

LUST Investigation & Remediation



OSHA, LUST, & Remediation

by Matthew E. Fitzgerald

LET'S BEGIN AT THE BEGINNING. THE OCCUPATIONAL Safety and Health Administration (OSHA) was created by Public Law 91-56 (the OSH Act). The Agency, a part of the Department of Labor, has the mandate from Congress to: "Assure safe and healthful working conditions for men and women; by authorizing enforcement of standards developed by the Act; by assisting and encouraging the states in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and for other purposes." With this broad mandate, OSHA has for the past 21 years promulgated workplace standards that protect worker safety and health.

OSHA law governs employers, not employees. It is incumbent on the employer to provide each worker a safe and healthful workplace pursuant to Section 5(a) of the OSH Act, commonly referred to as the general duty clause which says: "Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause, death or serious physical harm to his employees."

How does all of this fit in with LUST remediation work? Let me try to address this question by responding to a series of basic LUST-related health and safety questions.

Q. Do OSHA standards apply to UST remediation projects?

A. Yes. In addition to the general duty described above, employers of hazardous waste site remediation workers must also comply with all applicable OSHA standards.

There is a popular misconception that OSHA standards do not apply to companies with less than 10 employees. This is not true, OSHA standards apply to all employers regardless of the number of employees. OSHA has a random inspection program from which companies with 10 or less employees are excluded. However, OSHA will inspect companies with ten or less employees in response to an accident or complaint.

Q. What standards would apply?

A. General Industry Standards (1910) and Construction Industry Standards (1926) may apply to UST remediation projects depending on the hazards and equipment used on site. General Industry Standards that may apply to UST remediation include:

- 1910.94 Ventilation for Abrasive Blasting
- 1910.106 Flammable and Combustible Liquids
- 1910.120 Hazardous Waste Operations & Emergency Response
- 1910.132 Personal Protective Equipment
- 1910.134 Respiratory Protection
- 1910.146 Proposed Confined Space Entry
- 1910.180 Crawler, Locomotive, & Truck Cranes
- 1910.184 Slings
- 1910.252 Welding, Cutting, & Brazing
- 1910.301 Design Safety Standards for Electrical Systems
- 1910.1000 Air Contaminants
- 1910.1028 Benzene
- 1910.1200 Hazard Communication

Construction Industry Standards that may apply include:

- 1926.24 Fire Prevention & Control
- 1926.28 Personal Protective Equipment
- 1926.55 Gases, Vapors, Fumes, Dusts, & Mists
- 1926.103 Respiratory Protection
- 1926.350 Gas Welding & Cutting
- 1926.351 Arc Welding & Cutting
- 1926.550 Cranes & Derricks
- 1926.651 Excavations

Note: Neither of these lists is intended to be all inclusive. There may be other OSHA standards that apply to your remediation projects. A competent health and safety professional should be consulted to ascertain exactly which and how OSHA standards apply to your company.

Q. What is the Hazardous Waste and Emergency Response Standard, and how does it apply to UST remediation?

A. The Hazardous Waste Operations and Emergency Response Standard (HAZWOPER), 29 CFR 1910.120, was promulgated by OSHA in response to a Congressional mandate in the Superfund Amendments and Reauthorization Act (SARA) of 1986. Title 1, Section 126(a) calls for the promulgation of "standards for the health and safety protection of employees engaged in hazardous waste operations."

HAZWOPER, the standard that emerged from this Congressional mandate, was promulgated March 6, 1989, effective March 6, 1990. The standard applies to three groups of workers: employees at cleanup operations involving hazardous substances (uncontrolled hazardous waste sites and corrective actions required by RCRA);

employees at hazardous waste treatment, storage, and disposal facilities (TSDFs); and employees expected to respond to emergencies caused by the release of a hazardous substance.

Q. So, does the HAZWOPER standard apply to UST work?

A. Yes. UST remediation is a RCRA Corrective Action and clearly falls under the scope of HAZWOPER.

Q. What does HAZWOPER require of employers with employees engaged in UST remediation?

A. The requirements of this standard are far too numerous to list here. Any company involved in UST remediation work should review all of the requirements in 29 CFR 1910.120 paragraphs (b) through (o) to ensure that it is in compliance.

The major HAZWOPER requirements include developing a site safety and health plan and training workers either for 24 or 40 hours depending on their role on site. In general, UST workers who actively engage in remediation for more than 30 work days a year are required to have 40 hours of initial training, 3 days of supervised field experience, and 8 hours of annual refresher training, thereafter.

Q. Isn't that overkill for UST remediation workers? After all, wasn't this standard really written for workers at uncontrolled hazardous waste site remediation projects?

A. No, it is not overkill; it is a minimum regulatory requirement. The standard was not written exclusively for uncontrolled hazardous waste site workers. Six separate accidents that occurred during UST remediation projects have resulted in six deaths during the 6-year period of 4/84 to 6/90 for an average of one death per year. An additional 38 fatalities and 32 hospitalizations occurred as a result of accidents associated with storage tanks. UST remediation is a dangerous business that is best handled by properly trained and equipped employees.

Q. All the tanks that we work with contain gasoline. Aren't petroleum products excluded from the definition of "hazardous substance"?

A. No. Unlike the EPA term, "hazardous waste" and Department of Transportation term "hazardous materials," the OSHA phrase "hazardous substance" includes petroleum products.

Q. Are all activities associated with a UST remediation project covered by the standard?

A. Most likely, but not necessarily. The HAZWOPER standard is based on exposure. That is to say, if an employer can demonstrate that an employee will experience no exposure and no reasonable possibility of exposure to a hazardous substance or safety and health hazards during an operation, then that operation is not covered by the standard.

An example of an exempted operation might be a soil gas survey at a gas station with a tank suspected of leaking. The operator of the soil gas equipment is isolated from the free product contamination because of the limited intrusive nature of inserting the soil gas probe into the soil. The employer would, however, be required to document that there is not, in fact, an exposure during this operation.

Stay tuned for the next issue when we'll discuss training requirements in 1910.120 and UST remediation activities in greater detail. ■

Matthew E. Fitzgerald is a Senior Environmental Scientist with the Washington Consulting Group, and is currently assigned full time to the Office of Health Compliance Assistance, OSHA, where he works exclusively with HAZWOPER issues.