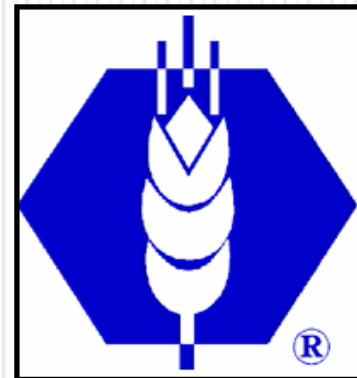


Top Regulatory Issues Facing the Grain Handling Industry in 2013

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Enforcement Reaches Historic Heights

- Total number of inspections are up 6.2%
- Programmed inspections are up 15.1%
- Complaint inspections are up 8.8%
- Violations are up 15.3%
 - Serious violations are up 22.1%
 - Willfull violations re up 217.1%
 - Repeat violations are up 8.1%
 - Other than serious violations are down 10.4%

Regional and Local Emphasis Programs

- Local Emphasis Programs
 - Region V (IL, IN, WI, MI, OH) 11/01/2011
 - Region VI (AR, LA, NM, OK, TX) 10/01/2011
 - Region VII (IA, KS, MO, NE) 10/01/2011
 - Region VIII (CO, MT, ND, SD, UT, WY) 10/05/2011
 - Region IX LEP (AZ, CA, HI, NV) 1/20/2012
 - Region X (AK, ID, OR, WA) 10/13/2011
- State Emphasis Programs
 - Iowa and Indiana
- Combustible Dust NEP has been reissued

What Does This Mean in the Field

- Increased Pressure on Area Directors
 - Produce more significant cases using the press for deterrence effect
 - Focus resources on cases with more press appeal
- Decreased discretion in the field
 - Concern about the bottom line
 - Power centralized in the National Office
- In settlement OSHA wants more...for less

Proactive Targeting Philosophy

OSHA Inspection Statistics (Federal and State)	FY09	FY10	FY11	FY12
Total Inspection	238	296	380	629
Percent Programmed Inspections	42%	49%	55%	54%
Total Violations Issued	858	1,289	1,552	1,343

Most Frequently Cited OSHA Standards in Grain Handling Industry

Most Frequently cited standards for LEP Grain Inspections:

- **1910.272 – Grain handling facilities**
- **1910.219 – Mechanical power-transmission apparatus**
- **1910.023 – Guarding floor and wall openings and holes**
- **1910.305 – Wiring methods, components, and equipment for general use**
- **1910.303 – Electrical, general use**
- **1910.1200 – Hazard Communication**
- **1910.134 – Respiratory Protection**
- **1910.146 – Permit-required confined spaces**
- **1910.027 – Fixed ladders**
- **1910.132 – Personal protective equipment**

Most Frequently Cited OSHA Standards in Grain Handling Industry

Most frequently cited standards in 1910.272 include:

- 1910.272 J01 – failure to implement a written housekeeping program for fugitive dust.
- 1910.272 E02 – failure to train employees for special tasks, such as bin entry.
- 1910.272 G02 – failure to provide lifelines and harnesses for employees entering the bin at or above the level of the grain.
- 1910.272 G01 I – failure to issue a permit prior to entering the bin.
- 1910.272 G04 – failure to provide rescue equipment suitable for the bin being entered.
- 1910.272 G01 III – failure to test the atmosphere within a bin before employees enter.
- 1910.272 M03 – failure to maintain a certification record of performed preventative maintenance inspections.
- 1910.272 E01 II – failure to provide specific procedures and safety practices applicable to job tasks.
- 1910.272 D – failure to implement an emergency action plan.
- 1910.272 G01 II – failure to deenergize and disconnect all equipment in a grain storage

Increased Penalties and Contest Rate

New penalty system (FY 2011)

- More difficult to get reduction for good safety history and size
- Many more significant cases
 - In 2005, \$21 million was highest penalty vs. \$87 million in 2009
 - OSHRC considering raising the mandatory threshold amount for mandatory settlement (currently \$100,000)
- Higher contest rate
 - 62% increase from 2008 (last year of Bush Administration)

OSHA – Second Term

Rulemaking

- Injury and Illness Prevention Program
- Silica
- Combustible Dust
- MSD Column on OSHA 300 Log
- Walking/Working Surfaces e.g. rolling stock fall protection
- HAZCOM

Enforcement

- Reallocation of budget
- Appointments to OSH Review Commission
- Emphasis Programs
- Press Releases
- Severe Violator Enforcement Program
- State Oversight
- Whistleblower actions

Top Grain Handling Issues for 2013

- Continued Increased Enforcement Upon Grain Handling Industry
 - Permit Required Confined Space/Boot Pit
- Sweep Auger Letter of Interpretation
- Combustible Dust Rulemaking
 - Globally Harmonized System for Labeling
 - Industry Consensus Standards e.g. NFPA
- Rolling Stock Fall Protection

Confined Space/Boot Pit

- Recently OSHA has issued numerous citations where “boot pits” are considered confined spaces.
- OSHA does not have a specific definition for “boot pit;” similar to “guarded/unguarded auger” issue
- Are they considering certain depth, level of moisture, configuration in relationship to the facility, etc?

