

National Grain & Feed Association/
Grain Journal

Safety, Health and Environmental
Quality Conference

Top OSHA Issues for 2010

July 28-29, 2010
Omaha, NE

Jess McCluer
National Grain and Feed Association

About the NGFA



- **950 Active Member Companies**
 - Handle three-fourths of U.S. grain, oilseeds
 - Over 350 feed manufacturers
- **200 Associate member companies**
 - Provide goods and services to the industry
- **35 State and Regional Affiliates**
- **Strategic Alliances: PFI, NAEGA**

NGFA Core Activities

■ Representing Industry

- Congress, federal agencies



■ Providing Services

- Trade Rules
- Arbitration



■ Distributing Information

- Newsletters, training resources



■ Offering Professional Development Opportunities

- Annual Convention
- Country Elevator/Feed Industry Conferences



Top OSHA Issues for 2010

- Sweep Auger Letter of Interpretation
- Combustible Dust Rulemaking
- Rolling Stock Fall Protection

OSHA Sweep Auger Letter of Interpretation

- OSHA on Dec. 24 issued a letter pertaining to sweep auger operations within grain bins:
 - Prohibits an employee from working inside a bin while an unguarded sweep auger is in operation
 - OSHA offered no acceptable procedures that would allow a person to work inside a bin when an unguarded auger is in operation



Sweep Auger Timeline

- **September 30, 1996** – Following the promulgation of the Grain Handling Standard's technical amendment, OSHA issued an internal memorandum with an interpretation of 1910.272 (g) (1) (ii).
- **January 23, 2008** – Insurance representative sends letter to OSHA with questions about employees working in bins with operating equipment.
- **September 29, 2008** – OSHA issued a response letter titled, “Grain handlers and engulfment hazards; procedures for unguarded sweep augers.[1910.23(a)(5); 1910.272; 1910.272(e)(2); 1910.272(g)(1)(ii); 1910.272(g)(2)] , “ the Agency states “the standard (1910.272(g)(1)(ii)) is not intended to be prohibition against employees entering grain storage structures while machinery is running.” OSHA does not recognize 1996 memorandum.
- **October 15, 2008** – Insurance representative sends second letter to OSHA asking “Can an unguarded sweep auger be in operation (energized) in a grain bin while an employee is inside the bin?” Does not specifically identify what is meant by guarded or unguarded.

Sweep Auger Timeline (cont.)

- **January 2009** – Industry is made aware of letter after it is posted on OSHA public Web page.
- **August 2009** – Representatives from NGFA and Grain Elevator and Processing Society meet with OSHA to discuss the sweep auger issue.
- **December 24, 2009** – OSHA issued a letter to insurance representative stating that it is a violation of 1910.272 (g) (1) (ii) unless the employer can eliminate all hazards presented by an energized unguarded sweep auger. (Yet to be posted on OSHA public Web page).

Sweep Auger Timeline (cont.)

- **February 22, 2010** – NGFA submits letter to OSHA asking them to rescind December 24, 2009 letter and asks to schedule meeting to further discuss issue.
- **April 2010** – OSHA declines to meet with NGFA unless they identify specific parts of the December 24 the letter to discuss.
- **May 4, 2010** – NGFA submits letter to OSHA that points to several conflicts between OSHA's statements in the Dec. 24th letter compared to its current standards. The NGFA also cited how previous correspondence between the agency and the NGFA regarding deenergization was not referenced in the Dec. 24 OSHA letter.

What Does the Letter Mean?

- Until NGFA receives a response from OSHA, the December 24th letter is the “letter of the law” and supercedes previous documents including the 1996 memorandum.
- Each Region, Area Office and State Plan State can and has been interpreting the letter differently.
- As a result, several companies are challenging citations which could set precedent.

What Should I Do?

- Have effective safety and health program and procedures.
- Review and analyze December 24th letter of interpretation and make changes to sweep auger operation process as you interpret.
- Be prepared to explain to OSHA why you have or have not made changes to current policy.

Next Steps

- NGFA is waiting for response from OSHA and results of citation challenges to determine next legal and/or political actions.
- NGFA is working to set-up meeting with senior OSHA leadership to discuss economic impact on industry and need for quick resolution.

