



*What you  
don't know  
can cost  
you money...*

**2016 OSHA Trends Present Peril  
for Unprepared Employers**

April 29, 2016

**Reinhart**  
Boerner Van Deuren s.c. Attorneys at Law

## AGENDA

**8:00am: Registration, Networking, Continental Breakfast**

*Please continue to enjoy breakfast and refreshments throughout the morning.*

**8:30am: Welcoming Remarks ~ John Zawadsky**

**9:00am: Hazcom, Air Quality and Respirator Issues ~ Mike McCoy**

**9:30am: New Developments ~ Carolyn Sullivan**

**10:00am: Construction Industry/OSHA Issues ~ John Zawadsky, Troy Giles**

**10:30am: How to Deal with an OSHA Inspection ~ John Zawadsky**

**11:00am: Questions and Answers ~ Panel of presenters**



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## HAZCOM, Air Quality and Respirator Issues

### *2016 OSHA Trends Present Peril for Unprepared Employers*

**Michael McCoy, CIH, CSP**  
Senior Industrial Hygienist

michael.mccoy@gza.com  
262-754-2586  
www.gza.com

Page | 3



The OSHA top 10 for FY 2015 were:

- Fall Protection (1926.501) – 6,721 violations
- **Hazard Communication** (1910.1200) – 5,192 violations
- Scaffolding (1926.451) – 4,295 violations
- **Respiratory Protection** (1910.134) – 3,305 violations
- Lockout/Tagout (1910.147) – 3,002 violations
- Powered Industrial Trucks (1910.178) – 2,760 violations
- Ladders (1926.1053) – 2,489 violations
- Electrical – Wiring Methods (1910.305) – 2,404 violations
- Machine Guarding (1910.212) – 2,295 violations, and
- Electrical – General Requirements (1910.303) – 1,973 violations.

Page | 4



## Hazard Communication Standard (HCS) or HAZCOM (29 CFR 1910.1200)

- Designed to protect against chemical-source injuries and illnesses.
- Ensures employers and workers are provided with sufficient information to anticipate, recognize, evaluate, and control chemical hazards and take appropriate protective measures.
- Chemical information is provided through safety data sheets (SDSs), labels, and employee training.
- In order for SDSs, labels, and training to be effective, the hazard information they convey must be complete and accurate.



## HAZCOM, key program elements:

- **Written** HAZCOM program.
- **Train** your employees in HAZCOM.
- **Inform** your staff of hazardous chemicals in workplace.
- **Properly label** hazardous chemicals in the workplace.
- **Maintain** a full-list of chemicals and maintain **current** SDSs for chemicals inventory.
- **Provide** unfettered employee access to SDSs.





### HAZCOM training provides:

- Effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard is introduced.
- Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area.
- The physical, health, simple asphyxiation, combustible dust, and pyrophoric gas hazards, as well as hazards not otherwise classified, of the chemicals in the work area.



### HAZCOM training should provide:

- How employees can **protect themselves** from chemical hazards, including **specific procedures** the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and,
- How the hazard communication program was developed by the employer, including an **explanation of the labels** received on shipped containers and the workplace labeling system used by their employer; the **SDS**, including the order of information and how employees can obtain and use the appropriate hazard information.



