

OSH INFORMATION MEMORANDUM 90-X-87

TO: All OSH Compliance Personnel

FROM: William Lybrand, Director of OSH

DATE: December 14, 1990

SUBJECT: Procedures for Ensuring Uniform Enforcement of Training under 1910.120 for Employees involved in Post-Emergency Response Operations

Background.

A final standard for Hazardous Waste Operations and Emergency Response (1910.120) became effective March 6, 1990. In addition to many other requirements, the standard regulates worker safety and health during post-emergency response operations.

1. The standard defines post-emergency response as:
...that portion of an emergency response performed after the immediate threat of release has been stabilized or eliminated and clean up of the site has begun. If post-emergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not post-emergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean-up operation, then the separate group of employees would be considered to be performing post-emergency response and subject to paragraph (q)(11) of this section.
2. The employer conducting the clean-up must comply with all requirements in (b)-(o) of the standard (1910.120(q)(11)(i)) unless the clean-up is done on plant property using plant or workplace employees. The requirements under (b)-(o) of the standard specify a minimum of 24 hours of off-site training. If the clean-up is done on plant property using plant or workplace employees, the employer must comply with the training requirements of 1910.38(a), 1910.134, 1910.1200 and other appropriate training made necessary by the tasks they are expected to perform (1910.120(q)(11)(ii)).
3. Based on experience with the standard during oil spills off the coasts of Texas, Alaska and California, the hazards to employees vary widely in severity of potential injury or illness. For job duties and responsibilities with a low magnitude of risk, fewer than 24 hours of training may be appropriate for these post-emergency clean-up workers. It is our expectation that though the number of hours of training may vary, a minimum of 4 hours would be appropriate in most situations. Moreover, petroleum spills are unique in that many people who assist in the clean-up operations may not engage in this activity on a recurring basis. In addition, for maximum protection of the environment, petroleum spills dictate clean-up must be completed as soon as possible.

4. The U.S. Coast Guard and other concerned parties have requested flexibility in the amount of employee training required for petroleum spill clean-ups and other types of clean-up operations which follow emergency situations.
5. The state will consult with the OSHA regional office for making assessments when fewer than 24 hours of training is required.

Enforcement Guidelines

1. Policy Background. If an employer complies with the clear intent of a standard but deviated from its particular requirements in a manner that has no direct or immediate relationship to employee safety and health, OSHA's COM directs that such a violation be characterized as de minimis. Citations are not issued for de minimis violations.
2. Policy. Compliance with the intent of the training requirements of 1910.120(q)(11)(i) is achieved when an employer provides sufficient training as outlined in paragraph B.3 below, but the exact specifications of OSHA standards are not met (i.e.; the specific number of hours required by the standard is not given) In such cases a de minimis violation exists and no citation will be issued. Violations of 1910.120(q)(11)(i) can be abated by compliance with the criteria specified in B.3.
3. De Minimis Criteria. All of the following criteria must be met in order to classify violations of the training requirements of 1910.120(q)(11)(i) as de minimis.
 - a. Clean-up is performed in an area that has been monitored and fully characterized by a qualified person indicating that exposures are presently and can be expected remain under permissible exposure limits and other published exposure limits;
 - b. Health risks from skin absorption are minimal;
 - c. Employees have completed the training requirements of 1910.38(a) and 1910.1200, including refresher training as appropriate;
 - d. Employees have completed other safety and health training made necessary by the tasks they are expected to perform such as, but not limited to, operating procedures, decontamination procedures, water safety, hypothermia, heat stress and safety hazard controls;
 - e. There is adequate supervision by employees who meet the training requirements of 1910.120(e)(4).