

Compliance Headliner

OSHA Issues \$134,750 Penalty to Manufacturer

Source: <http://www.complianceregs.com>

There are four reasons an employer may meet an Occupational Safety and Health Administration (OSHA) inspector, to include:

1. An employee complaint that reveals a health or safety hazard and/or specific violation;
2. A programmed inspection based on the standard industrial classification (SIC) code – “high hazard” industries;
3. A follow-up inspection following a citation and/or known violation; investigations of imminent dangers; or
4. After an incident that hospitalizes three or more employees and/or one that results in a worker fatality.

Although the first is the most common cause of an OSHA inspection, the latter brought Federal

OSHA officers to Shelter Enterprises, Inc. in August, 2004 after a scaffolding accident was reported involving three employees. The inspectors found numerous deficiencies in the company’s training program, including violations of the Powered Industrial Truck (forklift) and Hazardous Energy Control - Lockout/Tagout standards. The inspection also found that Shelter Enterprises did not have a Hazard Communication program to inform and train employees about the chemicals with which they worked. **The Hazard Communication standard 29 CFR, 1910.1200 appears to still be one of, if not the most, frequently cited standard by OSHA.**

Most OSHA inspections are conducted by officers without advance notice to the employer. Inspections must be completed at a reasonable time and in a
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Is Your Forklift Unsafe?

OSHA recently issued a letter of interpretation regarding forklifts that are considered unsafe, defective or in need of repair...

OSHA requires pre-operational inspections of forklifts to ensure proper condition. These inspections must be conducted on each forklift on a daily and/or shiftly basis.

In accordance with 29 CFR, 1910.178(p)(1), any powered industrial truck (forklift) found in poor condition must be taken out of service until it has been properly repaired. OSHA responds to a question regarding the definition of “unsafe,” as used in 1910.178(p)(1), as a condition that presents harm or risk. *Continue reading on page 4...*

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OSHA Issues \$134,750 Penalty to Insulation Manufacturer

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reasonable manner. Absent a warrant, an owner/operator may postpone the inspector to a mutually agreeable time, thus providing an opportunity for compliance representation during the audit. **Included in Crandall's *Integrated Compliance Management Program*, a Compliance Specialist will represent your company during any OSHA, EPA, DOT and/or local regulatory compliance inspection.** While Crandall can't change the condition of the facility or sway the opinion of the inspector, he/she understands the regulatory requirements and will be able to interpret the questions asked and/or the information requested by the inspector. In many instances, a manager or employee doesn't fully comprehend what the inspector is asking and may offer "too much" when answering a question(s).

Most inspections are intended to focus on a specific condition (dependant upon the "reason" of the inspection, as described in the first paragraph of this article), but may blossom as a result of information/observations obtained during the process.

In the case involving Shelter Enterprises, Inc., OSHA cited the insulation manufacturer for violating numerous standards and failing to provide a "workplace free from recognized hazards," issuing a \$134,750 penalty. Included in this penalty were three willful violations that constituted \$115,000 of the final penalty. A willful violation is one committed with an intentional disregard of or plain indifference to the requirements of the Occupational Safety and Health Act and regulations.

Oftentimes, repeat violations are cited as *willful*. If OSHA finds a condition that is considered dangerous or unsafe during an inspection, they will cite a violation of a specific general industry standard and/or regulation (within Title 29 of the Code of Federal Regulations, Part 1910). Depending on the severity of the violation, OSHA will set forth an abatement and corrective action schedule, issue a proposed penalty(s) and inform the employer of procedures to contest the charges.

The minimum OSHA penalty for a serious violation is \$2,400; the maximum is \$70,000. OSHA may reduce proposed penalties by as much as 60% for small businesses (those with less than 25 employees) if the violation does not pose severe potential harm to employees, the employer has demonstrated good faith to reduce the hazard, the business is financially limited and there is no history of OSHA violations by the employer/business.



Unless the outlet is protected by a ground-fault circuit interrupter, most electrical violations are considered serious. The minimum OSHA penalty for a serious violation is \$2,400.

If you would like to discuss the OSHA inspection process, please contact Crandall at 800-248-4801. Your *Compliance Specialist* can assist in preparation and response to an inspection.

Owners, managers and employees are often involved in the interview, audit and inspection process by OSHA. Everyone should understand their role and be prepared to answer questions, provide documentation and respond to specific requests by the OSHA officer in a manner that satisfactorily demonstrates the company's Environmental, Health and Safety Program.

EPA Considering SPCC Exemptions for Small Businesses

Source: www.epa.gov

The EPA's Spill Prevention Control and Countermeasure (SPCC) rule subjects all oil storage facilities who meet three criteria to comply with written plan, professional engineer (PE) certification, documentation and employee training requirements. Those criteria include:

1. The facility must be non-transportation-related;
2. The facility must have an aggregate aboveground storage capacity greater than 1,320 gallons or a completely buried storage capacity greater than 42,000 gallons; and
3. There must be a reasonable expectation of a discharge into or upon navigable waters of the United States or adjoining shorelines.

