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216-696-2390

February 25, 1986

Mr. William L. Baker
Executive Director
NATIONAL ASSN OF DEMOLITION CONTRACTORS
4415 West Harrison Street
Hillside, IL 60162

Re: NEW OSHA LAWS AFFECT EMPLOYERS AND EMPLOYEES
COMPLIANCE MANDATORY BY MAY 25, 1986

Dear Bill:

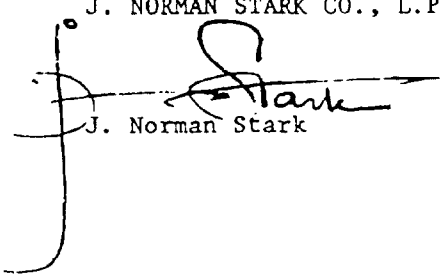
I anticipate you will be very busy at the National Convention next week, so I am taking the liberty of sending this directly to your offices, where you'll find it (hopefully) upon your return from the best NADC annual meeting ever.

Because of the current concern in the industry and profession regarding the new OSHA requirements, please find the enclosed manuscript for your consideration for publication as a feature in the next issue of DEMOLITION AGE. Inclusion of your Editorial Note at the end of the article, regarding our availability for consultation, seminars, etc. will be appreciated.

Warm regards.

Yours truly,

J. NORMAN STARK CO., L.P.A.


J. Norman Stark

JNS:n
Enclosures: Stated.
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[[RELEASED FOR IMMEDIATE PUBLICATION]]

NEW OSHA STANDARDS AFFECT DEMOLITION EMPLOYERS AND EMPLOYEES ©
[COMPLIANCE MANDATED BY MAY 25, 1986]

By: J. NORMAN STARK, Esq.

and

M.C.D. STARK, P.A.

The HAZARD COMMUNICATION STANDARD (HCS), 29 CFR 1910.1200, is the most recent, broad enactment of the Occupational Safety & Health Act (OSHA) of 1970. These new provisions, affecting employers and employees became effective as to manufacturers and suppliers of chemicals on November 25, 1985, and are effective as to all others within the Act on May 25, 1986. These standards comprise the latest legislative support of the "Right-to-Know" laws affecting every employer and employee included under the Standard Industrial Classification (SIC) Codes 20 through 39 (Division D, Standard Industrial Classification Manual). While fabricating operations performed at construction sites are not considered manufacturing, the prefabrication of sheet metal, concrete, stone, clay products, glass products, lumber and wood products is included in the manufacturing division, and is within the provisions of these new laws, mandating compliance.

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NEW OSHA STANDARDS AFFECT EMPLOYERS AND EMPLOYEES (Continued)

The new regulations apply "to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions or in a foreseeable emergency". This standard imposes detailed requirements for identification and determination of chemicals that may present a physical or health hazard, preparation, review and maintenance of Material Safety Data Sheets (MSDS), availability of MSDS's to employees, employee training and development of a written hazard communication program.

Trade secrets, while protected under the new Regulations, require full disclosure of composition to physicians and other health-care professionals to enable emergency treatment of employees.

The general categories of hazardous materials include:

- a. Carcinogens (Cancer-Causing Agents)
- b. Corrosives (Destructive to Living Tissue)
- c. Highly Toxic Chemicals
- d. Irritants
- e. Sensitizers
- f. Toxic Chemicals
- g. Target Organ Effects (Chemicals Targeting Specific Organs
of the Human Body
- h. Flammables, Explosives and Compressed Gases.

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NEW OSHA STANDARDS AFFECT EMPLOYERS AND EMPLOYEES (Continued)

Other provisions of the new OSHA Regulations require the transmittal of information regarding chemical hazards to employers and employees include "... container labeling and other forms of warning, material safety data sheets (MSDS) and employee training."

Employers are mandated to develop and implement a written hazard communication program for their workplaces, including providing employees with information and training on hazardous chemicals in their work area "... at the time of their initial assignment, and whenever a new hazard is introduced into their work area." The program to be developed by each employer must include:

- a. A detailed description of how the OSHA standard criteria for labelling and other forms of warning, along with the MSDS's and employee information and training will be met.
- b. A list of hazardous chemicals known to be present in the workplace. This specific requirement applies not only to final products that are produced or manufactured, but also to raw materials, intermediate chemicals, by-products, wastes [not otherwise subject to regulations under the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901, et seq., as a classified "Hazardous Waste"], maintenance supplies or any other substances in the physical location, plant or facility which are, or may actually contain, hazardous substances and/or chemicals. The list compiled by the employer should include a reference to each applicable MSDS for each chemical, compound and/or mixture.