OSHA's Initiative on Combustible Dust

- The sugar plant explosion in Georgia started this regulation.
- OSHA began an “advanced notice of proposed rulemaking” process.
- Risks to our industry of this rulemaking:
 - 1/8 inch standard could go lower (1/16 inch; 1/80 inch).
 - Other sectors besides elevators could have similar housekeeping standards.
 - Too much emphasis on dust may lead to too little attention on other risks e.g. ignition sources
 - How safe are we today? In 30 years: 2/3 reduction in explosions and 90% reduction in fatalities.

OSHA Combustible Dust Rulemaking

- Advance Notice of Proposed Rulemaking (ANPRM) issued on Oct. 21, 2009 outlined agency's intent to develop a comprehensive combustible dust standard that would apply across different industry sectors:
 - ANPRM posed various 69 questions on which OSHA is soliciting public comment.
 - NGFA, AFIA and PFI submitted Joint Comments on Jan. 19, 2010.
 - Stakeholder meeting conducted on Dec. 14, Feb. 17 and April 21; NGFA testified at each one.
 - NGFA participated in June 28 Web-based forum.
 - NGFA is working with other organizations that also are affected: AFIA, NOPA, CRA, RFA, NAMA, others; goal is to convey a consistent message

OSHA Combustible Dust Rulemaking

- Rulemaking issues specific to grain and feed industry:
 - Are revisions needed to the industry's current grain handling standard?
 - Should current grain handling standard be “harmonized” with the potential approach created for other combustible dusts
 - Should grain and feed facilities be incorporated into a “new” standard, if developed

Current Grain Handling Standard

- Applies to grain elevators, feed mills, flour mills, rice mills, dust pelletizing plants, dry corn mills, soybean flaking operations, and the dry grinding operations of soycake
- Some provisions only apply to grain elevators:
 - Inside bucket elevators; emergency escape; continuous-flow grain dryers
 - Fugitive Dust: Requirement to remove fugitive dust when it exceeds 1/8 inch in designated priority housekeeping areas: 1) floor areas within 35 feet of inside bucket elevators; 2) floors of enclosed areas containing grinding equipment; and 3) floors of enclosed areas containing grain dryers located inside the facility

OSHA Combustible Dust Rulemaking

- Housekeeping action level is a major consideration
 - OSHA is considering whether to incorporate National Fire Protection Association (NFPA) standards into combustible dust rule
 - NFPA standards refer to 1/80 inch of dust covering five percent of the total floor area of a building as a combustion hazard
 - NFPA formally proposed to combine into a single standard its current five separate combustible dust standards – NFPA 61, 484, 654, 655 and 664
 - NGFA submitted comments opposing combination of standards. A majority of comments opposed proposal

What's Next?

- Small Business Advocacy Review panel to review the draft proposed rule and related analyses prepared by OSHA.
- The panel will have 120 days to consider the proposal and provide recommendations.
- Based on this, it appears OSHA will not issue a proposed standard until fall 2011, at the earliest.

OSHA Walking-Working Surfaces and PPE Standard

- Notice of Proposed Rulemaking (NPRM) issued on May 24 outlined agency's intent to significantly revise current fall protection standard. Comments due on August 23.
- Specific issues related to grain and feed industry :
 - Seeks comments on whether specific regulations are needed to address rolling stock and commercial motor vehicles
 - Seeks comments on whether to include specific references to combustible dust in the housekeeping section of the standard

OSHA Walking-Working Surfaces and PPE Standard

- Other issues in far reaching proposal include:
 - New requirements for guardrail, safety net and personal fall protection;
 - New requirements for portable and fixed ladders;
 - New requirements for employee training and retraining; and
 - Comments and cost-benefit analysis on proposal to require employees to provide waterproof foot gear where wet processes are used



NGFA/GEAPS General Safety DVD



- Newly created educational/training tool that addresses basic safety topics for new employees
 - Approximately 35 minutes in length
 - Available in Spanish
- Includes DVD and CD with supplemental training materials

National Grain & Feed Association/
Grain Journal

Safety, Health and Environmental
Quality Conference

Thank you!!

Jess McCluer

National Grain and Feed Association

202-289-0873

jmccluer@ngfa.org