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Publisher & Editor: Lawrence Earl;

Legislative research and content provided by

Arlene Bouwman

Associate Editor: Judy Earl;

Published by Templegate Information Services Inc.,

Ste 200-206, 131 Bloor St. W.

Toronto, Ont M5S 1R8.

Telephone: (416)920-0768; fax: (416)920-0620;

email: templegate@rogers.com

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Court rules MOL seizure of privileged internal accident investigation report prejudicial to fair trial

A JULY 2009 decision of the Ontario Court of Appeal in *R. v. Bruce Power Inc.*, affirms that where an employer has taken the step of protecting an internal accident investigation report with solicitor-client privilege, that report should not be subject to seizure by ministry of labour inspectors.

The court held that the Crown's seizure of a solicitor-client privileged accident investigation report was prejudicial to Bruce Power's right to a fair trial. As a result, all charges against the company and two of its supervisors were stayed.

Background: On January 21, 2002, an employee of Vipond Inc., a subcontractor of Bruce Power Inc., was seriously injured in a fall while working at the nuclear power plant in Tiverton, ON. In December 2002, Bruce Power was charged with three offences and two of the company's supervisors were each charged with an offence under the act.

On the day of the accident, an inspector from the Ministry of Labour attended at the power plant and commenced an investigation into the accident. Immediately after the accident, in-house counsel for Bruce Power contacted outside counsel for legal advice in anticipation that charges would be laid by the ministry under the act. Outside counsel advised that Bruce Power undertake its own investigation of the accident with the purpose of producing a report for use by counsel in providing legal advice to the company and its employees and for use in the defence of the anticipated charges under the act.

Bruce Power established an accident investigation committee the day following the accident comprising members of management and unionized employees. Terms of reference were established which expressly provided that the investigation was being undertaken in contemplation of litigation and that all documents created during the investigation, including the investigation report, were to be held in confidence by Bruce Power's legal department.

A draft report marked

“CONFIDENTIAL” in large, bold type, was prepared and distributed to the committee members. However, in advance of the trial, a ministry inspector and the Crown prosecutor interviewed a member of the committee, during which the member provided a copy of the report to the inspector and prosecutor. The Crown disclosed the report to Bruce Power and indicated the report would be used at the pending trial of Bruce Power and the company supervisors.

In response, Bruce Power and the two supervisors brought a motion for a stay of proceedings at the outset of trial. The company and supervisors alleged the report was subject to solicitor-client and litigation privilege and the Crown's seizure of the report violated their rights to fair trial under the *Charter of Rights and Freedoms*. The case went to trial and charges were stayed. The Crown appealed. The appeal court set aside the stay of proceedings. Bruce Power and the supervisors appealed to the Court of Appeal.

The law firm Heenan Blaikie recently released an *OHS & Workers' Compensation Management Update*, commenting on the Bruce Power decision. The document notes that increasingly, employers find that provincial and federal safety inspectors or officers request or direct production of an employer's internal investigation report. The report contains a section on “lessons learned” from the case - an edited version of which appears on the following page.

(Continued on next page)

The lead story

Court rules MOL seizure of privileged internal accident investigation report prejudicial to fair trial

(Continued from front page)

“ Ensuring that probing and detailed internal accident investigations remain confidential and are not used by OHS enforcers and Crown Prosecutors to advance their case, is a key element in an employer’s accident response plan. The *Bruce Power* decision is a positive one for employers and it provides some useful instruction on the measures and steps necessary to have a privilege claim supported by the courts.”

Lessons Learned: Protecting Reports With Privilege

The *Bruce Power* decision provides important insight into the measures and practices that may help ensure that a company’s detailed internal accident investigation report remains privileged and cannot be used by the Crown. Measures which Heenan Blaikie suggest, some of which are gleaned from and supported specifically by *Bruce Power*, and some of which are routinely recommended after a serious workplace accident, include:

- Ensuring that the internal investigation report is prepared at the direction of legal counsel. This can be accomplished by having legal counsel make this request by email or correspondence before materials are gathered and the report is prepared;
- If counsel specializing in OH&S matters will be retained, retaining that counsel as soon after the accident as possible in order to obtain advice on the means to properly protect reports and other internal materials. Any waiver should occur in an informed manner, and to the extent possible, after reviewing all available information;
- Ensuring that the report clearly states that it is being prepared for potential litigation and that every person involved in the preparation of the report understands the purpose and that all information collected is to be confidential. All materials intended for legal counsel should be marked “Solicitor-Client Privileged.” All materials gathered using contemplated litigation privilege should be marked “Confidential – In Contemplation of Litigation.” All files containing privileged information should be similarly marked when kept in the workplace and kept segregated from other material that is accessible within the workplace;
- Ensuring that all persons interviewed during the internal investigation are told that the investigation is for the purpose of anticipated litigation and that the information they provide will be confidential and for the use of legal counsel;
- If necessary, if the internal privileged report is requested or the government OHS officer becomes aware of its existence, ensuring that the officer is advised that the internal report is solicitor-client and/or litigation privileged;
- Ensuring that the privileged investigation and report are prepared independently of any other workplace investigation (e.g. the investigation and report prepared by a worker member of the Joint Health and Safety Committee pursuant to subsection 9(31) of the Ontario OHSA);
- Ensuring that any dissemination of the report to third parties (experts, physicians, other parties) is done only by or on the advice of legal counsel; and
- Ensuring that, if the report is disseminated to small numbers of involved parties in the workplace, it is disseminated for a strictly defined purpose and that the recipient is fully aware that solicitor-client and/or litigation privilege is not being waived. We do caution that such dissemination creates risk of waiver of the privilege, and should usually only occur after advice from counsel.

Access the Ontario Court of Appeal 2009 decision (21 pages) at:
<http://www.canlii.org/en/on/onca/doc/2009/2009onca573/2009onca573.pdf>
 Access the Heenan Blaikie update document (5 pages) at:

http://www.heenanblaikie.com/en/media/BioXML_PublicationsHB/pdf_file/ENEWS_OHS--WC_Management+Update_2009-07-29_Tor_EN+%282%29.pdf

Red Flag Reports

Workers assaulted; CAMH fined total of \$70,000 for two incidents

The Toronto, ON-based Centre for Addiction and Mental Health (CAMH) was fined a total of \$70,000, plus a 25 per cent victim fine surcharge, August 13, 2009, for the following violations of Ontario’s *Occupational Health and Safety Act*:

- On November 14, 2007, at CAMH’s Secure Observation and Treatment Unit, a patient woke in the middle of the night and began wandering. After unsuccessfully trying to persuade the patient to return to bed, a nurse radioed for help. The patient punched the nurse that arrived to help. The nurse fled to the nursing station but was unable to lock the door.

The patient entered the station and started punching the nurse and a third nurse who was now on the scene. Security staff arrived but could not access the unit because they did not have a key. One nurse was able to open the door from the inside while the patient was distracted and security subdued the patient.

CAMH pleaded guilty and was fined \$35,000 for failing to ensure that security personnel had key access to the Secure Observation and Treatment Unit in the event of an emergency.

- On September 17, 2008, at the centre’s Assessment and Treatment Unit, a nurse was watching a patient who was under constant supervision. The patient began molesting and forcing the nurse toward the washroom. The nurse screamed, but no one heard the call for help. At the washroom door, the nurse escaped when the patient was startled by another patient.

Although there was a personal alarm system in place in the building, the system was not in use in the Assessment and Treatment Unit. In addition, there were no written procedures in place for the use of personal alarms. CAMH pleaded guilty and was fined \$35,000 for failing to provide written measures and procedures pertaining to the use of personal alarms.

For more information contact: Ministry of Labour (416) 326-7770; toll-free: 1 (800) 268-8013;

website: <http://www.labour.gov.on.ca>

Access the act at:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90a01_e.htm

Red Flag Reports

Canadian Sub-Surface Energy Services ordered to cease use of nuclear substances

On August 31, 2009, a designated officer of the Canadian Nuclear Safety Commission (CNSC) issued an order under the *Nuclear Safety and Control Act* to Calgary, AB-based Canadian Sub-Surface Energy Services Incorporated (CSSESI). The company provides services to the oil and gas industry across Western Canada. The order requires CSSESI to cease the use of all nuclear substances the company is authorized to possess.

Background: On August 13, an employee of CSSESI, who is designated as a nuclear energy worker, failed to return a 2.0 Ci Cs 137 logging source to its Type A shielded container after completing work at a job site near Goodlands, MB.

On August 14, the employee realized the source had not been returned to its shielded container - by which time, based on calculations performed by the CNSC, the employee could have received upwards to 31 mSv (millisieverts) of radiation exposure as a result of the event.

On August 18, the radiation safety officer at CSSESI, reported the incident to the CNSC. CNSC staff visited CSSESI offices in Red Deer, AB, on August 19, and measured higher than expected surface dose rates from the Cs 137 Type A container holding the source in question.

On August 20, Brad Gabel, CSSESO president, informed the CNSC that the company had voluntarily suspended use of all nuclear substances until an assessment of their compliance and training programs could be completed.

On August 27, CNSC staff visited the Red Deer offices of CSSESI and discovered the Type A shipping containers used during the transportation of the company's cesium (Cs) sources had been modified. CSSESI staff were unable to explain when the modifications were performed and by whom.

Subsequently, the CNSC determined an order was necessary to protect the health and safety of persons, the environment, and the security of the nuclear substances.

Access the order at:

http://www.nuclearsafety.gc.ca/eng/lawsregs/regulatoryaction/csseesi_order_2009-08-31.cfm

For more information contact: CNSC
(613) 995-5894; fax: (613) 995-5086;
website: <http://www.nuclearsafety.gc.ca>

Regulatory Alert

Proposed Maritime Occupational Health and Safety Regulations incorporate hazard prevention program and violence provisions

Proposed Maritime Occupational Health and Safety Regulations, pursuant to the *Canada Labour Code* (Part II), were published in the August 22 edition of *Canada Gazette Part I*. Comments will be accepted for 30 days.

The proposed regulations will replace the existing regulations to harmonize with current Canada Occupational Health and Safety Regulations (COHSR), also under Part II of the *Canada Labour Code*.

