



VISITOR AND CONTRACTOR CONTROLS TO PREVENT THIRD-PARTY INJURIES

Does a facility owner have safety and health responsibilities to contractor employees working at their facility? What safety and health obligations do facility owners have to other personnel such as customers, vendors, and delivery personnel who visit the facility? To help answer these questions, consider the following scenarios:



Case 1: A manufacturing firm was experiencing difficulty with its air compressor. The company hired a firm to service the compressor. The repairman came to the site and began working on the equipment. The serviceman removed the safety guards and got his hand caught between the pulley and belts when the compressor inadvertently started. The incident caused the serviceman to

lose four fingers. The injured worker filed a lawsuit against the manufacturing firm. The plaintiff attorney demonstrated that the manufacturing firm did not have contractor guidelines for the control of hazardous conditions and the court awarded the injured party \$865,000.

Case 2: A meat packing plant hired a contractor to clean machinery at its plant. The contractor cleaned the machinery that violated OSHA's lockout/tagout standard exposing the contractor's employees and host employees to hazardous conditions. Following an injury to the contractor's employee associated with this activity, OSHA issued citation to both the contractor and host employer. The host employer appealed the citation; however, the Review Commission held that employers are liable for contractor violations that they "control," even if the violations do not endanger the host employer's employees. The host employer was in "control" because as sole owner of the plant, it had exclusive control over who entered and worked there.

Case 3: A vendor arrived at a pipe manufacturer to deliver a load of flammable solvent that involved transferring the material into a stainless steel tote. The driver failed to bond and ground the tank truck and tote prior to off-loading the material. As a result, the material ignited while transferring the product due to electrostatic discharges. The driver sustained burns to his arm, neck and shoulders. He subsequently filed suit against the facility owner. The case resulted in a substantial settlement.

As these cases illustrate, outside contractors, vendors, and visitors provide a source of potential liability for manufacturing and other facilities. To minimize liabilities of facility owners associated with activities performed on site by contractors, facilities should establish and implement a contractor safety and health program and have visitor safety policies and procedures in place.

This article discusses elements of an effective contractor safety and health program and also provides safety considerations to protect parties that may visit your facility.

CONTRACTOR SAFETY AND HEALTH PROGRAM

Relative Risk

The risk of injury or illness to contractor and owner employees is an important consideration in determining how to apply elements of a contractor safety and health program. For example, the risk of injury or illnesses for an administrative support person employed through an agency providing temporary clerical support is lower than a maintenance worker performing activities in an active manufacturing area. Therefore, contractor safety and health programs should be designed to reflect different relative levels of risk associated with the work to be performed. Factors to consider when designing your contractor safety and health program include the following:

- Nature of the work to be performed.
- Location of the work to be performed.

- Potential exposure to work site hazards.
- Potential for the contractor performing the work to expose themselves, other contractors, or owner employees to hazards.
- Duration of the work to be performed.

Prequalification and Contractor Selection

Generally, prequalification should be the initial step taken by owners to evaluate a new contractor or contractors who have not recently worked in the facility. Prequalification is recommended for contractors who work on-site and may expose their employees, other contractors, owner employees, or the community to recognized hazards. The prequalification process should be determined by the level of risk associated with the contractor's work onsite.

The prequalification process typically involves the prospective contractor providing the owner with a completed prequalification questionnaire (PQQ) and supporting documents and programs. The purpose of the PQQ is to identify those contracting organizations with effective safety management systems.

The completed PQQ should be evaluated by various departments or functional specialists within the company. The PQQ should be reviewed and evaluated for safety, health, and environmental issues, technical issues (e.g., organizational structure, discipline/trade skills, ability and experience of similar contracts, quality issues, and financial issues).