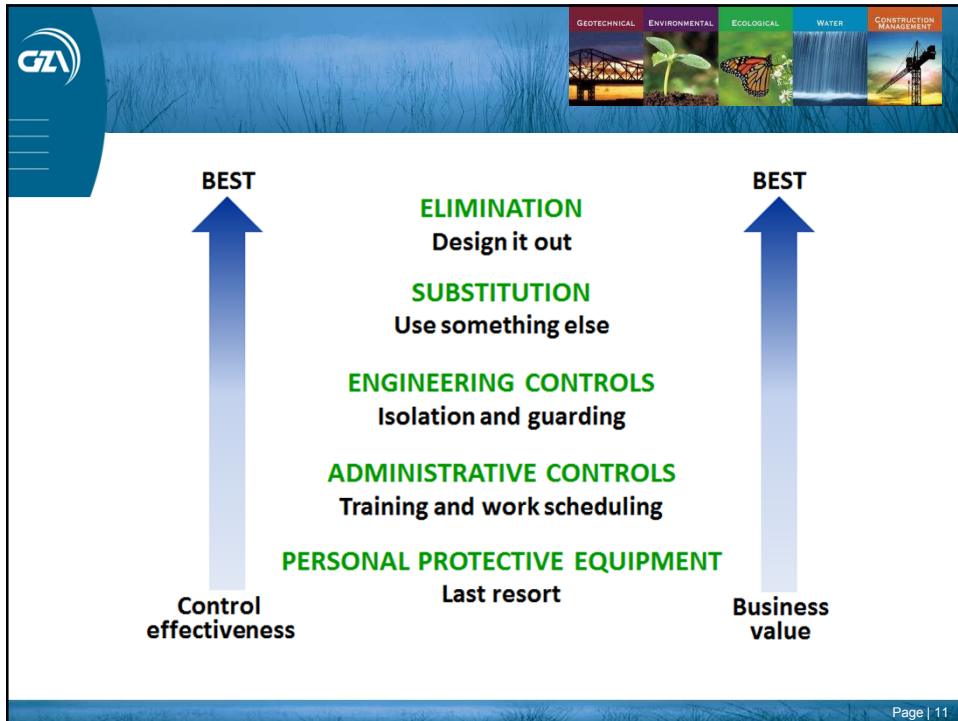
### OSHA HAZCOM Violations:

- Outdated or lack of written program. Updated to GHS standards?
- Employees "trained" but uninformed.
- No access to, or training on the location of SDS.
- New chemicals introduced without SDS.
- Compliance Officer may ask for training materials, proof of training?
- Unlabeled or improperly labeled chemicals.
- Chemicals on-site at temporary workplace without SDSs.



### Respiratory Protection Standard (29 CFR 1910.134)

- **Number one rule:** Prevent atmospheric contamination rather than use respirators!
  - Engineering controls, confinement, enclosure, local exhaust ventilation or substitute for less toxic materials.
  - Respiratory programs are administratively burdensome and expensive.
- When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to this section.



- 
- ### Respiratory Protection Standard, Key Elements
- **Written** Respiratory Protection Plan
  - **Training** regarding respiratory hazards and respirator use
  - **Selection** of Respirators
    - Evaluation of atmospheric contaminants
    - Selection of respirator type and filtration
    - Calculating Maximal Use Concentration (MUC) and Protection Factors (PF)
  - **Medical** Evaluation and Fit Testing
  - **Maintenance**, cleaning, storage and inspection of respirators
- Page | 12





### **Respiratory Protection Program Training (annually):**

- Why the respirator is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator.
- The limitations and capabilities of the respirator.
- How to effectively use the respirator in emergency situations, including situations in which the respirator malfunctions.
- How to inspect, put on and remove, use, and check the seals of the respirator.
- Procedures for maintenance and storage of the respirator.
- How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators.



### **OSHA Respiratory Protection Program Violations:**

- Lack of a written program, or outdated program
- Lack of employee training
- Employee trained but "uniformed"
- Using respirators without a respiratory protection program
- Respiratory equipment dirty, not inspected or incorrectly stored
- Lack of assessment of hazardous atmospheres
- Lack of filter/cartridge change-out (end of service life) schedule
- Selecting the incorrect respirator cartridge or type
- Fit testing and/or training not completed annually
- Inadequate record keeping
- Inappropriate "voluntary" use of respiratory protection
- Facial hair on employees prevents sealing
- Testing of supplied air not performed



## Air Quality (29 CFR 1910.1000 Subpart Z)

- **OSHA Permissible Exposure Limits (PELs)**
- Most of OSHA's PELs were issued shortly after adoption of the Occupational Safety and Health (OSH) Act in 1970, and have not been updated since that time.
- Since 1970, OSHA promulgated several standards including new PELs for 16 agents, and standards without PELs for 13 carcinogens. *\*Recently updated Silica standard.*
- OSHA recently "annotated" PEL tables with other OELs.  
<https://www.osha.gov/dsg/annotated-pels/>



## Air Quality

- We always have the General Duty Clause!
- Section 5(a)(1) of the Occupational Safety and Health Act (OSHA) of 1970: Employers must provide a workplace that "is free from recognizable hazards that are causing or likely to cause death or serious harm to employees."
- What is an employer to do? Sample or not to sample?
- How and when should we perform air sampling for worker inhalational exposures to dusts, mists, fumes, and vapors?





