

American Society of Safety Engineers
Professional Development Conference June 3-6, 2012



**Fundamentals of SH&E:
Overview of
Regulatory Compliance 101A**

American Society of Safety Engineers
Professional Development Conference June 3-6, 2012



Tim Fisher, CSP, CHMM, ARM, CPEA
Director, Practices and Standards

Dennis Hudson
Director, Professional Affairs

American Society of Safety Engineers

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



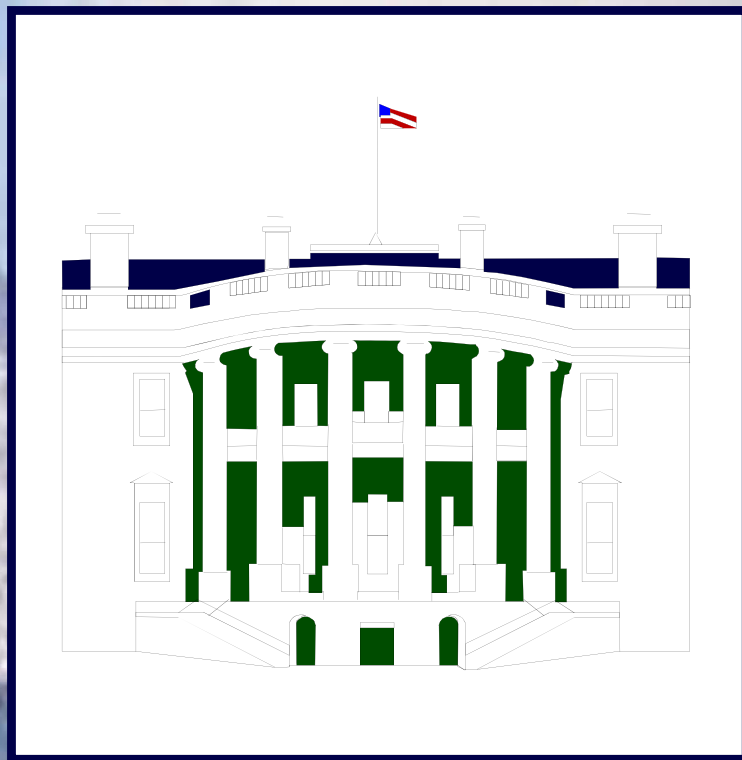
Compliance vs. Intelligence

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 OSHAct given the power of the LAW!

OSHA Regulations & Compliance Guidelines

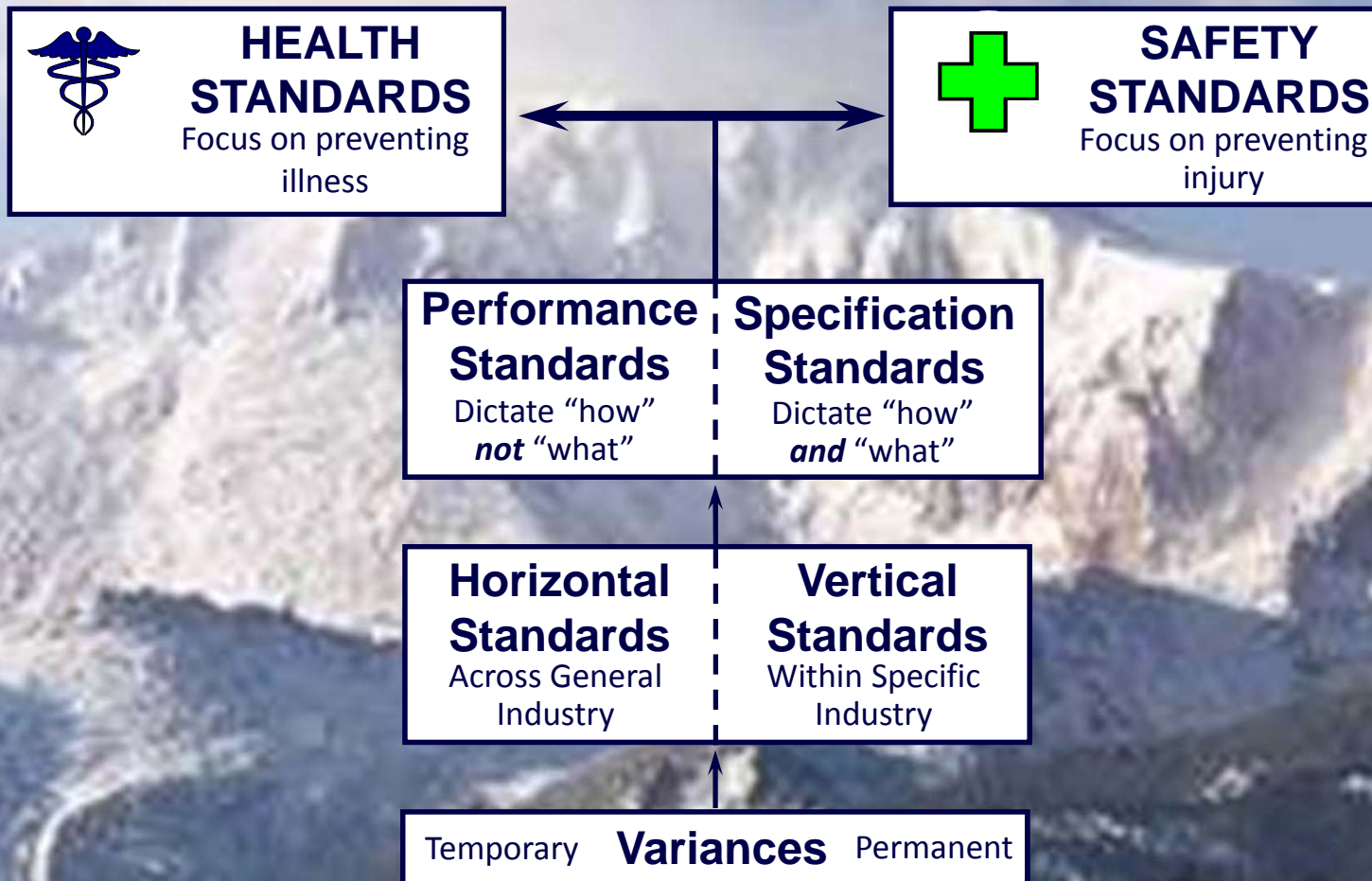


About Federal Regulations

- **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 almost 25 years later?**
 - Hazard Communication remains at the top for citations
 - 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**