Changes will include:

- adopting the provisions of *Part XIX Hazard Prevention Program* of the COHSR that require employers to develop, implement, and monitor a program for the prevention of hazards (including ergonomics-related hazards) in the workplace; and
- adopting new *Part XX Violence Prevention in the Work Place* provisions of the COHSR to require that employers develop a prevention policy along with procedures and systematic controls to eliminate or minimize workplace violence.

The proposed regulations will also incorporate certain provisions related to occupational health and safety that are contained in crew accommodation and safe working practices regulations under the *Canada Shipping Act, 2001*.

For example, a requirement that a qualified person conduct certain types of inspections to ascertain that safe working conditions are maintained (section 6 of the Safe Working Practices Regulations) have been included in the proposed regulations.

Access the COHSR at: <http://www.canlii.org/en/ca/laws/regu/sor-86-304/latest/sor-86-304.html>

Access the Safe Working Practices Regulations at:

<http://www.canlii.org/en/ca/laws/regu/crc-c-1467/latest/crc-c-1467.html>

Access the ILO maritime labour convention at:

http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/index.htm

For more information contact: Human Resources and Skills Development Canada (819) 953-0212;

email: beverley.bisson@hrsdc-rhdsc.gc.ca website: <http://www.hrsdc-rhdsc.gc.ca>

Access the August 22, 2009 gazette at:

<http://www.gazette.gc.ca/rp-pr/p1/2009/2009-08-22/html/index-eng.html>

Federal chemical management plan continues to identify toxic substances: Ingredient in popular fast foods found to be 'toxic' under CEPA

The federal government recently confirmed that it is proposing to add a common ingredient in many popular fast foods (-2-Propenamide - also known as acrylamide) to the List of Toxic Substances under the *Canadian Environmental Protection Act, 1999*.

Though the majority of acrylamide is used in industry in the manufacture of various polymers, the government's main focus is on reducing acrylamide in the food service industry, where the chemical has been detected in French fries, potato chips and other processed foods such as breakfast cereals, pastries, cookies, breads, rolls, toast, cocoa products, coffee and coffee substitutes. According to the government, the toxic listing was based on the "carcinogenic potential" of acrylamide and the lack of an adequate safety margin at current exposures for causing reproductive and developmental harm during fetal and early life development.

For more information on toxic and other chemicals of concern identified in the federal chemical management plan, request a sample copy of *Canadian Environmental Regulation & Compliance News* at: templegate@rogers.com

For more information about acrylamide and other substances in Batch 5 of the CMP, access the

February 21, 2009 *Canada Gazette* at: <http://canadagazette.gc.ca/part1/2008/20090221/html/index-e.html>

WorkSafeBC: OHS Regulation guideline for wire rope guardrails

Last month WorkSafeBC issued a new guideline (G4.58(4)(b)) under the Occupational Health and Safety Regulation covering requirements for prior approval for wire rope guardrails. The guideline:

- explains the process for obtaining prior approval to use temporary wire rope guardrails; and
- sets out the engineering specifications to be considered in the design, installation, and use of a wire rope guardrail.

Access the guideline at:

http://www2.worksafebc.com/Publications/OHSRegulation/GuidelinePart4.asp#SectionNumber:G4.58_4

Access the regulation at: <http://www2.worksafebc.com/publications/OHSRegulation/Home.asp>

For more information contact: WorkSafeBC (604) 276-3100;

website: <http://www.worksafebc.com>

Regulatory Alert

New Newfoundland and Labrador OHS Regulations now in force include new provisions for dealing with workplace violence

New Occupational Health and Safety Regulations, 2009, under Newfoundland and Labrador's *Occupational Health and Safety Act* came into force September 1. The new regulations, which replace the existing 30-year-old regulations, feature a number of new provisions, including:

- a requirement to comply with the most recent version of any code or standard named in the legislation;
- new procedures to enter an enclosed or partially-enclosed space having restricted access and egress;
- new requirements for fall arrest systems and the construction of guardrails;
- procedures for de-energizing and locking-out equipment;
- requirements to establish and maintain a hearing conservation program where noise exposures exceed permissible levels;
- new safe blasting practices;
- requirements to provide education and training to workers who may be exposed to musculoskeletal injuries;
- requirements to develop a written procedure for checking the well-being of employees who work alone;
- new requirements to certify operators who must have the appropriate trade qualification as determined by the Department of Education; and
- new requirements to have employers conduct a violence in the workplace risk assessment, establish procedures to control the risk, and communicate those procedures to workers.

Access the regulations at: <http://www.assembly.nl.ca/Legislation/sr/Regulations/rc090070.htm>

For more information contact: Department of Government Services 1 (800) 563-5471;

email: ginfo@gov.nl.ca website: <http://www.gs.gov.nl.ca>

Note: the regulations were also published in the August 14, 2009 edition of *The Newfoundland and Labrador Gazette* (240 pages): <http://www.gs.gov.nl.ca/gsoq/gazette/misc/wk/2009-08-14.pdf>

New avalanche assessment section of BC OH&S regulation now in force requires assessments of buildings and transport corridors

A new section 4.1.1 *Snow avalanche assessment* of British Columbia's Occupational Health and Safety Regulation, under the *Workers' Compensation Act*, came into force September 1, 2009.

Section 4.1.1 requires that before work commences in a workplace where there is, or may be, a risk from an avalanche to a worker/workers, an avalanche risk assessment must be prepared as follows:

- for workplaces involving buildings, construction, logging, transportation corridors, or other work areas that will be occupied by any person working in the workplace on a permanent, seasonal, or scheduled basis, by a qualified registered professional and a qualified avalanche planner; and
- for wilderness operations where any person working in the workplace undertakes short-duration activities in undeveloped terrain, by a qualified avalanche planner.

If the assessment identifies an avalanche risk zone, no work may be conducted in that risk zone at any time when snow conditions have the potential to create an avalanche unless an avalanche safety plan has been developed and implemented.

On and after September 1, 2011, every active avalanche safety program approved before September 1, 2011 must have been prepared by, or reviewed and approved by, a qualified avalanche planner who meets the requirements of *CAA Recommended Minimum Training and Experience for Qualified Avalanche Planners* published by the Canadian Avalanche Association (CAA) in August 2008. Access the CAA document (2 pages) at:

http://www.avalanche.ca/docs/avalanche/GetMedia.aspx?DocID=2911&Documents&MediaID=383&Filename=CAA_Recommended_Minimum_Training_and_Experience_For_Qualified_Avalanche_Planners_Ratified_May_2008_published_on_web_Aug_2008.pdf

This month, WorkSafeBC released a new guideline *G4.1.1 Snow avalanche assessment* to provide clarification regarding the new requirements.

Access the guideline at:

<http://www2.worksafebc.com/Publications/OHSRegulation/GuidelinePart4.aspx#SectionNumber:G4.1.1>

For more information contact: WorkSafeBC (604) 276-3100;

website: <http://www.worksafebc.com>

Red Flag Reports

NEB report: two out of every 100 pipeline workers suffered serious workplace injury in 2007

The National Energy Board (NEB) released in August 2009, *Focus on Safety and Environment: A Comparative Analysis of Pipeline Performance 2000-2007*. The document reports that nearly two out of every 100 pipeline workers suffered a serious workplace injury in 2007 - almost double the seven-year average and the highest worker injury rate since the NEB began reporting on safety performance indicators in 2000.

The document cited factors such as employee experience levels, increasing pressure to meet deadlines, worker complacency, and increased construction activity as possible causes for the rise in the injury frequency.

Access the report (31 pages) at:

<http://www.neb.gc.ca/cfnsi/sfyndthvnmnt/sfyis/sfyprfmncndctr/fcsnsfy/2009/fcsnsfy2009-eng.pdf>

Study finds addiction and inadequate family support major issues for oil and gas industry

Shepell-fgi, a provider of workplace health, EAP and productivity solutions in Canada, released a report this month titled: *Health and Wellness Trends in the Oil and Gas Sector*.

The document provides an overview of the issues cited most frequently by employees in the oil and gas industry using employee assistance programs (EAPs) between 2006 to 2008.

Over the three-year period the report cites a 481 per cent increase in EAP use for alcohol abuse. Compared to the Canadian norm, use of EAP for addiction issues within the oil and gas industry was 35 per cent greater.

The report recommends:

- implementing targeted prevention-focused manager training;
- targeting promotion of services and programs to at-risk groups including isolated, migratory, and relocated workers;
- offering more intensive stress management education; and
- reinforcing the EAP as a resource for the issues which cause stress, strain, or disruption in the employee's life.

Access the overview report (7 pages) at:

http://www.shepellfgi.com/EN-CA/AboutUs/News/Research/20RReport/pdf/OIP%20and%20Gas%20Report_2009.pdf

For more information, contact:

Vicky Zeldin, Shepell-fgi (416) 355-5424.

Red Flag Reports

Study: Granite countertop cutters at risk of radiation exposure

Craftsmen who cut granite for kitchen countertops can be at risk of radiation exposure thousands of times above the federal safety limit, according to new research.

The study, "Implications of Granite Counter Top Construction and Uses," raises concerns that the stone dust could be exposing granite fabricators to elevated cancer risks.

Linda Kincaid, an industrial hygienist in Saratoga, CA, and co-authors Al Gerhart, an Oklahoma City stonecutter, and Dave Bernhardt, a Salt Lake City health physicist, contend that when workers cut slabs of stone, they sometimes release radioactive dust into the air. In turn, that dust is inhaled, reaching the workers' lungs.

The study, unveiled at the Health Physics Society's annual meeting on July 13, is the first look at how a granite byproduct could be harming workers.

Based on air quality tests in Gerhart's Oklahoma City granite-cutting shop, Bernhardt found that full-time granite workers could be exposed to radiation levels more than 3,000 times above the US Nuclear Regulatory Commission's radiation exposure limit of 0.1 rem per year for members of the general public.

The Marble Institute of America, a trade group for stone industry based in Cleveland, OH, slammed the report.

"This report has no scientific credibility and cannot be relied upon," said Jim Hieb, MIA vice president.