Prequalification Criteria

The next step is to establish appropriate safety and health performance acceptance criteria. An owner may want to establish acceptance criteria for the type of contractor and work to be performed. Typical prequalification acceptance criteria include the following:

- Experience Modification Rate (EMR): It is common practice for owners who have a formal contractor safety and health program to require contractors to have an EMR of 1 or less.
- Injury frequency and severity rates: Specific target injury rates are typically company specific and are often revised (i.e. lowered) periodically by the owner based on the owner's contractor safety goals.
- Safety and health program evaluations: Safety and health program evaluations are time-consuming and more subjective than reviewing injury statistics but the evaluator should base his/her judgment on the presence or absence of specific safety and health management system elements.
- Integration of safety and health on current projects: For contractors performing high-risk activities (such as construction and/or maintenance activities, especially in active manufacturing areas), the owner should consider interviewing the prospective contractor representatives and/or visiting a representative project to assess the prospective contractor's corporate safety culture, safety and health knowledge, management skills, and philosophy.
- OSHA citation history: A contractor that is subject to regular scrutiny by OSHA should be avoided since the presence of that contractor would increase the likelihood of OSHA inspections performed at the owner's site. OSHA inspection records are public records and may be obtained by conducting a company search on the OSHA inspection database Internet site (www.osha.gov/cgi-bin/est/est1).
- References from previous customers: The owner should talk with previous customers and determine whether or not previous customers were satisfied with the contractor's performance.

Safety and Health

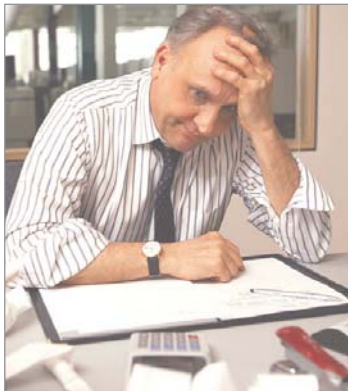
Requirements for Contractors

Prudent contractors usually include the cost of supplying safety equipment and employee training in their bids. Consequently, their bids may be higher, causing owners to look elsewhere. In other words, some effective safety and health programs go unrewarded. Owners can change this by making safety and health considerations an integral part of their procurement procedures. Many owners have well written contractor safety and health programs. Incorporating their standards as specific contract requirements should be considered. The more specific the safety and health requirements are stated in the contract, the greater the ability the owner has in ensuring the work is conducted in a safe manner.



Safety and health requirements should also be objectively stated to avoid ambiguity and interpretation issues. Legal and contract specialists should be consulted to formulate contractor safety and health specifications. Consider the following when developing such specifications:

- Naming the person who will be responsible for overseeing contractors' performance and ensuring that the work is performed in a safe manner.
- Requiring all contractors to prepare and submit an acceptable safety and health plan that defines supervisory and employee safety training prior to the start of their particular work.
- Listing specific published safety and health standards and hazard prevention requirements (such as OSHA, ANSI, and other applicable industry standards).
- Specifying safety and health requirements that are unique to the facility and/or not addressed in other industry standards.
- Listing qualifying requirements for contractors eligible to work on site.



Holding Contractors Accountable

Just having written programs and policies is not enough. Your contractors should report on-going activities in training, incident reporting, accident investigation, and other parts of their safety program in an effort to make them accountable for their performance. Plus, the owner should conduct frequent audits to ensure the contractor

is performing in accordance with the contract specifications and their own safety and health program.

A monitoring program typically includes safety and health performance reporting, inspections (by both the owner and contractor representatives) and incident reporting. Owners often require periodic (i.e. at least monthly) reports to be submitted to the owner to track

the contractor's safety and health performance. Consideration should be given to measure and track both results-based metrics (such as injuries and incidents) and activity-based metrics (e.g., inspections, audits, job safety analyses completed, toolbox safety meetings, number corrective actions from audits, behavior observation and feedback, etc.).

Once the contractor is on site, the owner should periodically monitor the work practices of the contractor. If improper safety and health practices are observed, the owner needs to take action to ensure the responsible contractor(s) correct the situation. From a legal perspective, the owner is exercising reasonable diligence. Owners should consider monitoring contractor compliance with the facility's safety and health requirements on an on-going basis. The frequency of monitoring should depend on the level of risk associated with the work the contractor is performing. The contractor should conduct internal safety and health inspections according to their procedures. The contractor's self-inspection reports may either be submitted to the owner or be available to review upon request. A formal system should be established to review the audit findings with the contractor(s) that reflect corrective actions needed, person(s) responsible for implementing the corrective action, and due dates to ensure the deficiencies are corrected in a timely manner.

