proving the merits of the request*
 - *Seldom granted for Performance Standards*

OSHA Regulations & Compliance Guidelines



What are Interpretations?

- **Clarification of Regulations:**
 - Anyone can request a letter of interpretation
 - OSHA will respond to the Interpretation
 - Request for Interpretation is intended to clarify the regulation.

Note: You may not get the answer you expect to hear!!!

OSHA Regulations & Compliance Guidelines



The General Duty Clause

- Section 5(a)(1) of the OSHAct says each employer:
 - *“Shall furnish to each of his employees employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”*
- Section 5(a)(2) of the OSHAct says each employer:
 - *“Shall comply with occupational safety and health standards promulgated under this Act.”*

In the absence of a specific standard, employers **STILL** have the General Duty to provide a safe place to work!

OSHA Regulations & Compliance Guidelines



The General Duty Clause

- **Key elements of Section 5(a)(1):**
 - The “employer” has the General Duty.
 - Hazards must be “recognized.”
 - Hazards must be “causing or are likely to cause death or serious physical harm to employees.”
- **If YOU are a manager/supervisor:**
 - OSHA considers YOU an agent of the “employer.”
 - YOU are responsible for “recognizing” a hazard.
 - YOU can be held accountable for “deaths or serious physical harm to employees.”

OSHA Regulations & Compliance Guidelines



The Compliance Process

- **Understanding “Compliance”**
 - **Compliance is mandatory**
 - *Selective compliance is NOT an option*
 - **OSHA publications**
 - *Assist employers in their compliance efforts*
 - **Determining applicability of standards**
 - *Understanding intent and purpose*

OSHA Regulations & Compliance Guidelines



The Compliance Process

- **Developing a Compliance Plan**
 - **Self-audits**
 - *Proactive approach to hazard recognition, evaluation, & control*
 - **Required vs. optional plans**
 - *Some standards require plans, others do not*
 - **Plan implementation**
 - *Must have a process in place to implement the compliance effort*

Proper Record-keeping and the Compliance Process



Importance of Proper Record-keeping

- One of the “original” requirements in the OSHAct since 1970
 - Congress realized it would be necessary to obtain such information
 - Data/statistics are used to determine the need for new rulemaking
 - Fundamental requirements:
 - *Employers are required to maintain injury and illness records*
 - *Employers must maintain records for specific periods of time*
 - *Employers must make records available to OSHA upon request*
- Between 1970 - 1980, requirements not strictly enforced
 - Employers grew complacent while concentrating on specific standards
 - OSHA concentrated on hazard elimination rather than data collection