The institute contends that most stone fabricators use advanced, water-based cutting techniques to minimize dust exposure.

Federal figures tell a different story. Inspecting 133 of the nation's 64,000 stone-cutting facilities from October 2007 to September 2008, authorities from the Occupational Safety and Health Administration (OSHA) issued 185 citations for respiratory violations and 54 citations for air contaminants.

Responding to the findings, a spokeswoman for the U.S. Department of Labor called for more research.

"Little research has been performed on the radiation hazards for granite cutting," said Diana Petterson, a department spokeswoman. "But with the increasing residential use of granite countertops, more studies are underway."

Source/Courtesy: Isaac Wolf, Scripps Howard News Service

Regulatory alert

Distracted driving regulations expected to impact the leading cause of fatalities and injuries among North American workers

According to the Ontario government website, regulations necessary to implement Ontario's Bill 118 *Countering Distracted Driving and Promoting Green Transportation Act, 2009* which passed third reading April 22, are to be unveiled this fall.

As reported earlier in WEHSR, the bill amends the *Highway Traffic Act* to prohibit the use of hand-held devices to talk, text, or email while operating a motor vehicle - even while stopped at a stop sign or red light.

According to the provincial government, driver distractions result in about 20 per cent of collisions and distracted drivers are four times more likely to be involved in a collision than those who are not distracted by hand-held devices.

Motor vehicle collisions are a leading cause of fatalities and injuries among workers in Ontario and North America. According to RoadSafe, an alliance of organizations* brought together to promote road safety and help change driver behaviour, vehicle crashes are the greatest single cause of traumatic workplace fatalities. In Ontario, between 2000 and 2005, it is estimated there were 199 work-related deaths caused by vehicle crashes (more than 30 per cent of all work-related traumatic fatalities).

For more information contact: Ministry of Transportation 1 (800) 268-4686; website: <http://www.mto.gov.on.ca>
Access Bill 118 (7 pages) at:
http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b118rep.pdf
Access Highway Traffic Act at:
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h08_e.htm

* RoadSafe comprises Ontario's Workplace Safety & Insurance Board; Office of the Chief Coroner; Industrial Accident Prevention Association; Ministry of Labour; Transport Canada; et al. **For more information contact:** RoadSafe 1 (888) 921-9742; email: info@roadsafe.ca website: <http://www.roadsafe.ca>

Related courses: Ontario's Municipal Health and Safety Association (MHSA), in partnership with the Transportation Health and Safety Association of Ontario (THSAO), is presenting a four hour general defensive driving course. The program is divided into five learning modules: the law; the driver; the vehicle; the environment; and driving defensively.

For more information contact: MHSA (905) 890-2040; email: info@mhsao.com
website: <http://www.mhsao.com>

The THSAO is also holding its 2009 *Fleet Safety Council Conference*, October 23-25, in Sarnia, ON. Topics on the agenda include, in part: communication of hazard recognition and collision investigation and reporting.

Access the conference agenda at: http://www.thsao.on.ca/docs/fsc_2009_conf_agenda.pdf
Access the registration form at: http://www.thsao.on.ca/docs/fsc_reg_form_2009.pdf

Related resources: The US Occupational Safety and Health Administration (OSHA), National Highway Traffic Safety Administration (NHTSA), and the Network of Employers for Traffic Safety (NETS), have compiled and posted online, *Guidelines for Employers to Reduce Motor Vehicle Crashes*. The document discusses setting up a safe driving program to keep employees safe on the road; and promoting safe driving practices.

Access the guidelines (35 pages) at:
http://www.osha.gov/Publications/motor_vehicle_guide.pdf

TDG directorate clarifies requirements regarding safety marks

On September 9, Transport Canada, Transportation of Dangerous Goods, released proposed amendments to Part 4 of the federal Transportation of Dangerous Goods Regulations that deals with safety marks.

While the majority of the amendments relate to 'housekeeping' changes regarding editorial and other errors and/or omissions, some substantive changes are intended to clarify when a dangerous goods safety mark must be covered or removed. In addition, Section 4.15 is being revised to clarify that, when dangerous goods placards are not immediately visible, (because they are contained in a larger container), then the outer, larger means of containment must also display the required placard or the placard and UN number.

Comments on the proposed changes will be accepted until October 5, 2009. Access the proposed changes at: <http://www.tc.gc.ca/tdg/clear/modifications/amendmentz.htm>
For more information contact: Linda Hume-Sastre, Transport Dangerous Goods Directorate, Transport Canada, 613-998-0517 email: linda.hume-sastre@tc.gc.ca

OH&S standards & guidelines

TSSA issues advisory for amendments to propane regulation; guideline to help implement revisions

In the continuing fallout from last year's Sunrise Propane explosion, this month, Ontario's Technical Standards & Safety Authority (TSSA) issued an advisory discussing amendments to O. Reg. 211/01 Propane Storage and Handling, under the *Technical Standards and Safety Act, 2000*.

Filed December 11, 2008, the amendments (contained in O. Reg. 440/08) come into effect at different times through to the end of 2011:

- sections 1,2,4,6 and 8 came into force January 1, 2009;
- subsection 3(1) came into force 60 days after the regulation was filed; and
- a number of sections will come into force December 31, 2009.

The advisory discusses the revisions and the associated timelines.

Access the advisory (9 pages) at:

<http://www.tssa.org/CorpLibrary/ArticleFileMain.asp?Instance=136&ID=CBB8C9401BB6420F9A751ED5395B4295>

Access O. Reg. 211/01 at:

http://www.e-laws.gov.on.ca/html/reg/english/elaws_regs_010211_e.htm

Access O. Reg. 440/08 at:

http://www.e-laws.gov.on.ca/html/source/reg/english/2008/elaws_src_regs_r08440_e.htm

The TSSA also released this month the following new documents:

- **Guidelines for the Implementation of the Risk and Safety Management Plan.** A person applying for a new licence or a renewal of an existing licence is required to submit a risk and safety management plan that includes the elements described in section 3.1 of O. Reg. 211/01. The guidelines have been developed to help implement the requirements for a risk and safety management plan.
Access the guidelines (27 pages) at:
<http://www.tssa.org/CorpLibrary/ArticleFileMain.asp?Instance=136&ID=2BE798CC360F4DBE8F0B16B9541C80C5>
- **Guideline for Incident Reporting Criteria for Boiler and Pressure Vessels.** This document provides clarification on the circumstance under which an owner or persons involved with boilers, pressure vessels, and fitting or piping systems must report an incident.
Access the guideline (2 pages) at:
<http://www.tssa.org/CorpLibrary/ArticleFileMain.asp?Instance=136&ID=F9C62C0DD742400E98AACF2A9C3A13D5>
- **Elevator Machine Room Equipment Guarding: A Best Practices Guideline Produced by Industry Stakeholders.** In response to concerns raised by building owners and the elevator industry, this guideline was developed to help employers, supervisors, and workers recognize hazards and determine the best way to comply with their obligations under the *Occupational Health and Safety Act*. This is the first release of the guideline which is intended to be a living document and subject to updates as required.
Access the document (61 pages) at:
<http://www.tssa.org/CorpLibrary/ArticleFileMain.asp?Instance=136&ID=DB305982A37C46C3B47FEB45BAFE9E70>
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ANSI approves CSA Standards CNG fuel system inspector program

The Canadian Standards Association (CSA) has announced that CSA America's CNG Fuel System Inspector Certification program is now accredited by the American National Standards Institute (ANSI). The program is the only accredited certification available in North America for compressed natural gas (CNG) fuel system inspectors. Certification covers the inspection of containers, valves, pressure relief devices (including vent system), and other fuel system components of compressed natural gas-powered vehicles. Exams for certification are offered at test sites located throughout North America.

The ANSI accreditation demonstrates the CSA certification program has met program requirements based on the international standard ANSI/ISO/IEC 17024 *General requirements for bodies operating certification schemes for persons*. The standard contains guidelines designed for the development and maintenance of professional certification programs that deliver fairness and reliability to candidates while meeting the requirements of industry and stakeholders.

For more information contact: CSA Standards (416) 747-4000; website: <http://www.csa.ca>

Download Personnel Certification Guide: CNG Fuel System Inspector (24 pages) at:

<http://www.csa-america.org/pdf/CNGApplicationHandbook.pdf>

Download program fact sheet at: http://www.csa-america.org/pdf/CNGFuelSystem_FactSheet.pdf

Access additional resources for CNG Inspectors at:

http://www.csa-america.org/personnel_certification/cng_certification/default.asp?load=resources

Newsbriefs

Group offers link to find out your cellphone radiation level

Cellphone radiation standards don't make enough of an allowance for safety and ignore the impact of electromagnetic radiation on children, says the US Environmental Working Group, which analyzed the radiation emissions from 1,268 cellphones.

To help empower consumers to make sensible decisions regarding cellphone use, the group has created a database of feature phones and smartphones that lists the maximum radiation each of the devices emits. (You can look up your phone's radiation level using the form embedded in this story, below.)

"We want consumers to take steps they can take to minimize potential risks," says Olga Naidenko, a senior scientist at EWG, who worked on the report for about 10 months.

Based on a recommendation from industry group, the Federal Communications Commission limits Specific Absorption Rate (SAR) levels for partial-body exposure (including head) to up to 1.6 watts per kilogram (W/kg).

But FCC's current standards are inadequate, says EWG. FCC standards allow 20 times more radiation to reach the head than the rest of the body, says an EWG representative, and they don't provide an adequate margin of safety for cell phone radiation exposure.

Find your phone's radiation level at:

<http://www.ewg.org/project/2009/cellphone/cellphoneradiation.php>

Interventions to prevent occupational noise induced hearing loss

Wiley InterScience has posted online *Interventions to prevent occupational noise induced hearing loss (Review)*. The document is a reprint of a review prepared and maintained by The Cochrane Collaboration and presented in *The Cochrane Library 2009, Issue 3* published by John Wiley & Sons Ltd.

Millions of workers worldwide are exposed to noise levels that increase their risk of hearing impairment. The review assessed the effectiveness of non-pharmaceutical interventions for preventing occupational noise exposure or occupational hearing loss compared to no intervention or alternative interventions.

