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Title: Inspection Guidelines for Post-Emergency Response Operations Under CFR 1910.120

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OSHA Instruction CPL 2-2.51 November 5, 1990 Directorate of Compliance Programs

Subject: Inspection Guidelines for Post-Emergency Response Operations Under 29 CFR 1910.120

A. Purpose. This instruction provides procedures for ensuring uniform enforcement of training under the Hazardous Waste Operations and Emergency Response standard for employees involved in post-emergency response operations.

B. Scope. This instruction applies OSHA-wide.

C. References.

1. OSHA Instruction CPL 2.45B, June 15, 1989, the Revised Field Operations Manual (FOM).

2. 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, (54 FR 9294, March 6, 1989).

3. OSHA Instruction STP 2.22A, CH-2, January 29, 1989, and CH-3, February 27, 1990, the State Plan Policies and Procedures Manual.

D. Action. OSHA Regional Administrators and Area Directors shall utilize the guidelines in this instruction to ensure uniform enforcement.

E. Federal Program Change. This instruction describes a Federal program change which affects State programs. Each Regional Administrator shall:

1. Ensure that a copy of this change is promptly forwarded to each State designee, using a format consistent with the Plan Change Two-way Memorandum in Appendix P, OSHA Instruction STP 2.22A, CH-2.

2. Explain the technical content of this change to the State designees as requested.

3. Ensure that State designees are asked to acknowledge receipt of this Federal program change in writing to the Regional Administrator as soon as the State's intention is known, but not later than 70 calendar days after the date of issuance (10 days for mailing and 60 days for response). This acknowledgment must include a description either of the State's plan to implement the change or of the reasons why this change should not apply to that State.

4. Ensure that the State designees submit a plan supplement, in accordance with OSHA Instruction STP 2.22A, CH-3, as appropriate, following the established schedule that is agreed upon by the State and Regional Administrator to submit non-Field Operations Manual/OSHA Technical Manual Federal program changes.

a. If a State intends to follow OSHA's policy described in this instruction, the State must submit either a revised version of this instruction, adapted as appropriate to reference State law, regulations and administrative structure, or a cover sheet describing how references in this instruction correspond to the State's structure. The State's acknowledgment of the Plan Change Two-way Memorandum may fulfill the plan supplement requirement if the appropriate documentation is provided.

b. If the State adopts an alternative to Federal guidelines, the State's submission must identify and provide a rationale for all substantial differences from Federal guidelines to allow OSHA to judge whether a different State procedure is as effective as comparable Federal guidelines.

5. Advise the State designees that, in implementing the State policy, they are encouraged to follow the enforcement guidelines in paragraphs G.1.,2., and 3. of this instruction.

6. Advise the State designees that they may consult with the OSHA Regional Office for technical assistance and questions relating to post-emergency response operations under 29 CFR 1910.120.

7. Review policies, instructions, and guidelines issued by the State to determine that this change has been communicated to State personnel.

F. Background. A final standard for Hazardous Waste Operations and Emergency Response (29 CFR 1910.120) became effective March 6, 1990. In addition to many other requirements, the standard regulates worker safety and health during post-emergency response operations.

1. The standard defines post-emergency response as:

... that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site has begun. If post- emergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not post-emergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean-up operation, then the separate group of employees would be considered to be performing post-emergency response and subject to paragraph (q)(11) of this section.

2. The employer conducting the clean-up must comply with all the requirements in (b)-(o) of the standard (29 CFR 1910.120 (q)(11)(i)) unless the clean-up is done on plant property using plant or workplace employees. The requirements under (b)-(o) of the standard specify a minimum of 24 hours of off-site training. If the cleanup is done on plant property using plant or workplace employees, the employer must comply with the training requirements of 29 CFR 1910.38(a), 1910.134, 1910.1200, and other appropriate training made necessary by the tasks they are expected to perform (29 CFR 1910.120(q)(11)(ii)).

3. Based on experience with the standard during oil spills off the coasts of Texas, Alaska, and California, the hazards to employees vary widely in severity of potential injury or illness. For job duties and responsibilities with a low magnitude of risk, fewer than 24 hours of training may be appropriate for these post-emergency clean-up workers. It is our expectation that though the number of hours of training may vary, a minimum of 4 hours would be appropriate in most situations. Moreover, petroleum spills are unique in that many people who assist in the clean-up operations may not engage in this activity on a recurring basis. In addition, for maximum protection of the environment, petroleum spills dictate clean-up must be completed as soon as possible.

4. The U.S. Coast Guard and other concerned parties have requested flexibility in the amount of employee training required for petroleum spill clean-ups and other types of clean-up operations which follow emergency situations.

5. The person with responsibility for making assessments when fewer than 24 hours of training is required is the OSHA Regional Response Team representative.

G. Enforcement Guidelines.

1. Policy Background. If an employer complies with the clear intent of a standard but deviates from its particular requirements in a manner that has no direct or immediate relationship to employee safety or health, OSHA's FOM directs that such a violation be characterized as de minimis. Citations are not issued for de minimis violations.

2. Policy. Compliance with the intent of the training requirements of 29 CFR 1910.120(q) (11) (i) is achieved when an employer provides sufficient training as outlined in paragraph G.3 below, but the exact specifications of OSHA standards are not met (i.e., the specific number of hours required by the standard is not given). In such cases a de minimis violation exists and no citation will be issued. Violations of 29 CFR 1910.120(q) (11) (i) can be abated by compliance with the criteria specified in G.3.

3. De Minimis Criteria. All of the following criteria must be met in order to classify violations of the training requirements of 29 CFR 1910.120(q) (11) (i) as de minimis:

a. Clean-up is performed in an area that has been monitored and fully characterized by a qualified person indicating that exposures are presently and can be expected to remain under permissible exposure limits and other published exposure limits;

b. Health risks from skin absorption are minimal;

c. Employees have completed the training requirements of 29 CFR 1910.38(a) and 1910.1200, including refresher training as appropriate;

d. Employees have completed other safety and health training made necessary by the tasks they are expected to perform such as, but not limited to, operating procedures, decontamination procedures, water safety, hypothermia, heat stress, and safety hazard controls;

e. There is adequate on-site supervision by employees who meet the training requirements of 29 CFR 1910.120(e)(4).

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