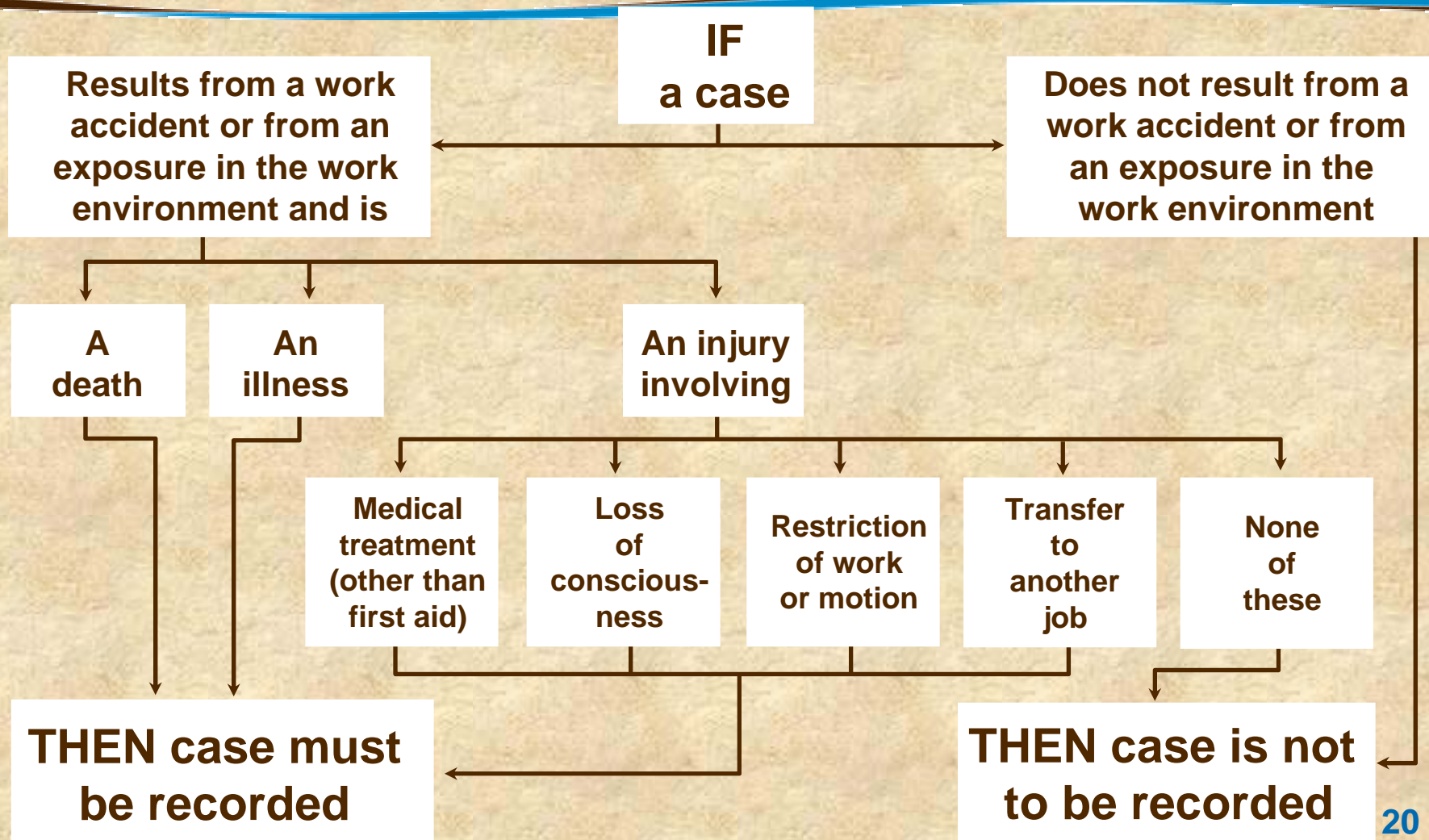
Proper Record-keeping and the Compliance Process



Record-keeping Requirements

- **Regulatory requirements**
 - 29 CFR 1904 - Recording and Reporting of Occupational Injuries and Illnesses
 - Specific standards with specific record-keeping requirements
 - *Hazard Communication Standard (29 CFR 1910.1200)*
 - *Occupational Exposure to Blood-borne Pathogens (29 CFR 1910.1030)*
- **New Regulations and record-keeping requirements**
 - OSHA can always require employers to keep specific records

Proper Record-keeping and the Compliance Process



OSHA's Air Contaminant Standard: An Overview



Classification of Air Contaminants

- **Irritants**
 - Aggravation of whatever issue the material comes into contact with
- **Asphyxiants**
 - **Simple asphyxiants**
 - *Inert gases that displace oxygen below 19.5%*
 - **Chemical asphyxiants**
 - *Prevent intake of oxygen in the blood*
- **Narcotics or Anesthetics**
 - Cause loss of consciousness and death
 - *Action on the central nervous system*

OSHA's Air Contaminant Standard: An Overview



29 CFR 1910.1000 (Subpart Z)

- **Table Z-1**
 - Lists exposure limits for more than 600+ air contaminants
- **Table Z-2**
 - Provides 8-hour time weighted averages for specific contaminants
- **Table Z-3**
 - Provides exposure limits for certain mineral dusts
- **Standards**
 - Beginning with Asbestos (29 CFR 1910.1001), Subpart Z provides Standards for a number of specific Air Contaminants