Access the document (72 pages) at:

<http://mrw.interscience.wiley.com/cochrane/clsysrev/articles/CD006396/pdf/fs.html>

Legislative summary

General Duties of Contractors:

Just who is in charge around here?

by William M. Glenn

AT SOME POINT, JUST ABOUT EVERY BUSINESS WILL FIND itself engaging contract staff to expand, modernize, renovate or retrofit its operations. This can range from installing some specialized equipment to building a new factory or office wing. Some jurisdictions permit owners to download at least a share of their OH&S responsibilities to the prime contractor or constructor hired to do this work.

But in the Canadian regulatory regime - split not only federally and provincially, but fractured among ten provinces and three territories - nothing is ever that simple.

“Standards for the exercise of due diligence in Canada where contractors are involved is in an unfortunate state of confusion and uncertainty and woefully lacking in consistency,” writes Cheryl A. Edwards, a lawyer specializing in occupational safety and compensation issues.

“The issue of contracting has become a logistical nightmare for organizations that operate across the country.”*

That’s because few jurisdictions follow the same model. In Alberta, British Columbia, the Yukon Territory and the Northwest Territories, the owner of a work site where two or more employers may be operating at the same time may engage a contractor, employer or other person to serve as a “prime contractor” for the site. If no agreement is made, the owner becomes the prime contractor and must ensure, as far as it is reasonably practicable to do so, that the OH&S statute and its regulations are complied with.

In many other jurisdictions, multiple employers on a site, together with the site owner, supervisors, employees, suppliers and other prescribed persons, may all be jointly and concurrently responsible for ensuring the health and safety of workers and compliance with the relevant statutes.

Many jurisdictions have included provisions to determine how these obligations may be allocated or shared when the same duty is imposed on more than one person. In some cases, the individual with the greatest control is expected to take the lead. However, a failure to do so, does not relieve the other parties of their obligations.

In certain jurisdictions – including Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, and the Yukon Territory – owners can download certain OH&S responsibilities onto the contractor or “constructor” of a construction project.

For example, *Ontario’s Occupational Health and Safety Act* creates the position of “constructor” to undertake a construction project, including erecting, altering, repairing, demolishing, performing structural maintenance, painting, land clearing, excavating or installing machinery.

An owner can become a constructor by undertaking some or all of the work on a project, or by contracting work out to more than one contractor or employer. However, an owner can enter into a contractual agreement with a single contractor who is hired to “undertake” all the work (and who may, in turn, subcontract work to other people).

That contractor then becomes the “constructor” and assumes certain legal duties, including the primary responsibility for the health and safety of workers on a project.

A constructor must also ensure that:

- all the measures and procedures prescribed in the Act and its regulations for construction projects are carried out;
- every employer and every worker on the project complies with the Act and its regulations;
- a health and safety representative or joint health and safety committee is selected;
- the Ministry of Labour is notified of the project;
- the ministry is notified of any

An owner has to proactively manage the relationship with the constructor or prime contractor to ensure that their individual responsibilities are clearly delineated, the constructor is positioned to meet the provisions of the Act, and due diligence standards are satisfied.

accident or other occurrence as prescribed; and

- every contractor or subcontractor receives a list of all designated substances present at the project as prescribed.

However, an owner must ensure that the lines of responsibility for overseeing the safety of the project never become blurred. For example, if an owner hires additional workers on his own or assigns any of his own staff to the project, the duties of constructor revert to him. Or if an owner intrudes into the day-to-day management of safety concerns on a site, it may be construed, legally, that again he has assumed the duties of a constructor ... and any liability that may accrue in the event of an accident or an incident of non-compliance.

An owner has to proactively manage the relationship with the constructor or prime contractor to ensure that their individual responsibilities are clearly delineated, the constructor is positioned to meet the provisions of the Act, and due diligence standards are satisfied. There is a lot of potentially useful information posted on the Internet. Just ‘googling’ “contractor safety program” will uncover numerous examples or agreements drafted by various universities and colleges, trade associations and municipalities to transfer certain of their OH&S duties. In addition, a number of organizations, including the Canadian Centre for Occupational Health and Safety (CCOHS), offer short courses to explore the subject in more detail.

However, such self-help remedies cannot hope to do more than scratch the surface of the complex subject of a contractor’s duties and obligations. The interested reader is encouraged to obtain the expertise of legal counsel to determine local regulatory requirements and his or her own liability exposure in the matter.

* For more information, access: “The OH&S Contracting Conundrum” on the Heenan Blaikie LLP website at: www.heenanblaikie.com/.
http://www.heenanblaikie.com/en/media/pdfs/pdf/The_OHS_Contracting_Conundrum.pdf?jsessionid=1FCAC690B846C92A357B06ED785AE09E

Legislative summary: Provisions related to contracting out work

General Duties of Contractors under Federal, Provincial and Territorial OH&S Statutes

Note, these provisions have been edited in the interest of length and, in addition, may be amended from time to time by the regulating authority.

Refer to the full text of the statute for the exact wording of the general and specific duties and responsibilities of contractors, constructor, employers and other persons. Also note that this summary is not exhaustive. Additional duties and requirements related to these parties may be contained in other sections of the Act, its regulations, referenced standards, other instruments or orders issued under the Act

Jurisdiction	Duties of contractors	Overlapping duties of parties
Federal <i>Canada Labour Code, Part II</i> (R.S.C. 1985, c. L-2)	Not specified.	It is the general duty of every employer to ensure that the health and safety at work of every person employed by the employer is protected. Sections 125-125.2 set forth a number of specific duties to be undertaken by every employer, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity.
British Columbia <i>Workers' Compensation Act</i> (R.S.B.C. 1996, c. 492)	<p>Under s.118(1), the owner of a multiple-employer workplace (where workers of two or more employers are working at the same time) may enter into a written contract with a directing contractor, employer or other person to be the prime contractor. If there is no agreement, the owner of the workplace is the prime contractor. Under s.118(2). The prime contractor must:</p> <ul style="list-style-type: none"> • ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and • do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace. <p>In turn, each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace. There can be only one "prime contractor" at a workplace at any point in time. If an owner enters into more than one agreement purporting to create a "prime contractor" for the same period of time, the owner is considered to be the prime contractor.</p>	<p>Under s.123(2), if an employer, supplier, supervisor, owner, prime contractor or worker has two or more functions under this Part in respect of one workplace, the person must meet the obligations of each function.</p> <p>Under s.124, if the Act or regulations impose the same obligation on more than one person, and one of those persons complies with the applicable provision, the others are relieved of that obligation only during the time when simultaneous compliance would result in unnecessary duplication of effort and expense, and the health and safety of persons at the workplace is not put at risk by compliance by only one person.</p>
Alberta <i>Occupational Health and Safety Act</i> (R.S.A. 2000, c. O-2) and OHS Code	<p>Under s.2(5), every contractor who directs the activities of an employer involved in work at a work site shall ensure, as far as it is reasonably practicable to do so, that the employer complies with this Act, the regulations and the adopted code in respect of that work site.</p> <p>Under s.3(1)-(4), if there are two or more employers involved in work at a work site at the same time, that site must have a prime contractor, and the prime contractor shall ensure, as far as it is reasonably practicable to do so, that this Act and the regulations are complied with in respect of the work site. A prime contractor may meet this obligation by doing everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Act and the regulations in respect of the work site.</p>	<p>Under s.4(2), if a person has two or more functions (i.e., prime contractor, contractor, employer, supplier or worker) under this Act in respect of one work site, the person must meet the obligations of each function.</p> <p>Under 7(5) of the OHS Code, (introduced July 2009) a prime contractor must ensure that any employer on a work site is made aware of any existing or potential work site hazards that may affect that employer's workers.</p>
Saskatchewan <i>Occupational Health and Safety Act, 1993</i> (R.S.S. 1993, c. O-1.1), and the Occupational Health and Safety Regulations, 1996 (R.R.S., c. O-1, r. 1), under the Act	<p>Under s.6, every contractor shall:</p> <ul style="list-style-type: none"> • ensure, insofar as is reasonably practicable, that every place of employment or worksite where an employer, employer's worker or self-employed person works pursuant to a contract between the contractor and the employer or self-employed person or • work process or procedure carried on at every place of employment where an employer, employer's worker or self-employed person works pursuant to a contract between the contractor and the employer or self-employed person; that is not in the direct and complete control of an employer or self-employed person under contract with the contractor is safe for, without risk to the health of, and adequate with regard to facilities for the welfare of, all employers, workers or self-employed persons at the place of employment; • post any prescribed notice in a conspicuous location at every place of employment where an employer, employer's worker or self-employed person works pursuant to a contract between the contractor and the employer or self-employed person; and • comply with this Act and the regulations <p>Under s.16 of the Regulations, a contractor at a major construction project (or an activity to which Part XXIX applies) shall give notice in writing to every employer, worker or self-employed person at the place of employment, setting out:</p> <ul style="list-style-type: none"> • the name of the person who is supervising the work on behalf of the contractor; • any emergency facilities provided by the contractor for the use of the employers' workers or self-employed persons; and • the existence of a committee or representative, if any, at the place of employment and the means to contact the committee or representative. 	<p>Under s.7.7, if the Act or regulations imposes the same duty on more than one person, and one of those persons complies with the applicable provision, then the others are relieved of their duty only during the time when simultaneous compliance would result in unnecessary duplication of effort and expense, and when the safety and health of any person at the workplace is not put at risk by compliance with that duty by only one person.</p> <p>Under s.5(5) of the Regulations, where a provision of these regulations imposes a duty or requirement on more than one person, the duty or requirement is meant to be imposed primarily on the person with the greatest degree of control over the matters that are the subject of the duty or requirement. However, under s.5(6), if the person with the greatest degree of control fails to comply, the other persons are not relieved of the obligation to comply with the provision if it is possible for them to comply. And under ss.5(7)-(8), even if the person in control or some other person complies with the provision, the others are relieved of the obligation to comply: (a) only for the time in which the person with the greatest degree of control is in compliance with the provision; (b) only if simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense; and (c) only if the health and safety of workers is not put at risk by compliance by only one person.</p>
Manitoba <i>Workplace Safety and Health Act</i> (R.S.M. 1987, c. W210)	<p>Under s.7.1(a), every contractor shall ensure, so far as is reasonably practicable that:</p> <ul style="list-style-type: none"> • every workplace where an employer, employer's worker or self-employed person works pursuant to a contract with the contractor, and • that every work process or procedure performed at a workplace by an employer, employer's worker or self-employed person pursuant to a contract with the contractor, that is not in the direct and complete control of that employer or self-employed person does not create a risk to the safety or health of any person. <p>Under s.7.1(b), if the contractor is involved in work on a construction project that has a prime</p>	<p>Under s.7.7, if one or more provisions in this Act or the regulations imposes the same duty on more than one person, and one of those persons complies with the applicable provision, the others are relieved of their duty only during the time when: simultaneous compliance of that duty by more than one person would result in unnecessary duplication of effort and expense; and the safety and health of any person at the workplace is not put at risk by compliance with that duty by only one person.</p>