After completion of a project, the contractor's overall performance should be evaluated. The safety and health portion of this evaluation should incorporate data from the contractor's monthly reports, audit findings, and observations. This comprehensive report can be used by the owner to build a database of contractors for future projects. Furthermore, contract close-out reports should be completed by both the owner and contractor management teams that detail the positive and negative aspects of the project and recommendations for similar contracts in the future. If the contractor does not meet the owner's expectations and requirements, a meeting may provide the contractor an opportunity to discuss the issues and develop a corrective action plan. In some cases (consistent with the owner's contracting provisions), the contractor may be removed from the approved contractor list.

VISITOR SAFETY POLICY

Aside from contractors and vendors that work on site, other parties may visit the facility. Such parties might include customers, sales representatives, and delivery personnel. Visitors are generally excluded from the facility's contractor safety and health program but the risk of injuries to visitors (and the subsequent risk of third-party claims) should not be neglected. Therefore, visitor safety policies and procedures should be established to prevent visitors from being exposed to hazards while on site.

The first step is to develop visitor safety rules and procedures for visitors and document that these safety rules were communicated to visitors. The safety rules should clearly and concisely communicate actions that are prohibited (e.g., access to active manufacturing or other hazardous areas unless escorted by a facility representative, etc.), actions required while on site (such as wearing personal protective equipment, following the site's emergency evacuation procedures, etc.), and consequences for not following the facility's visitor safety policy. Visitors who have not received a safety orientation for the site should also be escorted at all times while on site to ensure he/she does not access a hazardous area and to ensure the visitor knows what to do in the event of an emergency that requires evacuation.

In conjunction with establishing visitor safety rules for the site, visitors should be required to sign in and out upon entering and exiting the facility. Requiring visitors to review visitor safety rules and emergency alarm and evacuation procedures upon signing in at the gate or office provides a means to communicate basic safety information about the facility to anyone who visits the site. A sign in/out procedure can also provide documentation that such information was communicated to visitors and provide a means for accounting for all personnel on site in the event of an emergency evacuation of the facility.

The next step is to make a reasonable effort to ensure that your facility is safe by complying with industry

standards. Conduct regular walkthrough inspections focusing on walking surfaces, trips and fall hazards, adequate egresses, emergency exits, emergency lighting, access to fire extinguishers, fire/smoke alarms and notifications, snow removal and signage. Also, make sure that the risk of being struck by moving equipment is minimized by segregating moving equipment and vehicles (such as forklifts and delivery trucks) from pedestrians.



To further communicate site hazards and instructions to visitors, post warning signs in hazardous areas including: manufacturing, process, hazardous material storage, and near moving vehicles and equipment. Such signage should clearly state that only authorized and trained personnel are allowed in those areas, warn personnel of hazards, and communicate required personal protective equipment and any special instructions to protect against such hazards. Finally, be sure to provide consistent enforcement of the facility's safety and health policies and rules. Policies and procedures have little impact in preventing injuries without diligent enforcement.

CONCLUSION

The question of liability is a complex issue. However, preventing an injury may be the best way to prevent a lawsuit and third-party injury claims. The basis of formalizing a comprehensive contractor safety and health program and visitor safety policy is to control the risk of injuries to contractors and visitors.

REFERENCES

American Petroleum Institute (API) and Chemical Manufacturers Association (CMA). Implementing a Contractor Safety and Health Program: API Recommended Practice 2221. Washington, DC: API, 1996.

Counts, J. "The Importance of Contractor Safety." Occupational Health & Safety. 66(6): 18-19.

Farrow, D. "Contracting Out: Assuring Health and Safety." Safety & Health Practitioner. 17(1): 32-35.

Hislop, R. Construction Site Safety: A Guide for Managing Contractors. Florida: Lewis Publishers, 1999.

MacCollum, D. Construction Safety Planning. New Jersey: John Wiley & Sons, Inc., 1995.

Nwaelele, C. "Prudent Owners Take Proactive Approach." Professional Safety. 41(4): 27-29.

Yohay, S. and Sapper, A. "OSHA Liability of Controlling Employers – Time for Reexamination." Employee Relations Law Journal. 23(4): 163-170.

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