Sweep Auger - Enforcement and Cases

Despite losing sweep auger cases in litigation, OSHA continued issuing citations, leaving employers with the following options:

- Accept citation and face risk of Repeat violations (w/ penalties of \$70,000+ per violation)
- Challenge citations and incur legal fees
- Not empty bins in economical or efficient manner

Sweep Auger Settlements

- Illinois company cited despite using both administrative & engineering controls to keep employees out of danger zone
- Area Director had personal knowledge of sweep auger operations
- OSHA withdrew citation and agreed to settlement terms that provided guidance re: acceptable alternative sweep auger operations



10 Sweep Auger Safety Principles

1. Follow 1910.272 permit requirements
2. De-energized & LO/TO sweep and sub-floor augers before setting-up/digging-out
3. Install and secure grates over sub-floor auger
4. Sweep auger must be guarded as designed by manufacturer
5. No walking on grain at depths presenting an engulfment hazard
6. Rescue trained & equipped observer posted outside the bin

10 Sweep Auger Safety Principles

7. Use engineering controls to prevent contact with auger (use of administrative controls alone is insufficient)
8. Use speed control mechanism or bin stop device to prevent uncontrolled rotation of the sweep auger
9. No hands, legs, or other similar means to manipulate an operating auger
10. To adjust auger, it must be unplugged (w/ plug controlled by adjuster) or locked out

Combustible Dust Regulations and Compliance

- 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.
 - OSHA originally had the CD standard on a fast track to be done in 2 to 3 years (from 2009). According to the current agenda, OSHA will convene a Small Business Advocacy Review panel in Fall 2013.

Combustible Dust Regulations and Compliance

OSHA is looking at other ways to address combustible dust hazards, such as, using other standards to cover the hazard.

- Housekeeping Section of Proposed Walking and Working Surface proposed rule
- “Chemical Hazard” Category in Proposed Amendment to Globally Harmonized Communication standard
- Injury and Illness Prevention Program
- NFPA’s New Standard Covering the Fundamentals of Combustible Dust

Combustible Dust Regulation

- GHS Amendment to OSHA Hazard Communication Standard
 - Final Rule: 3/26/2012; Effective Date – 5/25/2012 – 60 Days after publication
 - Combustible Dust is classified as “chemical hazard” and is undefined
 - Shipments of products that could produce combustible dusts e.g. whole grain when used in processing or where dust is produced is subject to new rule
 - New requirements mean new SDS’ and labels for manufacturers, distributors and importers. The key questions are what is combustible dust and who is the manufacturer, distributor and importer

Combustible Dust Regulation (cont.)

- NGFA along with several other agribusiness organizations has filed a legal petition to review in order to challenge combustible dust requirements
- Since the negotiations with OSHA began in June, several coalition members believe there has been a lack of progress to resolve the issue.
- This could set potential precedent for “backdoor” rulemaking. That is, topics added to a final rule that were not available for public comment during the rulemaking process.

Rolling Stock Fall Protection

- FGIS cited by OSHA in July 2011 for not using fall protection on top of rail car; being appealed at national level
 - Further example of “broad” interpretation of letter of interpretation
 - OSHA recently cited an FGIS designated official agency
 - Recent settlement does not provide clarification
- Since 2010 several grain-handling facilities have been issued individual “willful” citations with fines between \$60-70,000

Rolling Stock Fall Protection (cont.)

- On March 2, the Occupational Safety and Health Review Commission issued a decision that reaffirmed the “Miles Memo,” particularly its determination of where fall protection is feasible (inside or contiguous to a building) and where it is not (away from such areas). Also reaffirmed administrative controls can be used to protect employees.
- Notice of Proposed Rulemaking (NPRM) issued on May 24, 2010 outlined agency’s intent to significantly revise current fall protection standard.
 - 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

Education and Training

Training

- NGFA/*Grain Journal* Elevator Design Conference, July 30-August 1, 2013 in Omaha, NE



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Thank you!

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