Legislative summary: Provisions related to contracting out work

Jurisdiction	Duties of contractors	Overlapping duties of parties
	<p>contractor, the contractor must:</p> <ul style="list-style-type: none"> • advise the prime contractor of the name of every employer or self-employed person with whom the contractor has contracted to perform work on the project; • co-operate with any other person exercising a duty imposed by this Act or the regulations; and • comply with this Act and the regulations. <p>Under s.7(1), there must be a prime contractor for a construction project if more than one employer or self-employed person is involved in work at the construction project site at the same time. Under s.7(2), the prime contractor is either (a) the person who enters into a contract to serve as the prime contractor with the owner of the construction project site; or (b) if there is no contract in effect, the owner of the construction project site.</p> <p>Under s.7(3), the prime contractor for a construction project shall:</p> <ul style="list-style-type: none"> • ensure, so far as is reasonably practicable, that every person involved in work on the project complies with this Act and the regulations; • co-ordinate, organize and oversee the performance of all work at the construction project site and conduct his or her own activities in such a way as to ensure, so far as is reasonably practicable, that no person is exposed to risks to his or her safety connected with activities at the construction project site; • co-operate with any other person exercising a duty imposed by this Act or the regulations; and • comply with this Act and the regulations. <p>In addition, s.7.5 sets forth a general duty for contractors to provide any information that may affect the safety and health of a person at a workplace, is necessary to identify and control any existing or potential hazards, or is prescribed by regulation. Such information should be provided to every owner, employer and self-employed person of a workplace with whom the contractor has a contract, as well as the prime contractor for a construction project.</p>	
<p>Ontario <i>Occupational Health And Safety Act</i> (R.S.O. 1990, c. O.1)</p>	<p>Under s.1, a constructor is defined as a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer.</p> <p>Under s.23(1) A constructor shall ensure that:</p> <ul style="list-style-type: none"> • the measures and procedures prescribed by this Act and the regulations are carried out on the project; • every employer and every worker performing work on the project complies with this Act and the regulations; and • the health and safety of workers on the project is protected. <p>The constructor also assumes a number of specific duties under various sections of the Act, including a duty to provide notice to the Director before beginning any work on a project (s.23.2), to select and work with the health and safety representative or committee (ss. 8, 9, 11), report injuries and fatalities (s.51), deal with work stoppages (ss. 45, 46, 47, 49), deal with an inspector's order (ss. 54, 57, 58, 59, 61).</p> <p>Under s.30(1), before beginning a project, the owner shall determine whether any designated substances are present at the project site and shall prepare a list of all designated substances that are present at the site. In turn, under s. 30(4), the constructor for a project shall ensure that each prospective contractor and subcontractor for the project has received a copy of that list before the prospective contractor or subcontractor enters into a binding contract for the supply of work on the project.</p>	<p>Not specified.</p>
<p>Quebec <i>Act Respecting Occupational Health and Safety</i> (R.S.Q., c. S-2.1)</p> <p>Safety Code for the Construction Industry (R.Q. c. S-2.1, r.6)</p>	<p>Under s.196, a principal contractor (meaning the owner or any other person who, on a construction site, is responsible for the carrying out of all the work) is bound to the same extent as an employer to observe the obligations imposed on employers by this act and the regulations, particularly that of taking the necessary steps to protect the health and ensure the safety and physical well-being of construction workers.</p> <p>Part XI sets forth the special provisions respecting construction sites. The principal contractor must submit notice of the opening or closing of a construction site. For any construction site that will employ at least 10 construction workers simultaneously, the principal contractor must prepare a prevention program and shall see that an employer working on the construction site undertakes in writing to see that it is complied with. If the prevention programs of the principal contractor and of the employer conflict, the former prevails.</p> <p>Under s. 2.4.2, the employer shall ensure that:</p> <ul style="list-style-type: none"> • all necessary steps are taken to ensure public safety and the safety of workers; • any worker on a construction site wears at all times clothing completely covering his torso and back; • workers do not involve themselves in games or competitions while at work; • any worker does not work while his faculties are impaired by alcohol, drug or any other similar substance; • any worker knows this Code, any operation ensuring the good running order of apparatus and machinery for which he is responsible, and the emergency measures to observe in case of fire, explosion, or other accidents; • any worker is informed of the inherent dangers in his work; and • management and control staff working mainly and usually on a construction site and workers working on a construction site have taken a safety course and hold a certificate issued by the Commission or by an organization it recognizes. <p>Under s.2.4.4, on a construction site the principal contractor is responsible for: traffic control, use of public ways, temporary electrical installation, housekeeping of sites, public safety, access to the site, protection against fire, permanent ramps and guardrails, temporary heating and all other general safety measures. In addition, under s. 2.4.1, the principal contractor must notify the Commission de la santé et de la sécurité du travail, in writing at least 10 days before activities at a construction site begins.</p>	<p>Under s.56, where one building is used by several employers, the owner must see that the necessary measures to protect the health and ensure the safety of workers are taken in those parts of the building not under the authority of an employer.</p> <p>Not specified.</p>
<p>New Brunswick <i>Occupational Health and Safety Act</i> (A.N.B. 1983, c. O-0.2)</p>	<p>Under s.1, "contractor" means (a) a person who by contract undertakes all the work at a project site (i.e., a construction site), (b) an owner who undertakes all or part of the work at a project site, or (c) an owner who by contract engages more than one person to undertake all or part of the work at a project site.</p> <p>Under s.10, every contractor and sub-contractor shall:</p> <ul style="list-style-type: none"> • comply with this Act, the regulations and any order made in accordance with this Act or the regulations; and • for every project site for which he is responsible take every reasonable precaution to ensure the health and safety of any person having access to such project site. 	<p>Not specified.</p> <p>Under ss.10.1(2), a contracting employer who directs the activities of one or more employers involved in work at a place of employment shall ensure, as far as is reasonably practicable to so do, that each employer complies with this Act and the regulations in respect of that place of</p>

Legislative summary: Provisions related to contracting out work

Jurisdiction	Duties of contractors	Overlapping duties of parties
<p>Nova Scotia Occupational Health and Safety Act (S.N.S. 1996, c. 7), and the Occupational Safety General Regulations (N.S. Reg. 44/99), made under the Act</p>	<p>Under s.14 of the Act, every contractor shall take every precaution that is reasonable in the circumstances to ensure:</p> <ul style="list-style-type: none"> • the health and safety of persons at or near a workplace; • that the activities of the employers and self-employed persons at the workplace are co-ordinated; • communication between the employers and self-employed persons at the workplace of information necessary to the health and safety of persons at the workplace; • that the measures and procedures prescribed pursuant to this Act and the regulations are carried out at the workplace; and • that every employee, self-employed person and employer performing work at the workplace complies with this Act and the regulations. <p>Under s.15, every constructor shall take every precaution that is reasonable in the circumstances to ensure:</p> <ul style="list-style-type: none"> • the health and safety of persons at or near a project; • that the activities of the employers and self-employed persons at the project are co-ordinated; • communication between the employers and self-employed persons at the project of information necessary to the health and safety of persons at the project, and facilitate communication with any committee or representative required for the project pursuant to this Act or the regulations; • that the measures and procedures prescribed under this Act and the regulations are carried out on the project; and • that every employee, self-employed person and employer performing work in respect of the project complies with this Act and the regulations. 	<p>employment. In addition, under s.10.1(3), every contracting employer shall comply with this Act, the regulations and any order made in accordance with this Act or the regulations.</p> <p>Under ss.23(2)-, where a provision of this Act or the regulations imposes a duty or requirement on more than one person, the duty or requirement is meant to be imposed primarily on the person with the greatest degree of control over the matters that are the subject of the duty or requirement. Where that person fails to comply with a duty or requirement, the other person(s) on whom the duty lies shall, where possible, comply with the provision. Where the person with the greatest degree of control complies, the other persons are relieved of the obligation only:</p> <ul style="list-style-type: none"> • for the time during which the person with the greatest degree of control is in compliance; • where simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense; and • where the health and safety of persons at the workplace is not put at risk by compliance by only one person. <p>Under s.4(1) of the Regulations, where these regulations impose a duty on an employer, the duty is also imposed on a contractor, constructor, supplier, employee, owner or self-employed person, to those individuals' authority and ability to discharge the duty in the circumstances.</p> <p>Under s.4(2)(a), the person with the greatest authority and ability to ensure that a duty is discharged or a requirement is met is presumed to be the person with the greatest degree of control over the matter that is the subject of the duty or the requirement; and (b) where a provision in a lease or other agreement relating to property rights gives a specified owner authority to control an aspect of lands or premises that are used as a workplace, the provision is <i>prima facie</i> evidence that the specified owner has the greatest degree of control over that aspect of the land or premises.</p>
<p>Newfoundland and Labrador Occupational Health and Safety Act (R.S.N.L. 1990, c. O-3)</p>	<p>Under s.5, an employer must ensure that workers, and particularly supervisors, are made familiar with health or safety hazards that may be met by them in the workplace.</p> <p>Under s.10, a principal contractor (meaning the person primarily responsible for the carrying out of a project, including the person who owns the thing in respect of which the project is being carried out) engaged in a project shall ensure, where it is reasonably practicable for him or her to do so, that employers, workers and self-employed persons performing work in respect of that project comply with this Act and the regulations.</p>	<p>Under s.4.1(1)(b) of the Occupational Health and Safety Regulations (C.N.L.R. 1165/96), under the Act, the occupational health and safety policy of a workplace must contain a statement of the respective responsibilities of the employer, supervisors, the worker health and safety representative or the workplace health and safety designate and other workers in carrying out their collective responsibility for occupational health and safety.</p>
<p>Yukon Territory Occupational Health and Safety Act (R.S.Y. 2002, c. 159)</p>	<p>Under s.1, an "employer" includes a contractor or sub-contractor who undertakes with an owner, constructor, contractor, or sub-contractor to perform work or supply services.</p> <p>Under s.4, every constructor shall ensure, so far as is reasonably practicable, that during the course of each construction project the constructor undertakes: the measures and procedures prescribed by this Act and the regulations are carried out on the project; every employer and every person working on the project complies with this Act and the regulations; and the health and safety of workers on the project is protected.</p>	<p>Under s.5, if there is an overlapping of the work areas of two or more employers, the principal contractor or, if there is no principal contractor, the owner of the project shall establish and ensure the continuing function of a management group to coordinate the accident prevention activities of the several employers, and each employer shall be represented in and shall cooperate with the management group.</p>
<p>Northwest Territories and Nunavut Safety Act (R.S.N.W.T. 1988, c. S-1)</p>	<p>Under s.1, "employer" includes a principal contractor, subcontractor or other authorized person having charge of an establishment in which one or more workers are engaged in work.</p> <p>Under s.4(2), if two or more employers have charge of an establishment, the principal contractor or, if there is no principal contractor, the owner of the establishment, shall coordinate the activities of the employers in the establishment to ensure the health and safety of persons in the establishment.</p>	<p>Under s.5 of the General Safety Regulations (R.F.N.W.T. 1990, c. S-1), under the Act, where the work force at a place of employment includes workers of more than one employer, each employer is responsible for the accident prevention program for his or her employees.</p> <p>Under s.6 of the Regulations, where there is an overlapping of the work areas of two or more employers, the principal contractor or, if there is no principal contractor, the owner of the project shall establish and ensure the continuing function of a management group to co-ordinate the accident prevention activities of the several employers, and each employer shall be represented in and shall co-operate with the management group.</p>