## Air Quality

1. Visually obvious fumes/dust/mist the in air or noticeable odors?
  2. Observe processes for known hazards, ask equipment dealers
  3. Review SDS for chemical components and hazards
  4. Review OSHA Table Z-1, Z-2, Z-3, List of Air Contaminants
- Processes that *may* need air quality or IH monitoring
    - Welding (especially on stainless steel)
    - Painting or coating operations, heat treating
    - Grinding, scraping or chipping
    - Sandblasting
    - Compounding, mixing or drying
    - Dipping or electroplating
    - Cleaning or etching
    - Machining or foundry work



## Air Quality

- If your employees work with listed carcinogens or other OSHA regulated chemicals at your facility. Some examples include:
  - Asbestos, benzene, beryllium, cadmium, ethylene oxide, formaldehyde (formalin), hexavalent chromium, lead, methylene chloride, silica, vinyl chloride
- Other chemicals/substances are currently under national/local emphasis programs including:
  - MDI or other isocyanates, combustible dusts, flavoring compounds (diacetyl)



## Air Quality

- *May* also need air quality or IH monitoring if employees:
  - Work with strong acids or bases
  - Use pesticides and herbicides
  - Use anesthetic gasses or chemotherapeutic agents
  - Use gas chemical sterilization of equipment and surfaces
  - Use small scale, yet hazardous, laboratory chemicals
  - Use volatile organics (acetone, MEK, toluene, isopropanol)
  - Hazardous, asphyxiate or explosive gases
  - Use of air-sensitive metals or other chemicals
  - Generation of combustible dusts
  - Non-routine process changes or "temporary" or "pilot" work
  - Use combustion equipment indoors, risk of carbon monoxide



## Air Quality

- What if an employee complains to OSHA?
  - Engage a professional, it can often prevent an OSHA visit
  - Often quick response and well-written IH report from a CIH will satisfy OSHA and reassure employees
  - If elevated levels are detected, then professionals can assist legal counsel to advise strategy for compliance
- What if an OSHA CSO visits my facility?
  - Professional guidance on compliance, sampling and evaluation is critical to protect employers and employees
  - Side-by-side sampling
  - Peer-review OSHA results and methods



### OSHA Violations Associated with Air Quality:

- Lack of air monitoring or IH data, missing historical data
- Insufficient sampling based on OSHA program, i.e. lead
- Exceeding either an OSHA action limit or PEL with no corrective actions initiated
- Use of PPE or administrative controls rather than engineering controls
- Use of respirators or other PPE with limited or no air quality data
- Introduction of new chemicals without sampling
- Area sampling for chemical hazards and excluding personal breathing zone sampling
- Sampling duration insufficient to characterize full-shift work
- Performing too few samples to characterize worker exposure
- Assumptions about local exhaust ventilation controlling hazards
- Assuming inert dusts or other compounds do not require monitoring
- Assuming limited hazardous work does not require sampling



### Generally how can we avoid OSHA violations?

- Maintain and update written OSHA-mandated programs
- Train employees for knowledge and understanding
- Require employees demonstrate knowledge
- Provide access to SDSs and other program documents
- Maintain excellent recordkeeping! If you don't document, it didn't happen.
- Use "Hierarchy of Controls" to eliminate hazards, use respiratory protection as last resort
- If respiratory protection is required, meet the RPS standard
- Perform IH sampling as required by OSHA and when processes change
- Do not make assumptions regarding employee exposure
- Use legal resources for best employer protection
- Respond appropriately to employee exposure complaints

# RECENT OSHA DEVELOPMENTS

**Carolyn A. Sullivan**  
262-951-4536  
csullivan@reinhartlaw.com

**Reinhart Boerner Van Deuren s.c.**  
N16 W23250 Stone Ridge Drive, Suite One, Waukesha, WI 53188  
www.reinhartlaw.com

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## Introduction

- OSH Act created OSHA to assure safe and healthful working conditions for workers
  - Set standards
  - Enforce standards
  - Train
  - Outreach
  - Educate
  - Assist

## Introduction (cont.)

- OSHA does not
  - Cover self-employed workers
  - Cover workplace hazards regulated by other federal agencies
  - Fine federal agencies
- OSHA covers most private sector employers and workers directly or through OSHA-approved state programs

