



The American Society of Safety Engineers—North Carolina Chapter

# NC-ASSE RECORDER

Volume 3, Issue 1

September, 2008

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## Department of Labor publishes “secret rule”

A much-criticized Department of Labor requirement, which opponents claim was secretly developed and will slow the formation of new regulations, has been officially published.

A notice of proposed rulemaking for "Requirements for DOL Agencies' Assessment of Occupational Health Risks" was published in the Aug. 29 *Federal Register*. The proposed rule would require DOL agencies to publish an advance notice of proposed rulemaking and open a comment period for any health standard regulating occupational exposure to toxic substances and hazardous chemicals. It also would require agencies to electronically publish "all relevant documents" after each step in the regulatory process for the proposed rule, including scientific studies related to the rulemaking.

DOL is accepting public comment on the rule until Sept. 29, but stressed in the notice that the step was not required because the proposed rulemaking relates to internal DOL regulation.

The proposed rule, the notice said, stems from a 1997 report from the Presidential/Congressional Commission on Risk Assessment and Risk Management that recommended OSHA publish guidelines for risk assessments instead of relying on a case-by-case approach.

Opponents claim the rule ultimately would weaken worker protections by delaying the rule-making process to satisfy pro-business interests. In July, Rep. George Miller, D-CA, chairman of the House Education and Labor Committee, introduced legislation (H.R. 6660) to stop DOL from "issuing, administering or enforcing any rule, regulation, or requirement" stemming from the plan.

On Aug. 14, the Project on **Scientific Knowledge and Public Policy** (or SKAPP, [www.defendingscience.org](http://www.defendingscience.org)), a George Washington University-funded group composed of dozens of scientists and doctors from various institutions, wrote a letter to Secretary of Labor Elaine L. Chao asking that she withdraw the proposed rule. The group claims the rule would "significantly weaken current risk assessment approaches without offering any improvements." OSHA administrator Edwin G. Foulke Jr. has stated the proposed rule is not being pursued at the expense of other standards.

Courtesy: National Safety Council

## Next Meeting Topic: MRSA Speaker: Judy Analco, MS, CEP

Is your business ready for MRSA? Please join the NC ASSE Chapter on October 9th, 11:30 am, to learn what steps we can take to prepare for a potential outbreak.

Our speaker, Judy Analco, is Principal of EnviroKey, a risk communication firm specializing in the prevention and management of environmental and human health crises. Prior to starting her own business, she provided risk evaluation and control services within the private sectors.

Location: Buffalo Brothers, 3111 Capital Blvd. Raleigh, NC.

## Hearing draws concerns over proposed confined spaces rule

A July 22 OSHA hearing regarding a proposed rule on confined spaces in construction drew questions from stakeholders on the rule's complexity and scope.

OSHA has debated promulgating a specific standard on confined spaces in construction since March 1980, when it formally began gathering documentation. The agency issued a notice of proposed rulemaking in November 2007.

Richard Marshall, representing the Dallas-based International Association of Foundation Drilling, questioned a provision in the proposed rule that addressed "controlling" employers at a construction worksite – a situation in which an employer who may not have workers at a site still may be responsible for the safety of contract workers. "Our fear is that someone else will tell you how to do your work," Marshall said. Others said the proposed rule is complicated and burdensome on employers, and that it veers from long-established industry consensus standards. The new standard also would have applications for "construction work" in industries outside of construction.

While the agency has had specific confined-space rules in place for general industry and shipyard employment for more than a decade, those rules do not fully address confined-space issues unique to the construction industry, said Bill Parsons, director of OSHA's Office of Construction Standards and Guidance.

The new construction rule would reduce construction-related confined-space fatalities and injuries by about 90 percent each year, addressing issues that include ventilation in confined spaces, entry and nonentry rescue, and training, according to Parsons.

*"The new construction rule would reduce construction-related confined-space fatalities and injuries by about 90 percent each year."*

–Bill Parsons

Director, OSHA's  
Office of  
Construction

## Group asks for stronger criminal penalties for OSHA violations

The Occupational Safety and Health Act of 1970 needs to be updated to include a criminal enforcement program that sufficiently investigates and prosecutes violators, a new report says.

The American Constitution Society for Law and Policy, a Washington-based nonprofit, non-partisan group that "promotes the vitality of the U.S. Constitution," on Aug. 29 released *Prosecuting Worker Endangerment\** from author David M. Uhlmann. Uhlmann is an environmental law professor at the University of Michigan Law School and former chief of the Environmental Crimes Section at the Department of Justice.

In the report, Uhlmann said current law offers too many loopholes for employers or mid-level managers to avoid the heftiest penalties. He contrasted OSH Act provisions with environmental laws: Both were enacted in the 1970s, and violations of them were limited to misdemeanors. Within 10 years, however, penalties for violating some environmental laws had been upgraded to felonies, he said.

*"...current law offers too many loopholes for employers or mid-level managers to avoid the heftiest penalties."*

–David Uhlmann  
Env. law  
professor, U. of  
Michigan Law  
School

Read the *Prosecuting Worker Endangerment* document at:

<http://acslaw.org/pdf/press/2008-08-26%20Uhlmann%20Issue%20Brief%20Embargoed.pdf>

## NCDOL issues new Hazard Alert

The N.C. Department of Labor investigated nine cases in the last eight months of workers being killed after being struck by heavy machinery such as dump trucks, backhoes and vehicles. Many of the fatalities occurred in the construction industry, particularly in work zones. Some summaries:

**April 2008**—Employee working on a residential construction site was run over by a truck driver backing up his vehicle.