Hazard Communication



Overview

29 CFR 1910.1200

- **Effective Dates**
 - **November 1985 for Chemical Manufacturers**
 - **May 1986 for General Industry**
- **So Why do we still care more than 20 years later?**
 - **Hazard Communication remains on the top 5 list**
 - **OSHA consistently cites and fines employers for violations**
 - **Employer naiveté toward the Standard continues today**

Hazard Communication



Overview

- **Objective of the HazCom Standard**
 - Reduce the incidence of illness and injuries that result from exposure
 - Establish uniform requirements in all States & jurisdictions to ensure:
 - *That hazards of all chemicals are evaluated*
 - *Hazard information is transmitted to affected employees*
- **Requirements**
 - Hazard evaluation
 - Written Hazard Communication Program
 - Labels and warnings
 - Material safety data sheets
 - Employee information and training

Hazardous Waste Operations and Emergency Response



HAZWOPER Overview 29 CFR 1910.120

- **Scope of HAZWOPER**
 - Workers at cleanup sites
 - Workers at treatment, storage, and disposal facilities (TSDF)
 - Workers involved in emergency response operations involving hazardous substances
- **Limited Scope and Applicability**
 - Generators who store hazardous wastes for less than 90 days
 - Small quantity generators with Emergency Response Team

Environmental Legislation, Regulations, and Standards:



An Overview

- **U.S. Environmental Protection Agency - EPA**
 - **Created by Presidential Executive Order - 2 December 1970**
 - *One of the first times an agency was not created by an "Act"*
 - *Placed directly in the Executive Branch (reports to OMB)*
 - *Assumed activities of the former Environmental Health Service*

Environmental Legislation, Regulations, and Standards:



Regulatory Overview

A Brief Look at Major Environmental Regulations

- National Environmental Policy Act of 1970
- Clean Air Act (and Amendments)
- Clean Water Act
- Resource Conservation and Recovery Act of 1976
- Toxic Substances Control Act of 1976
- Comprehensive Environmental Response, Compensation, and Liabilities Act of 1980
- Superfund Amendments and Reauthorization Act of 1986

Environmental Legislation, Regulations, and Standards:



Resource Conservation & Recovery Act (RCRA)

- **RCRA: Amendments to the Solid Waste Disposal Act**
 - **Develop comprehensive and integrated legislation to protect the environment from mismanagement**
 - **Establish the necessary framework to manage hazardous wastes**
 - **Cradle to grave approach to hazardous waste management**
 - **Regulates the generation, storage, transportation, treatment, and disposal of hazardous wastes**

Environmental Legislation, Regulations, and Standards:



Toxic Substances Control Act (TSCA) of 1976

- **Title I: Control of Toxic Substances**
 - **Broad in Scope**
 - **Thirty Sections that contain much of the regulations that affect industry**
- **Title II: Asbestos Hazardous Emergency Response**
 - **Narrow in Scope**
 - **Deals primarily with asbestos in schools**

Other Agencies



Regulatory Agencies Impacting Compliance

- **FEDERAL**
 - **MSHA - Mine Safety and Health Administration**
 - **DOT - Department of Transportation**
 - **DOT/PHMSA (originally was RSPA)**
 - **DOE - Department of Energy**
- **OTHERS - State and Local Government Bodies/Agencies/State - Plan - States**
- **NIOSH - Respirators/Research**

Information Sources



- **WEBSITES** look at **www.**
 - asse.org**
 - osha.gov**
 - cdc.gov/niosh**
 - epa.gov**
 - dot.gov**
- **List Services/Servers**
- **ASSE Resources**

National Voluntary Consensus Standards



- **Organizations**
 - **ANSI**
 - **ASME**
 - **ASTM**
 - **NFPA**
 - **ACGIH**
- **How they Work**
- **Philosophy**
- **Relation to Compliance**