Arkansas	Maryland	South Carolina
Arizona	Michigan	Tennessee
California	Minnesota	Utah
<i>Connecticut</i>	North Carolina	Virginia
Hawaii	<i>New Jersey</i>	Vermont
Iowa	New Mexico	Washington
<i>Illinois</i>	Nevada	West Virginia
Indiana	<i>New York</i>	Puerto Rico
Kentucky	Oregon	<i>Virgin Islands</i>

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## Increased Penalties

- 2001 tank explosion that killed 1 refinery worker and thousands of fish and crabs
  - OSHA penalty = \$175,000
  - EPA CWA penalty = \$10,000,000
- Bipartisan Budget Act of 2015 authorizes increased OSHA penalties
  - Strikes 1990 exemption preventing OSHA from increasing penalties for inflation
  - Provides for one-time "catch-up" increase
  - Adjusts civil monetary penalties to account for inflation

26

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## Increased Penalties (cont.)

- Effects of Bipartisan Budget Act of 2015
  - OMB guidance for implementing new penalty calculation process
  - OSHA must publish any maximum penalty adjustment by July 1, 2016
  - Any increase takes effect no later than August 1, 2016
  - Penalties could exceed current amounts by more than 80%

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## Increased Penalties (cont.)

- Assuming 80% penalty increase:

<b>Violation</b>	<b>Current Maximum</b>	<b>Increased Maximum</b>
Other than Serious	\$ 7,000	\$ 12,600
Serious	\$ 7,000	\$ 12,600
Repeat	\$ 70,000	\$ 126,000
Willful	\$ 70,000	\$ 126,000

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## SEVERE VIOLATOR ENFORCEMENT PROGRAM (SVEP)

- Concentrate resources: Employers who demonstrate indifference to OSH Act obligations
- Criteria
  - Egregious
  - Fatality/Catastrophe
  - Non-Fatality/Catastrophe -- Hazards Due to the Potential Release of a Highly Hazardous Chemical
  - Non-Fatality/Catastrophe -- Related to High-Emphasis Hazards

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## SVEP (cont.)

- Components include
  - Enhanced follow-up inspections
  - Nationwide inspections of related workplaces
  - Enhanced settlement provisions
- SVEP log
- Press releases

30

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## National Emphasis Programs

- Combustible Dust (Reissued)
- Amputations
- Hexavalent Chromium
- Occupational Exposure to Isocyanates
- Lead
- Primary Metal Industries
- PSM Covered Chemical Facilities
- Petroleum Refinery PSM
- Shipbreaking
- Crystalline Silica

31

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## Fatality/Severe Injury Reporting

- All employers under OSHA jurisdiction must notify OSHA when employee
  - Is killed on job
  - Suffers work-related hospitalization, amputation or loss of eye
    - In-patient hospitalization = formal admission to in-patient service of hospital/clinic for care or treatment
    - Amputation = traumatic loss of all/part of limb or other external body part

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## Fatality/Severe Injury Reporting (cont.)

- Reporting deadlines
  - Fatality -- within 8 hours
  - In-patient hospitalization, amputation or eye loss -- within 24 hours
- Reporting methods
  - Call nearest OSHA office
  - Call OSHA 24-hour hotline
  - Submit online form

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## Fatality/Severe Injury Reporting (cont.)

- Report must include:
  - Business name
  - Affected employee(s) name(s)
  - Location and time of incident
  - Brief description of incident
  - Additional relevant information
  - Number of fatalities/injuries
  - Object/substance that caused harm
  - Identification of harm
  - Contact person and phone number

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## Enforcement Weighting System

- Assigns greater value to complex inspections requiring more time and resources
  - Strategic planning and measurement
  - Equal protection of workers
- Enforcement units
  - Inspections that are routine = 1 unit
  - Inspections that require greater resources = up to 9 units

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## December 17, 2015 MOU

- Memorandum of Understanding to prevent, deter, investigate and prosecute worker endangerment violations
  - U.S. Department of Justice
    - Environment and Natural Resources Division
  - U.S. Department of Labor
    - Occupational Safety and Health Administration
    - Mine Safety and Health Administration
    - Wage and Hour Division

36

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# OSHA AND THE CONSTRUCTION INDUSTRY

**John H. Zawadsky**  
608-229-2202  
jzawadsky@reinhartlaw.com

**Troy E. Giles**  
262-951-4522  
tgiles@reinhartlaw.com

**Reinhart Boerner Van Deuren s.c.**  
www.reinhartlaw.com

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## OSHA and Construction

There are several pages of OSHA/Construction Rules—and that is just the Table of Contents!