Legislative summary (Cont'd)

OH&S legislation obligates a person in authority, be he constructor, employer or supervisor, to take every precaution reasonable for the protection of the worker, and to ensure that a worker is not endangered. While there is no exhaustive "due diligence" prescription, the following guiding principles were recently identified by OH&S lawyer Cheryl Edwards of Heenan Blaikie:

- **Know the law:** While knowledge of each intricate aspect of regulatory provisions or codes for a contractor being retained for its expertise is not reasonable, some knowledge (of the law) is necessary in order to review whether the contractor has a system in place to carry out the work safely. Contractor safety programs must reflect the responsibilities of the parties involved.
- **Know the hazards:** Take reasonable steps to assess all potential workplace hazards. An ongoing and active assessment of hazards is crucial in order for contractors to be informed of workplace hazards.
- **Assess and 'pre-qualify' the contractor's OH&S program:** Due diligence requires the presence of a detailed and functioning safety system. Processes must be in place for advance review of the contractor's program. These are referred to as "pre-qualification" processes.
- **Monitor contractors to ensure compliance:** Monitoring should increase depending on the nature of the risk. While it is good to pre-qualify, it is not enough to rely on promises made by the contractor to comply. Any incidents of non-compliance must result in warnings and, if necessary, removal of the contractor from the work site.
- **Communicate:** Ensure that contractors and their workers are familiarized with the work site and informed of any foreseeable risks or hazards, prior to work commencing. Thereafter, as work proceeds, they must be advised of any new hazards or problematic issues arising which could endanger workers.

Occupational health news

Young people with dyslexia may be at higher risk of work injuries

A new study (*Work Injury Risk Among Young People With Learning Disabilities and Attention Deficit/Hyperactivity Disorder in Canada*) from Ontario's Institute for Work & Health (IWH) has found that young people with dyslexia may be at greater risk of being hurt on the job. The study was published in the August 2009 issue of the *American Journal of Public Health* and is "one of the first" to look at the relationship between learning disabilities, attention deficit/hyperactivity disorder (ADHD), and job-injury rates among young people.

IWH scientist, Dr. Curtis Breslin, led the study and believes the association between dyslexia and injury rates underscores the important role of the education system in workplace health and safety. Breslin suggests health and safety training incorporate the principles of universal design and make materials usable by all people, regardless of their age, ability, or situation, to the greatest extent possible.

Access the journal at: <http://www.ajph.org>

Access the Canadian Dyslexia Association website: <http://www.dyslexiaassociation.ca>

Access information on ADHD from ADD/ADHD Advocacy Canada website: <http://www.caddac.ca>

Related and upcoming reports: The Conference Board of Canada has posted online, *All Signs Point to Yes: Literacy's Impact on Workplace Health and Safety* - a report that summarizes the results of the first phase of a two-year research project exploring the connections between employee literacy skills and workplace health and safety records as reported in current literature. A final report, *What You Don't Know Can Hurt You: Literacy's Impact in Workplace Health and Safety*, is expected to be published this fall and will be available for free download from the board's e-library. A series of case studies from the study will also be published at the same time.

Access the report (32 pages) at:

http://sso.conferenceboard.ca/e-Library/temp/BoardWise2EHBEFHHCNCAPLLPGEKOIMJBC2009826125524/08-279_AllSignsPointtoYes.pdf

Study examines health effects of exposure to nano particles

A new study, published in the September issue of the *European Respiratory Journal*, is arousing concern that long-term exposure to microscopic-size nano particles without protective measures may be related to serious damage to human lungs.

The study focused on seven female workers (18-47 years), who were exposed to nano particles for 5-13 months, and who were subsequently admitted to hospital with symptoms related to shortness of breath and pleural effusions.

Examinations of the patients' lung tissue displayed non-specific pulmonary inflammation, fibrosis, and foreign-body granulomas of pleura - typical of exposure to nano particles. Electron microscopy revealed nano particles lodged in the pulmonary cells, and in the chest fluid. The presence of polyacrylate, consisting of nano particles, was confirmed in the workplace.

Despite this, members of the US National Institute for Occupational Safety and Health (NIOSH) Nanotechnology Research Center, cautioned that "sufficient exposure information necessary to draw a causal association between exposure to nano-sized particles in the paste/dust and lung and heart disease in the workers is missing."

NIOSH continues to recommend that in the face of continuing uncertainty about the risks to worker health associated with exposure to nanoparticles and chemical intermediates containing various concentrations of nanosized particles, a proactive, prudent approach to working with nanomaterials is necessary.

Access the NIOSH comment at: <http://www.cdc.gov/niosh/blog/>

Access the journal at: <http://erj.ersjournals.com/future/34.3.dtl>

WorkSafeBC reviewing policy on cancer in asbestos-exposed workers

Last month, WorkSafeBC released a discussion paper on bronchogenic carcinoma (lung cancer) in asbestos-exposed workers. Schedule B of the *Workers' Compensation Act* provides a presumption of work causation in favour of a worker who has developed primary site lung cancer where one or both of the following diseases are present and where there has been exposure to airborne asbestos dust:

- asbestosis (a chronic lung disease caused by inhaling asbestos fibres. Prolonged accumulation of the fibres in the lungs can cause scarring of lung tissue and shortness of breath; or
- bilateral diffuse pleural thickening or fibrosis more than five mm (millimeters) thick and extending over more than a quarter of the chest wall.

At issue is whether the descriptions in Schedule B of the act are current and supportable based on the most recent medical science.

Access the discussion paper (179 pages) at:

http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/bronchogeniccarcin

OH&S management

Study supports supervisors' role in determining employee health

According to *The Missing Link: Supervisors' Role in Employee Health Management*, a report released last month by the Shepell-fgi Research Group, Canadian employee access to EAPs (Employee Assistance Programs) increased by 10% in the first quarter of 2009 over last year, in part due to increased financial-related stressors.

The report's author, Marla Jackson, contends that, during stressful times, the relationship between supervisor and employee becomes a crucial determinant of employee health.

To support this view, the report quotes the groundbreaking research on work/life balance, *Reducing Work-Life Conflict: What works? What doesn't?* (Higgins, Duxbury, Lyons, 2007), which found that employees with high levels of work/life conflict:

- are not as committed and not as engaged (as other workers);
- have higher levels of job stress;
- have higher absenteeism; and
- experience higher levels of drug use, depression and burnout.

However, the report notes, in these same organizations, employees with supportive managers report:

- higher job satisfaction, and greater trust of managers and commitment to the organization
- lower levels of role overload and job stress
- lower levels of fatigue, depression, poor health and work/family conflict
- lower absenteeism; and
- greater intent to remain with the organization.

In this study, supportive managers were defined as those who gave positive feedback, practiced two-way communication, showed respect for employees, were consistent and fair, and served as a coach or mentor for employees.

Supervisors' Role in Employee Absence and Disability

The report argues that supervisors and managers also play a critical role in the employee absence and disability process.

"They (supervisors) are most likely the first ones to know when an employee will be absent, and their application of the organization's attendance policy and

procedures can have a profound impact on employee morale. The immediate supervisor is usually responsible for identifying issues, initiating appropriate actions, monitoring attendance issues and applying corrective measures. These processes are ripe for miscommunication

and a perceived lack of consistency and fairness. As such, the supervisor's ability to successfully manage them is critically important.

When supervisors and managers are provided with the information, tools and skills needed to consistently manage attendance issues well:

- work and staff planning are more effective
- direct and indirect costs of absenteeism are reduced
- employee morale goes up
- employees obtain the assistance they need when they need it

Tips on empowering supervisors to become health and safety leaders

✓ Recruit, hire and train supervisors to be supportive 'people leaders'

- Screen and hire supervisors with high levels of 'people management' skills.
- Train supervisors on the impact of workplace stressors on employee health.
- Train supervisors on 'people leader' skills such as communications, team building and conflict resolution.
- Identify internal 'people management' best practices and set up coaching or mentoring programs whereby these skills can be transferred.
- Ensure managers have workloads which allow 'people management' to be an adequate part of their time.
- Conduct 360 degree feedback.