**May 2008**—Concrete truck backed over a worker on a road paving project. The truck operator had no spotter.

**June 2008**—Backhoe struck an employee, knocking him down and fatally running over him.

**July 2008**—Dump truck driver backed over spotter while completing a paving operation.

**July 2008**—Employee operating a dump truck jumped out while the truck was in motion and was run over.

Struck-by accidents are among the four leading causes of workplace fatalities. About 75 percent of struck-by fatalities involve heavy equipment such as trucks or bulldozers, according to the Occupational Safety and Health Administration. In fact, one in four “struck by vehicle” deaths involve construction workers, more than any other occupation. Most employee injuries and fatalities can be attributed to lack of safe operating procedures, lack of safety-rule enforcement, and inadequate or insufficient training.

### Safe Operation Techniques

- Do not drive a vehicle/equipment in reverse gear with an obstructed rear view, unless it has an audible reverse alarm distinguishable from the surrounding noise level or another worker signals that it is safe.
- Flaggers must be highly visible in all levels of light. Warning clothing, such as red or orange vests, are required; and if worn for night work, must be of reflective material.
- Never allow untrained workers to operate equipment.
- Drive vehicles or equipment only on roadways or grades that are safely constructed and maintained. Failure to do so can result in overturned equipment.
- Make sure that you and all other personnel are in the clear before using dumping or lifting devices.
- Lower or block bulldozer and scraper blades, end-loader buckets, dump bodies, and other attachments on similar equipment when not in use, and leave all controls in neutral position.
- Set parking brakes when vehicles and equipment are parked, and chock the wheels if they are on an incline.
- Ensure that employees do not use cellular phones while working and walking around heavy equipment.

### Worker Training

- Train employees on the specific type of equipment they will operate, particularly the manufacturer’s specifications and recommendations.
- Familiarize all employees with the worksite and all vehicle operations. Make sure they are aware of intersections and blind areas in the work zone.
- If employees are assigned traffic control responsibilities, make sure they are trained in specific techniques, device usage and placement.

**Continued on page 4...**

Go to NCDOL’s website ([www.ncdol.com](http://www.ncdol.com)) to access this Hazard Alert and others!

## NCDOL issues new Hazard Alert (continued)

Specifically, a traffic control plan inside work zones and adequate marking of work zones are keys to safety. A common trend in the examples mentioned above is employees being backed over by vehicles or equipment. Even if vehicles are equipped by backup alarms, having a spotter is the best way to prevent vehicles from backing over employees. Often there are so many alarms on the sites that employees become used to the alarm sound and they start to ignore it. The N.C. Department of Labor urges you to use the following tips to help create a safe and healthy work environment for your workers. This information can be used to develop morning safety talks and weekly safety meetings.

### Spotter Safety

A spotter should always be used any time a vehicle or moving equipment with a restricted view is operating on site. The spotter's main responsibilities are to look out for himself/herself and look out for all others on the site. Some tips for the spotter include:

- Never leave the driver's sight without notifying the operator to stop the vehicle.
- Always signal in an area the driver can see.
- Be consistent with hand signals to ensure understanding.

### Work Zone Safety

- Use traffic signs, barricades or flaggers when construction takes place near public roadways.
- Ensure the traffic control zone is divided and maintained in five distinct areas: advance warning area, transition area, buffer area, worker area and termination area.
- Display properly spaced advance warning signs to notify drivers of lane tapering, shoulder work, paving or other activity.

### Vehicle Maintenance

- Ensure seat belts are in working order and meet the regulations found in OSHA standard 29 CFR 1926.601(b)(9) and 1926.602(a)(2).
- Check vehicles before each shift to ensure that all parts and accessories are in safe operating condition. Examples include brake systems, tires, emergency brakes, steering and lights.
- Ensure audible alarms and horns are in working order. All bidirectional machines, such as front-end loaders, backhoes and bulldozers, must be equipped with a horn.

For more information concerning education, training and interpretations of occupational safety and health standards contact:

### Education, Training and Technical Assistance Bureau

4th Floor, Old Revenue Building, Raleigh, N.C.

Telephone: (919) 807-2875 Fax: (919) 807-2876

For more information concerning occupational safety and health consultative services and safety awards programs contact:

### Consultative Services Bureau

3rd Floor, Old Revenue Building, Raleigh, N.C.

Telephone: (919) 807-2899 Fax: (919) 807-2902

Mailing Address: 1101 Mail Service Center

Raleigh, NC 27699-1101

Telephone: 1-800-625-2267

N.C. Department of Labor Web site: [www.nclabor.com](http://www.nclabor.com)



Founded in 1911, ASSE is the oldest and largest professional safety organization. Its more than 30,000 members manage, supervise and consult on safety, health, and environmental issues in industry, insurance, government and education. ASSE is guided by a 16-member Board of Directors, which consists of 8 regional vice presidents; three council vice presidents; Society president, president-elect, senior vice president, vice president of finance and executive director. ASSE has 13 practice specialties, 152 chapters, 31 sections and 52 student sections.

For more information, visit [www.asse.org](http://www.asse.org).

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