Today's topics are limited to three relevant areas of OSHA regulation pertaining to the construction industry:

1. Silica Exposure
2. Trenching and Excavation Safety
3. Temporary Workers

## I. Silica

- What is silica?
  - A basic component of soil, sand, gravel, granite and other minerals
  - Quartz is the most common form of silica
  - Found in most mines—including the sand mines in Wisconsin—used by the fracking industry

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## Silica

- Construction exposure to silica
  - Abrasive blasting with sand to remove paint and rust from structures—such as bridges and concrete structures
  - Jack hammering
  - Rock/well drilling
  - Concrete mixing, drilling, cutting and sawing
  - Brick cutting and sawing
  - Tuck pointing
  - Tunneling

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## Silica

- Other exposures
  - Jewelry smoothing
  - Asphalt pavement manufacturing
  - Steel and foundry industries
  - Cement and brick manufacturing
  - Manufacturing of household paints, adhesives and glass
  - Maritime industry—abrasive blasting operations
  - Demolition

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## Silica

- Hazards of crystalline silica
  - Respirable dust—particles small enough to penetrate the respiratory system—cannot be expelled by the body
  - Crystalline silica is classified as a human lung carcinogen
  - Breathing respirable silica can cause silicosis which can be disabling or even fatal
    - Three types of silicosis: chronic (15-20 years), accelerated (5-10 years) and acute (< 2 years)
  - Links to kidney disease, lung cancer, chronic pulmonary disease
  - Estimated by OSHA that silica exposure remains a serious threat to over two million workers

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## Silica

- Previous standard
  - OSHA first regulated silica in 1971—little change since new rule published
  - Old rule exposure limits:
    - General Industry—PEL of 100  $\mu\text{g}/\text{m}^3$  8-hour Time Weighted Average
    - Construction and Maritime—250  $\mu\text{g}/\text{m}^3$  8-hour Time Weighted Average

Note: NIOSH's recommended exposure limit is 50  $\mu\text{g}/\text{m}^3$   
ACGIH threshold limit value is 25  $\mu\text{g}/\text{m}^3$

PEL = Permissible Exposure Limit

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## Silica

- Final "new" rule
  - Issued March 25, 2016 in the Federal Register—over 600 pages—however, actual rule is 30 pages
  - Lowers the PEL
    - General Industry – 50  $\mu\text{g}/\text{m}^3$
    - Construction - 50  $\mu\text{g}/\text{m}^3$  (a 5-fold drop)
    - Maritime – 50  $\mu\text{g}/\text{m}^3$
  - Action level is 25  $\mu\text{g}/\text{m}^3$  (8 hour time weighted average)
- OSHA estimates 840,000 workers are exposed to silica levels that exceed the new PEL

44

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## Silica

- Compliance time frame
  - Construction must comply by June 23, 2017
  - General Industry must comply by June 23, 2018
  - Maritime must comply by June 23, 2018
  - Fracking must fully comply by June 23, 2021

There are some minor exceptions to these time frames

- OSHA estimates the new rule will save 600 lives and prevent 900 new cases of silicosis on an annual basis

45

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## Silica

- New rule—actually two rules
  - One for the General Industry and Maritime
  - One for the Construction Industry
  - Both rules have many of the same components
  - Focus here is on the Construction Industry (29 CFR 1926.1153)
  - Compliance depends on initial monitoring conducted by employer—three categories:
    - < action level (25  $\mu\text{g}/\text{m}^3$ )—discontinue monitoring
    - > action level (25  $\mu\text{g}/\text{m}^3$ ) and < PEL (50  $\mu\text{g}/\text{m}^3$ )—repeat monitoring
    - > PEL (50  $\mu\text{g}/\text{m}^3$ )—two compliance options

46

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## Silica

- Compliance components—flexible alternatives—  
construction employers can either:
  - Use Table 1 of the construction standard (29 CFR 1926.1153)