✓ Give supervisors the information they need to better manage employee health and productivity

- Measure employee stress and satisfaction by work group, and provide feedback and support to managers on findings.
- Reward and hold managers accountable for the stress and satisfaction scores of their work group.
- Ensure adequate, timely information is provided to supervisors about their employees' health, well-being and absence.

✓ Give supervisors the tools and supports they need to better manage employee absence and disability

- Ensure appropriate access to absence and disability data, at the workgroup level.
- Train supervisors on absence and disability management policies and practices.
- Train supervisors on behaviours and skills needed to successfully manage employee absence and disability, particularly for complex situations.
- Provide regular, formal supervisor training to identify and respond to declining employee productivity or significant behaviour change.

✓ Focus on Prevention and Early Intervention

Prevention-focused absence and disability management programs result in shortened employee absence, reduced costs, and sustained productivity. Establishing preventative measures and including proactive promotion of EAP, both at the broader organizational level and at the workgroup level, is a key strategy. When high-quality supervisors are provided with the information, tools and supports required, they can be pivotal in this process.

✓ Be Consistent

Organizations with exceptional success in disability prevention and management are committed to the consistent application of best practice strategies in every case. One of the reasons well-designed programs fail is because they are inconsistently understood and applied. Regularly and effectively communicating program activities, objectives, policies, and procedures will help ensure consistent application of the program. Supervisors, in particular, require orientation, training and continuous support to be able to identify issues and intervene as required.

OH&S management

- employees recognize consistency and fairness in their workplace

“In one study,” the report notes, “supervisors who were trained to adequately respond, communicate and problem solve with employees reduced new disability claims by 47% and active lost time claims by 18% (Liberty Mutual, 2006). The supervisor training program was designed to help them respond better to employee injuries and included skill building for employee communication, and problem solving to help get injured employees back to work.

“Clearly, it is more important than ever before that frontline supervisors have the information, tools and supports they need to effectively manage the full continuum of employee health.”

However, a recent Shepell-fgi survey of over 100 leading Canadian organizations revealed that, in most organizations, supervisors and managers remain poorly equipped to deal with issues related to employee productivity, absenteeism and disability.

The key findings of the survey indicated that:

- four out of every five supervisors did not have the information or tools they need to effectively manage employee absence or to address problems in employee productivity or behaviour; and
- two out of every three supervisors are not provided with the tools they need to effectively manage a return to work process.

What Can Employers Do?

According to Shepell-fgi, “the importance of supervisory quality in managing employee health, absence and disability cannot be overstated, especially during stressful times.

“Fortunately, many supervisory factors that have been clearly linked to positive employee health and wellbeing outcomes are learned behaviours.

“Employers seeking to better manage employee health, absence and disability must ensure that supervisors have adequate opportunities to

develop supportive ‘people leader’ skills, and provide incentives to put them into practice.

“The challenge for organizations is to recruit, train and support supervisors to engage in these behaviours, to be high quality ‘people leaders’, and to provide the

information, tools and supports needed to manage these issues most effectively.”

For more information, contact: Marla Jackson, MHS., Director, Shepell-fgi Research Group and Health Solutions Department, or Paula Allen, VP Health Solutions and Training at 1 800 461-9722.

Download the full text of the report at:

<http://www.shepellfgi.com/EN-US/AboutUs/News/Research%20Report/index.asp>

Best management practices

A series of monthly management columns by OH&S specialist Dianne Dyck. The series summarizes current OH&S best practices. Discussion of each topic is followed by a list of the relevant best practices. This month discusses practice #25 in the series which deals with programs to address the workplace health and safety of young/new workers.



#25 - Address health and safety of young/new workers

Young workers continue to be “victims” of workplace incidents. They tend not to recognize workplace hazards; as well they do not ask questions because they want to fit in and not draw attention to themselves. The outcome is that young workers are one-third more likely to be injured on the job than those over the age of 25 years — especially young males.

For injured workers under age 25, 60 per cent were injured during their first six months on the job. In 2005, the rate of fatalities in the 15-19 years of age group (young workers) was 1.8 deaths per 100,000 Canadian workers and 2.8/100,000 in the United States.

Although a number of strategies have been implemented to better protect young workers, the needless loss of these young people continues.

BEST PRACTICES

1. Companies need to recognize the vulnerability of the young and new worker in his or her specific workplace. An industry example of how a company can incorporate the well-being of young workers into its OH&S Program is provided by Ontario Power Generation (OPG). OPG establishes a Young Worker Safety program and entrenches it in its Occupational Health and Safety policy. At OPG’s suggestion, readers can refer to their website for more information at: <http://www.OPG.com/safety>
2. Develop worker training programs that provide in-depth knowledge about workplace hazards — their identification, assessment and control. This needs to include how the young worker should report an identified hazard to his or her direct supervisor.
3. Use training approaches that are tailored to address young worker learning needs and to enhance young worker learning.
4. Educate the general worker population in the vulnerability of the young/new worker and clearly state the role and responsibility it has for the protection of these workers.
5. Consider the use of various young worker programs such as the Passport to Safety, Work Safe BC, NIOSH Young Worker Health and Safety, and OSHA Fact Sheet on Young Workers.
6. Adopt a zero tolerance approach with workers who “pull pranks” on young/new workers (or on any workers for that matter). Practical jokes, horseplay and initiation practices can result in serious injury.

* Extracted from *Occupational Health & Safety: Theory, Strategy and Industrial Practice* by Dianne E.G. Dyck, copyright LexisNexis Canada (November 2007) and reproduced by permission. Please visit: <http://www.lexisnexis.ca> for ordering information on this and other LexisNexis Canada titles.

OH&S Due Dillgence

R. v. Lonkar Well Testing Limited 2009 ABQB 345:

Due diligence defence revives after Alberta appeal court quashes OH&S conviction

A recent ruling by Justice S.D. Hillier, Court of Queen's Bench of Alberta that allowed an appeal by Lonkar Well Testing Limited (appellant) and quashed a conviction under the *Occupational Health and Safety Act* has lead a number of prominent OH&S lawyers to claim the "rebirth" of the due diligence defence - or at least a correction of earlier decisions which tended to place the employer in the position of insurer of last resort.

In this case, Lonkar had appealed a September 2008 conviction rendered by Alberta Provincial Court Judge J. C. Spence on a charge that it had failed as an employer to ensure, as far as it is reasonably practicable, the health and safety of its worker following the fatal consequences of a work site incident involving a pressure vessel on a sweet gas well.

In quashing the conviction, the appeal court in Lonkar found that the trial judge had engaged in "speculative" reasoning in concluding that the defendant had not exercised all reasonable care in the circumstances.

According to David G. Myrol, partner at the law firm McLennan Ross LLP, "the Lonkar decision is an important decision for three reasons. First, it affirms the principle that an employer is not a virtual insurer of its employees. Second, it examines the concept of foreseeability as part of the defence of due diligence. Finally, it serves as a good reminder to trial judges to resist the temptation of hindsight reasoning."

The chain of events

The original conviction arose after an January 13, 2005, incident in which Jonathan Audit, a 21-year-old full-time employee of Lonkar Well Testing died from oxygen deficient suffocation.

The events leading to Audit's death began when workers attempting to measure the service flow rate of a sweet gas well noticed that a "meter run" had malfunctioned. The employer contacted the manufacturer of the pressure vessel to schedule a replacement. To hasten the process, the crew of the appellant began preparing the pressure vessel for the replacement operation and the supervisor of the crew traveled to Grande Prairie to obtain some parts for the replacement operation.

The role of the site supervisor

Before leaving the well site, the supervisor instructed the young worker to remove half of the flange bolts from the meter run and pressure valve which were both located inside a trailer.

The supervisor assigned another worker to assist the young worker and expressly instructed the young worker not to carry out any additional work until the supervisor's return from Grande Prairie. The supervisor was present in the pressure vessel trailer for part of the job and removed or helped to remove two of the bolts from the Meter Run to demonstrate the work required.

As a safety precaution, the supervisor

closed the five-fold valve which isolated the separator from the well. He then went to Grande Prairie.

While the supervisor was away, the two workers completed the task of removing half of the flange bolts. Once this task was completed, the assisting worker left the trailer. A short time later a driller (employed by a different company) came by the trailer and had a conversation with Audit. The driller observed that the Meter Run and pressure valve was still intact and was informed by Audit that no more work was to be performed on it until the supervisor returned.

The apparent cause of death

Upon the supervisor's return from Grande Prairie he found Audit lying on the floor of the trailer. The Meter Run and pressure valve had been removed from the pressure vessel. The supervisor immediately summoned help but Audit had died.

Apparently Audit had fallen to the floor of the trailer. A lack of oxygen at floor level caused by the stratification of hydrocarbon gases had led to his suffocation.

The charges faced by the employer

Lonkar was convicted, as an employer, for failing to ensure as far as it was reasonably practicable to do so, the health and safety of Jonathan Audit.

Although the trial judge

acknowledged that Audit was told on a number of occasions not to remove all the bolts on the Meter Run as it was dangerous, it was incumbent on Lonkar to 'make certain' that harm did not occur to Audit and the company was under a duty to take all reasonable measures to this end.

The trial judge also found it was not enough to blame Audit for going against the instructions of Lonkar's supervisor for there is case authority that workplace safety regulations not only protect the prudent worker but also the careless and even reckless workers. The trial judge referred to *Ontario (Ministry of Labour) v. Dofasco Inc.* [September 2005].

The appeal court decision:

Lonkar's success in quashing the conviction on appeal was based on the finding of the appeal court judge that the trial judge had erred in concluding that the defendant had not established its reasonable care defence on a balance of probabilities.

In distilling this issue further, the appeal judge reduced the question of due diligence to whether the defendant had done everything reasonably practicable to address foreseeable risks in terms of training, materials, testing, direction and supervision.

