

Workplace Safety is a Shared Responsibility

Chemical Processing, August 2008

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Employers have a general duty to their employees

Workplace safety is very much a responsibility shared by employer and employee alike. Environment, health, and safety (EHS) professionals are well aware of federal “standards” issued by the Occupational Safety and Health Administration (OSHA), compliance with which goes a long way to assure workplace safety. An equally important legal standard all EHS professionals must be aware of is the “general duty clause” under Section 5(a)(1) of the Occupational Safety and Health Act (OSH Act). The general duty clause and its requirements present ramifications for the chemicals industry.

A look at baseline standards

Even in the absence of OSHA-issued regulatory standards, the OSH Act Section 5(a)(1) establishes a baseline standard of employers’ conduct in protecting the health and safety of their employees. Known as the general duty clause, it requires an employer to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or seriously physical harm to his employees.” OSHA has consistently maintained that where it hasn’t established a specific standard addressing a particular hazard, employers must comply with this statutory catch-all provision. *See* “All About OSHA.”

To establish a general duty clause violation, OSHA must prove that “(1) the employer failed to render its workplace free of a hazard, (2) the hazard was recognized either by the cited employer or generally within the employer’s industry, (3) the hazard was causing or was likely to cause death or serious physical harm, and (4) there was a feasible means by which the employer could have eliminated or materially reduced the hazard.” *See, e.g., Secretary of Labor v. The Duriron Co., OSHRC Dkt. 77-2847 (OSHRC 1983).*

Whether, or how, the general duty clause may come into play in a manufacturing context is difficult to forecast with precision. A good recent example is OSHA’s reliance on the clause to justify the absence of specific combustible dust standards for various industry sectors. In the recent past, OSHA has been criticized for its alleged failure to regulate more specifically hazards posed by combustible dust in the workplace. A recent segment on “60 Minutes,” for example, focused on the history of organic dust explosions that have taken the lives of workers over the years. Many of these incidents are summarized in OSHA’s safety and health information bulletin, “Combustible Dust in Industry: Preventing and Mitigating the Effects of Fire and Explosions.” When asked why OSHA didn’t have combustible dust standards for more industry sectors (there is a grain dust standard), an OSHA representative responded that more standards aren’t needed because employers have a “general duty” under the Act to provide their employees with a safe and healthy workplace. Moreover, OSHA would likely also take the position that

accumulation of large quantities of dust that may pose a combustion hazard violates basic housekeeping standards.

Over the years, there has been some confusion as to what duty is owed under the general duty clause. The law defines a safety or health hazard as that which causes or is likely to cause death or serious physical harm. Congress has stated that a general duty requirement is for every person to exercise “reasonable care.” Since the OSH Act doesn’t define “reasonable care,” interpreting the standard hasn’t always been easy.

How to avoid broad, costly enforcement

Employers have many obligations to observe. One that sometimes escapes attention is the “general duty” they owe employees to provide a safe and healthy workplace. Some critics fault OSHA for not issuing more specific safety and health standards to ensure the workplace is free from harm. However, the general duty clause is a potentially sweeping provision on which OSHA may rely in bringing an enforcement action, even in the absence of a specific health or safety standard. The best way to avoid its potentially broad and costly enforcement effect is to apply reasonable care in ensuring employees have a safety and healthful work environment.

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