OR

- Measure workers' exposure to silica and independently decide which dust controls work best to limit exposures to the PEL in their workplaces

47

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## Silica

- Table 1
  - Matches common construction tasks with dust control methods so employers know exactly what must be done to limit exposures. These methods are those known to be effective. For example:
    - Using water to keep dust from getting into the air
    - Using ventilation to capture dust
    - Using respirators
  - Employers who follow and comply with Table 1 are not required to measure worker exposure to silica

48

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## Silica

- Regardless of which control measure that is used, all construction employers covered by the standard must:
  - Develop and implement a written exposure control plan—identifies tasks that involve exposure and methods to protect workers
  - Designate a competent person—this person implements the written exposure control plan—capable of identifying silica exposure hazards and has authority to address the hazards
  - Restrict housekeeping practices when feasible alternatives are available

49

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## Silica

- Offer medical exams—e.g., every three years for workers who wear respirators more than 30 days per year
- Train workers on work operations that result in silica exposure and ways to limit exposure
- Keep records of workers' silica exposures and medical exams—30 years!

50

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## Silica

- OSHA's economic analysis
  - Net benefits ≈ \$7.66 billion (includes \$1 billion in compliance costs)
- Industry reaction
  - Very cool
  - Costs will be over \$5 billion—not \$1 billion as OSHA estimates
  - Congress could rescind but President Obama would veto
  - Litigation will occur
  - Associated Builders and Contractors and others plan to join eight state affiliates petitioning the U.S. Court of Appeals Fifth District to review OSHA's rule

51

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## Silica

- **Recommendation:**

Don't wait until 6-23-17 to see if the new OSHA Silica rule goes forward or is modified or rescinded. If the rule does go forward and your operations are not in compliance with the Silica rule, OSHA will cite you for noncompliance.

Address the rule today as if the rule will not be changed.

STAY TUNED!

52

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## II. Trenching and Excavating

Per OSHA

- An excavation is any manmade cut, cavity, trench or depression in an earth surface formed by earth removal
- Trench excavation is a narrow excavation made below the surface of the ground. In general, the depth is greater than the width—but the width (measured at the bottom) is not greater than 15 feet

53

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## Trenching and Excavating

Primary OSHA Regulations:

- 29 C.F.R. 1926.651—Specific Excavation Requirements
- 29 C.F.R. 1926.652—Requirement for Protective Systems
- Two workers killed every two months in trench collapses

Many examples of trenching disasters

54

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## Trenching and Excavating

### Dangers of trenching

- Cave-ins (most common)
- Falling loads—slip of material from a crane
- Hazardous atmospheres (methane, VOCs)
- Mobile equipment incidents (skid steer falling into a trench)

55

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## Trenching and Excavations

### Safety Measures

1. Trench under five feet in depth
  - No protective measures needed—if determined by a "competent person"

Who is a competent person per OSHA:

An individual who is capable of identifying existing and predictable hazards or working conditions that are hazardous, unsanitary or dangerous to workers, including soil types and protective systems required and who is authorized to take prompt corrective measures to eliminate the hazards and conditions

56

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## Trenching and Excavations

### Safety Measures (cont.)

2. Trenches five feet or greater—requires a protective system unless the excavation is made entirely of stable rock.

Four types of soil:

- Stable rock—can be excavated with vertical sides and remain intact
- Type A—unconfined compressive strength of 1.5 tons per square foot (tsf) or greater, e.g., silty clay, clay, sandy clay
- Type B—unconfined compressive strength greater than 0.5 tsf, but less than 1.5 tsf, e.g., crushed rock, silt, silty loam
- Type C—unconfined compressive strength of 0.5 tsf or less, e.g., gravel, sand, submerged soil, soil from which water is freely seeping

Obviously, Type C will require the most diligent protective systems

57

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## Trenching and Excavations

3. Trenches 20 feet or deeper.
  - Require the protective system be designed by a registered professional engineer (PE)

Protective Systems

1. Benching—excavating sides to form one or more horizontal steps; not done with Type C soils
2. Sloping—cutting back on the trench wall at an angle
3. Shoring—requires supports to prevent soil movement and cave ins
4. Shielding—e.g., trench boxes

58

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## Trenching and Excavations