The appeal judge ultimately concluded that the trial had engaged in speculative and hindsight-based reasoning when it had concluded that everything foreseeable had not been done in this case. As the appeal judge noted in paragraph 61:

[61]...it remains a complete mystery as to why Audit [young worker] would have undertaken the task of dismantling the equipment in the circumstances. Consequently, it is entirely speculative that a more detailed warning would have prevented Audit's creation of the dangerous situation which resulted in his tragic death.

[62] For a potential danger to be foreseeable, there must be at least a reasonable prospect or expectation that it will arise".

The appeal judge concluded:

[80] ...I have found that if one places oneself in the shoes of a reasonable person prior to the occurrence, there was no more than a very speculative basis for the safety precautions identified in the Trial Judge's decision. In my view, the Trial Judge erred in concluding that Lonkar did not take reasonable care in the circumstances of this case.

OH&S Due Dillgence (cont'd)

David Myrol, partner with McLennan Ross LLP, has an interesting 'post-script' to the case. In a recent article, he observes:

"It is also worth noting that the defendant in *Lonkar* was acquitted of violating section 7(1) of the OHS Code, that is, failing to assess a work site to identify existing or potential hazards at the start of a project.

"At trial, the Crown argued three justifications for this charge: (1) the defendant failed to assess the work site to identify existing or potential hazards; (2) the defendant could not rely on the hazard assessment performed by the prime contractor; and (3) the prime contractor's assessment was woefully insufficient and failed to comply with the section. The trial judge rejected all of these arguments.

"It is important to note that the defendant was not charged under section 7(4)(b) of the OHS Code which requires a hazard assessment to be repeated whenever a work process changes. Had the Crown laid this charge there may very well have been a conviction. Instead, the trial judge was required to address section 7(1) and concluded that there was no requirement in that section for the "assessment" itself to be in writing. Moreover, the trial judge was not prepared to "read into" the section a requirement to provide specific details with respect to the hazards identified. That is, the trial judge was unwilling to "read into" the section something beyond the plain wording of the section. The trial judge concluded that if more detail was required, then the section should be amended by the legislature and not the courts.

"Employers, contractors and prime contractors should approach the trial judge's decision on the issue of written hazard assessments cautiously. While the Crown did not cross-appeal this finding, and therefore it was never before the appeal judge, there is nothing preventing the Crown from challenging the reasoning in later cases. Moreover, the Crown can remedy the situation by charging under s. 7(4) of the OHS Code. Prime contractors should also be aware of the change to s. 7(5) which came into force on July 1, 2009:

7(5) A prime contractor must ensure that any employer on a work site is made aware of any existing or potential work site hazards that may affect that employer's workers.

"Arguably, this is a significant expansion on the obligations of the prime contractor."

Access the June 2009 decision (23 pages) at:

<http://www.canlii.org/en/ab/abqbl/doc/2009/2009abq345/2009abq345.pdf>

Access David G. Myrol article at:

<http://www.mross.com/law/Publications/HSE+Law+Newsletter/Article?contentId=1489>

Information resources

- **Guidance for Businesses and Employers to Plan and Respond to the 2009-2010 Influenza Season.** This resource, which was released August 19 by the US Centers for Disease Control (CDC), provides recommended actions that non-healthcare employers should take now to decrease the spread of seasonal flu and 2009 H1N1 flu in the workplace, including in part:
 - review or establish a flexible influenza pandemic plan and involve employees in developing and reviewing the plan;
 - conduct a discussion or exercise using the plan, to determine ahead of time whether the plan has gaps or problems that need to be corrected before flu season;
 - have an understanding of your organization's normal seasonal absenteeism rates and know how to monitor personnel for any unusual increases in absenteeism through the fall and winter;
 - share best practices with other businesses (especially those in your supply chain), chambers of commerce, and associations to improve community response efforts; and
 - add a "widget" or "button" to your company website so employees can access the latest information on influenza.

Access the CDC's Widgets and Gadgets portal at: <http://www.cdc.gov/widgets>

Access the CDC's Social Media portal at:

<http://www.cdc.gov/SocialMedia/Campaigns/H1N1/buttons.html>

The online resource also includes additional strategies to use if flu conditions become more severe and some new recommendations regarding when a worker who is ill with influenza may return to work.

Access the resource at: <http://www.flu.gov/plan/workplaceplanning/guidance.html>

Access the update website at: <http://www.flu.gov>

- **The Evolution of a Flu Pandemic: Issues for Employer Response** - issued May 1, 2009, by Heenan Blaikie, this paper identifies key legal issues that may arise as employers prepare to deal with a potential influenza pandemic and its impact on the workplace. Topics include occupational health and safety legislation; work refusals; employment standards legislation; human rights legislation; mandatory testing; and pandemic preparedness.

Access the document (5 pages) at:

http://www.heenanblaikie.com/en/media/BioXML_Publications/HB/pdf_file/2009_05_01++Labour+and+Employment+eBlast_The+Evolution+of+a+Flu+Pandemic.pdf

- **Leadership Recognition Program.** This review of literature outlining leadership recognition practices with respect to healthy people and safe workplaces was compiled by the Ontario Safety Association for Community & Healthcare (OSACH) in response to a commission from the Ontario Ministry of Health and Long-Term Care. Five major themes were identified:
 - professional recognition is an important form of motivation;
 - recognition and reward are fundamentally different mechanisms of motivation;
 - process achievements should be recognized along with successful outcomes;
 - leadership recognition programs should acknowledge team work; and
 - the value placed on different forms of recognition varies.

Access the document (76 pages) at: <http://www.osach.ca/pdf/evare535/evare535.pdf>

- **Hazard Communication Guidance for Combustible Dusts** - posted online in July 2009 by the US Occupational Safety and Health Administration (OSHA), this resource discusses combustible dust hazards; identifying and controlling the potential for dust explosions; and training. Examples of dust explosions under normal conditions of use are also provided.

Access the document (13 pages) at: <http://www.osha.gov/Publications/3371combustible-dust.pdf>

- **Workplace Health and Safety Bulletin: Asbestos at the Work Site** - issued in July 2009, by Work Safe Alberta, this document discusses the uses of asbestos; health effects; controlling asbestos exposure; worker health assessment; occupational exposure limits; and employer/worker responsibilities.

Access the document (7 pages) at:

http://employment.alberta.ca/documents/WHS/WHS-PUB_ch019.pdf

- **Workplace Health and Safety Bulletin: Benzene at the Work Site** - issued in August 2009, by Work Safe Alberta, this bulletin discusses benzene at the work site; acute health effects; chronic health effects; biological monitoring; preventative measures; substitution; engineering controls; administrative controls; and personal protective equipment.

Access the document (11 pages) at:

http://employment.alberta.ca/documents/WHS/WHS-PUB_ch065.pdf

Conference & Events Planning Calendar

SEPTEMBER 2009

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
21	22	23	24	25
<ul style="list-style-type: none"> • Safety Orientation Package - Calgary, AB - Enform (780) 955-7700; toll-free: 1 (800) 387-4976; fax: (780) 955-2454; website: http://www.enform.ca • September 20-23 • Canadian Society of Safety Engineering (CSSE) Professional Development Conference and Exhibition - Calgary, AB - CSSE (416) 646-1600; fax: (416) 646-9460; email: info@csse.org website: http://www.csse.org 				
28	29	30	Advance Notice: November 2-3, 2009 Ottawa, ON Health and Safety Training for Managers and Supervisors CCOHS (905) 572-2981; email: dianed@ccohs.ca website: http://www.ccohs.ca	
<ul style="list-style-type: none"> • Fall Protection for Rig Work - Nisku, AB - Enform (780) 955-7700; toll-free: 1 (800) 387-4976; fax: (780) 955-2454; website: http://www.enform.ca 				

OCTOBER 2009

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
Advance Notice: November 25-27, 2009 Toronto, ON ENVIRONMENTAL COMPLIANCE ESSENTIALS Nov. 25: Environmental Regulation & Compliance Update Course Nov. 26: Dealing with new requirements governing Air and GHG emissions Nov. 27: Managing Environmental Certificates of Approval and Permits For more information access the brochure at: http://www.envirogate.ca or call (416)920-0768			1	2
5	6	7	8	9
<ul style="list-style-type: none"> • 2009 Canadian Industrial Emergency Expo & Conference - Edmonton, AB - 1 (877) 534-7285; website: http://www.industrialemergencyexpo.com • Federal Health and Safety Competency Training - London, ON - THSAO (416) 242-4771; toll-free: 1 (877) 242-7079; fax: (416) 242-4714; website: http://www.thsao.on.ca 				
12	13	14	15	16
<ul style="list-style-type: none"> • Fall Protection for Rig Work - Nisku, AB - Enform (780) 955-7700; toll-free: 1 (800) 387-4976; fax: (780) 955-2454; website: http://www.enform.ca 			<ul style="list-style-type: none"> • Oil Perforators Safety Training - Calgary, AB - Enform (780) 955-7700; toll-free: 1 (800) 387-4976; fax: (780) 955-2454; website: http://www.enform.ca 	
19	20	21	22	23
<ul style="list-style-type: none"> • OHS Due Diligence for Managers and Supervisors - Mississauga, ON - Gowlings (416) 862-3645; website: http://www.gowlings.com • Industrial Ergonomics Certification Special - Stratford, ON - E.K. Gillin (519) 662-3819; toll-free: 1 (888) 771-6754; email: ekginc@ekginc.com website: http://www.ekginc.com 				
26	27	28	29	30
<ul style="list-style-type: none"> • 2009 Alberta Health and Safety Conference and Trade Fair - Calgary, AB - Health & Safety Conference Society of Alberta (403) 236-2225; fax: (403) 206-7099; email: info@hsconference.com website: http://www.hsconference.com 			<ul style="list-style-type: none"> • Safety Services Newfoundland Labrador: 3rd Annual Health & Safety Conference - St. John's, NL (709) 754-0210; website: http://www.safetyservicesnl.ca 	

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TEMPLEGATE INFORMATION SERVICES INC. 131 BLOOR ST. W., STE. 200-206, TORONTO, ONT. M5S 1R8
To Subscribe: Call (416) 920-0768 Fax: (416) 920-0620