Under the SPCC regulations, oil is defined as "oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge,



The potential environmental risk for smaller in-shore businesses is significantly less than that of a crude oil tanker vessel and thus, EPA is considering certain exemptions from the SPCC rule.

oil refuse and oil mixed with wastes other than dredged spoil and oily mixtures." This also includes non-petroleum oils, animal and vegetable oils.

When considering the storage capacity, all containers storing oil which are equal or

greater than 55 gallons must be included. Also – it is the capacity of the containers, not the actual amount of product stored in the container that counts. Oil storage containers include, but are not limited to, tanks, containers, drums, transformers, and portable totes.

The EPA recently revised the SPCC rule and subsequently extended the compliance deadline. To date, the EPA is requiring compliance by all facilities who are subject to the rule no later than August 17, 2005. Implementation of SPCC plan elements, to include installation/upgrade of secondary containment, completion of tank inspections and training of oil-handling employees, must be completed no later than February 17, 2006.

Obviously, every business who owns/operates oil storage tanks does not pose the same risk of expected discharge into navigable water(s). For example, an in-shore textile manufacturer may have several fuel tanks for their shipping department vehicles. The potential environmental risk is significantly less than that of crude oil tanker vessel, oil rig or other sensitively located facility. Therefore, to reflect reasonable potential impacts from small oil releases, the EPA is considering a tiered program that would allow certain exemptions from the current SPCC rule.

In the proposed scheme, EPA would eliminate the requirement of a written plan for facilities who store 1,321 gallons to 5,000 gallons of oil. However, these facilities must still meet all other requirements, including secondary containment, tank/system inspections and annual employee training. Facilities who store between 5,001 and 10,000 gallons of oil would be required to meet all requirements of the standard, including a written plan. But, a Professional Engineer (PE) would not be required to certify the plan. Storage of more than 10,000 gallons of oil would require full implementation of the rule, in accordance with the existing requirements set forth in 40 CFR, Part 112.

OSHA Recognizes Serious Health Risks of Chlorinated Solvents

Source: www.osha.gov

Described in a *Trade News Release* dated April 14, 2005, OSHA is proposing new guidance for Reducing Worker Exposure to Perchloroethylene ("perc") in Dry Cleaning processes. Because perchloroethylene, also known as tetrachloroethylene, is a volatile organic chemical that can cause serious health hazards, dry-cleaning workers who routinely breathe the solvent's vapors or spill it on their skin are at risk of developing health problems.

Although OSHA recognizes that the dry cleaning industry has taken steps in recent years to improve workplace safety and reduce perc exposure, health effects from long-term exposure to the chemical are serious and sometimes irreversible. Symptoms of over-exposure to "perc" include skin, liver, and kidney damage, and possibly cancer. Inhalation of the chemical has been shown to cause numerous health effects such as dizziness, loss of coordination, memory loss, and blistering of skin [OSHA, Office of Communications, OSHA Trade Release. April 14, 2005. Contact: Frank Meilinger. Phone: (202) 693-1999].

Dry cleaning facilities are not the only industry that places workers at risk of exposure to perchloroethylene.

Many solvents used for cleaning metal parts contain perc or similar chlorinated solvents, such as methylene chloride. Attracted by the non-combustible nature of many chlorinated products, maintenance and production personnel often select these chemicals. However, the associated health risks of chlorinated solvents usually out-weigh the flammability hazards of petroleum-based solvents.

For example, the safe exposure concentration to perc is about one-fourth that of toluene (a common petroleum solvent). Therefore, long-term contact with chlorinated chemicals, even small amounts, places workers at a much greater risk of developing health problems, including certain cancers. The National Institute for Occupational Safety and Health (NIOSH) has designated perc a "potential occupational carcinogen." Environmental pollution is also a concern. The release of certain chlorofluorocarbons may adversely impact atmospheric ozone, increasing sunlight penetration and ultraviolet radiation. Due to human health risks, some states, including California, have completely banned the sale and use of chlorinated solvents.

For more information, go to www.osha.gov/dsg/guidance/perc.html or contact Crandall Corporation at 800-248-4801.

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When is Your Forklift Unsafe?

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In OSHA's letter, they specifically list these conditions as unsafe:

- Non-functioning gauges
- Broken welds, missing bolts, or damage to the overhead guard
- Tires that are missing large pieces of rubber

This is not an all-inclusive list and OSHA states that they would consider the totality of the circumstances surrounding a powered industrial truck in determining whether it is "in need of repair" or "defective." A professional service program is recommended for all forklifts to ensure they are maintained in adequate condition.