### General Practices

1. Know where underground utilities are before digging
2. Identify sources (e.g., vibrations, soil type) that may affect trench stability
3. Keep heavy equipment away from trench edges
4. Keep excavated soils at least two feet from the trench edges and keep stockpiled materials from the edge
5. Do not work under suspended or raised loads of materials

59

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## Trenching and Excavations

### General Practices (cont.)

6. Inspect trenches at the start of each shift
7. Inspect trenches following a rainstorm or other water intrusion (snow melt, broken water line)
8. Inspect trenches after any occurrence that could have changed conditions in the trench
9. Test for atmospheric hazards if the trench is greater than four feet deep—e.g., low oxygen, presence of toxic gases
10. Have personnel wear high-visibility or other suitable clothing, particularly in areas of exposure to vehicular traffic

60

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### III. Temporary Workers

- Temporary workers are entitled to the same protections under the Occupational Safety and Health Act of 1970—as all other covered workers
- Temporary workers are workers generally employed through a Staffing Agency—the Staffing Agency's client is the Host Employer

61

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### Temporary Workers

- There has been a shift to use temporary employees, including on hazardous work projects and sites.
- According to the 2015 Staffing Law Conference statistics:
  - The temporary worker industry has grown 125% since 1990
  - 861,000 temporary jobs added to the U.S. economy since August 2009
  - Approximately 10.6 million people work in temporary jobs each year

62

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## Temporary Workers

"Host employers need to treat temporary workers as they treat existing employees. Temporary staffing agencies and host employers share control over the employee, and are therefore jointly responsible for the temporary employee's safety and health. It is essential that both employers comply with all relevant OSHA requirements."

—David Michaels, Ph.D., M.P.H., Assistant Secretary of Labor for Occupational Safety and Health

## Temporary Workers

### Top Ten Categories of OSHA Violations Fiscal Year 2015

<u>OSHA Standard</u>	
Fall Protection—General	1
Hazard Communication	<b>2*</b>
Scaffolding	3
Respiratory Protection	4
Lock Out Tag Out	<b>5*</b>
Powered Industrial Trucks	<b>6*</b>
Ladders	7
Electrical-Wiring Methods	8
Machine Guarding	<b>9*</b>
Electrical Systems—General	10

\*Most cited federal standards with temporary worker exposure



## Temporary Workers

- OSHA launched its Temporary Worker Initiative in April 2013
- In general—  
Employer responsibilities:
  - Host Employer generally has primary responsibility for identifying hazards and complying with work site-specific health and safety requirements
  - Staffing Agency employer must ensure its workers are equipped with protections and have the necessary training

65

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## Temporary Workers

- Three Bulletins issued so far by OSHA regarding temporary workers:
  - Bulletin No. 1—Injury and Illness Recordkeeping Requirements
  - Bulletin No. 2—Personal Protective Equipment
  - Bulletin No. 3—Whistleblower Protection Rights
- Other bulletins are planned for issuance

66

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## Temporary Worker Initiative Bulletin No. 1

### **Injury and Illness Recordkeeping Requirements**

- Injury and illnesses should be recorded on only one employer's log—usually the Host Employer
- Reporting responsibility is determined by extent of supervision—e.g.,
  - Controlling conditions that present a hazard
  - Directing workers' activities around the hazard

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## Temporary Worker Initiative Bulletin No. 1

- Staffing Agency—still has responsibilities
  - Must maintain frequent communication with its workers and Host Employer to ensure injury and illness are properly reported and recorded
  - A communication line must be established between
    - Host Employer
    - Staffing Agency
    - Worker
- All parties must be aware of any injury-illness situation

68

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## Temporary Worker Initiative Bulletin No. 2 **Personal Protective Equipment (PPE)**

OSHA requires PPE to minimize worker exposure to hazards when engineering, administrative controls and work practices are not feasible or effective in reducing exposures to acceptable levels

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## Temporary Worker Initiative Bulletin No. 2

- Employers must conduct a hazard assessment to determine if PPE should be used, and if so, what type of PPE is appropriate
- Employers must also provide the appropriate training
- However, both the Host Employer and Staffing Agency are responsible for ensuring adequate PPE and applicable training are provided

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## Temporary Worker Initiative Bulletin No. 2

- The Staffing Agency needs to become familiar with the hazards at the Host Employer's workplace and maintain communication with the Host Employer and worker
- Neither the Host Employer nor the Staffing Agency can require workers to provide or pay for their own PPE
- There are specific exceptions to this rule—for example, long sleeve shirts, long pants, street shoes, normal work boots, clothing used solely for protection from weather—e.g., winter coats do not have to be provided to the worker

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## Temporary Worker Initiative Bulletin No. 3

### **Whistleblower Protection Rights**

- Section 11(c) of the OSH Act protects workers who report injuries and/or raise concerns to their Host Employer, OSHA or other governmental agencies about unsafe or unhealthful working conditions
- Temporary workers have the right to report injuries and/or raise concerns to the Host Employer, Staffing Agency or both. These actions are called "protected activity"

72

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## Temporary Worker Initiative Bulletin No. 3

- Employers shall not retaliate against employees for engaging in a protected activity. Both the Host Employer and Staffing Agency may be held liable for retaliating against workers who engage in a protected activity.
- Examples of retaliation
  - Blacklisting
  - Denying overtime or a promotion
  - Denying benefits
  - Firing or laying off
  - Making threats
  - Reassignment to a less desirable position
- Temporary Workers have the same rights and protections against retaliation as all other workers

73

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## National Labor Relations Board (NLRB)

- In September 2015 the NLRB ruled companies that use temporary workers are joint employers and share responsibility with the Staffing Agency or Subcontracting Agency for those workers
- The rule no longer requires that companies exercise direct control over temporary workers—instead, merely having the **authority** to control workers qualifies them as joint employees

74

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## National Labor Relations Board (NLRB)

- There are implications for this decision.
  - Parent companies who have subsidiaries
  - Franchisors who have franchisees
  - Companies who contract with another company to perform services
- Means joint employer responsibility will include the parent company.
- NLRB recommendations:
  - Parent company should verify and validate training that is applicable to the worker

75

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## National Labor Relations Board (NLRB)

- NLRB recommendations (continued).
  - Host Employer needs to conduct appropriate worker training on equipment specific to the job—e.g., forklifts or presses
  - Spell out the training agreement in the contract with the Staffing Agency—responsibilities should be clear
  - Make sure the training is conducted in the language or languages comprehended by the workers (e.g., training Hmong workers in Spanish or English is suspect, at best)

76

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# HOW TO DEAL WITH AN OSHA INSPECTION

**John H. Zawadsky**  
608-229-2202  
jzawadsky@reinhartlaw.com

**Reinhart Boerner Van Deuren s.c.**  
22 East Mifflin Street, Suite 600, Madison, WI 53703  
www.reinhartlaw.com

Partnering for your Success

## Types of Inspections

- Complaint
- Administrative
- Death or serious injury
- Compliance

## Complaint Inspection

- Normally is filed by an employee or union
- No advance notice is given to the employer of a visit from the compliance officer
- The scope of the inspection is limited to the contents of the complaint

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## Contents of the Complaint

- The employer will be advised of the nature of the complaint
- The employer will not be advised of who filed complaint

80

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## Administrative Inspection

- The employer is on the list of industries to be inspected
- Industries of most concern are listed on the OSHA website

81

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## Compliance Inspection

- Follows a settlement with OSHA or a judgement against employer in an OSHA proceeding
- Serious Violators Enforcement Program
- The employer has "agreed" to this inspection

82

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## What happens - Step by Step

### Compliance Officer Appears at Facility or Job Site

- Identifies himself/herself
- Shows credentials
- Explains the reason(s) for the visit

## OSHA Always Asks For:

- Hazard communications program
- Lockout/tagout
- OSHA 300 logs
- Safety policies

85

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## Warrant

- The employer always has the right to demand a warrant
- The standards for issuance of a warrant
- The length of time to secure a warrant
- The pros and cons of demanding a warrant

86

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## Inspection

- The employer has the right to select a representative
- The union has the right to attend the inspection

87

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## Strategies During the Inspection

- Do not allow any interrogation of management personnel
- Do not sign any statements
- Take photos of everything OSHA photographs/inspects
- Limit the scope of the inspection

88

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# Employee Interviews

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## Closing Conference

- When held

# Subsequent OSHA Visits

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## Citations

- When citations must be issued

**Questions?**

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**Thank You!**