((more))

NEW OSHA STANDARDS AFFECT EMPLOYERS AND EMPLOYEES (Continued)

c. A description of methods to inform employees of hazards associated with non-routine tasks and unlabelled piping in their work areas; and

d. A description of methods to inform contractors and contractors' employees about the hazardous chemicals and substances to which each contractor's employees may or will be exposed while at that plant, facility and/or area, including suggestions for appropriate protective measures to be implemented.

The Hazard Communication Standard (HCS) and program developed must be made available, upon request, to employees, designated employee/labor representatives and OSHA Compliance Safety and Health Officers (CSHO's). New employees, hired after the program has been installed, are required to be informed and trained under the HCS.

Employee training by the employer is required to include, at least:

(1) methods and observations that may be used to detect the presence or release of a hazardous chemical, (2) the physical and health hazards of the chemical in the work area, (3) the measures employees can take to protect themselves and (4) the details of the employer's hazard communication program, including an explanation of the labeling system and the material safety data sheets (MSDS) and how employees can obtain and use the appropriate information.

((more))

NEW OSHA STANDARDS AFFECT EMPLOYERS AND EMPLOYEES (Continued)

Demolition Contractors must implement a program to protect their employees from latent or hidden hazardous materials, substances and/or chemicals at each work site. One suggested method is requiring the awarding owner or contracting officer/representative to state, in writing, each, all and every hazardous substance and/or chemical known to the owner at that site, facility, structure and/or area, before the contract award. If the awarding party represents that there are no such materials and/or substances known to him on that site, that too should be in writing as a specific warranty to the demolition contractor and his or her employees. That writing, binding the owner or contracting authority, should be incorporated into the written agreement between the parties as a condition precedent to the Notice to Proceed, requiring the demolition contractor's appearance (ready to work) or performance on that site or project.

Building owners and managers, while not strictly within the provisions applicable to manufacturers in SIC 20 through 39 are within the General Duty Clause of the original enactment, 29 U.S.C. §654(a)(1), which provides:

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 are likely to cause death or serious physical harm to his employees.

((more))

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NEW OSHA STANDARDS AFFECT EMPLOYERS AND EMPLOYEES (Continued)

Compliance Safety and Health Officers (CSHO) are empowered and required to perform compliance inspections to determine the adequacy of a company's hazard determination program by assessing labelling and other forms of warnings, Material Safety Data Sheets (MSDS), Informing and Training of Employees, Lists of Hazardous Chemicals, Hazards of Nonroutine Tasks and On-Site Contractors. CSHO's may issue citations to employers when onsite inspection and evaluation discloses incomplete or substantial non-compliance with the new, detailed Regulations.

The gravity of an OSHA violation is the primary factor in determining penalties. These may be imposed as fines for civil wrongdoing, while more grave situations involving permanent injuries, disfigurement, total disability or death may result in criminal charges against the responsible entities, parties and/or individuals. Officers and directors of business entities are subject to intentional violations or failure to comply with these Federal Regulations.

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M.C.D. STARK

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ABOUT THE AUTHORS:

J. NORMAN STARK, Esq. is an Attorney-at-Law, a Registered Architect, (AIA, NCARB) Registered Landscape Architect, Planner, and Senior Appraiser (ASA).

A graduate of the Rhode Island School of Design (BFA), Kent State University School of Architecture (B. Arch.) and Cleveland-Marshall College of Law, Cleveland State University (Juris Doctor), Mr. Stark is the author of OSHA articles and lectures dealing with the Williams-Steiger Occupational Safety and Health Act of 1970. He has also written and lectured regarding environmental protection enactments, EPA, LEGAL ACTION © and CONSTRUCTION LAW BRIEF ©, and is the co-author of CONSTRUCTION CLAIMS INVESTIGATION WORKLIST ©.

Mr. Stark is the co-author and attorney-commentator of "On the Dotted Line - - - - -" ©, a Capsule Look at Law, featured daily on Radio Station WCLV-FM 95.5, with M.C.D. Stark, co-author, Producer, and Director.

A Member of the American Bar Association (ABA), Cleveland and Cuyahoga County Bar Associations, Mr. Stark is also an active Member of the American Trial Lawyers Association (ATLA), the Ohio Association of Trial Lawyers (OATL) and ABA Forum on the Construction Industry. He is the principal of his law firm, and is engaged in an active general and trial practice in Cleveland, Ohio.

* * *

M.C.D. Stark is a professional author, who attended Kent State University, Kent, Ohio and has researched and written numerous technical articles and seminars and co-authored professional papers published in the United States and abroad.

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EDITOR'S NOTE: The authors have indicated they are available for seminars, speaking engagements, consultation and master classes regarding the new OSHA enactments. They have prepared an OSHA HCS WORKBOOK © for use in connection with their seminars and presentations. Contact them directly at 960 Leader Building, Cleveland, OH 44114-1401 Tel.: (216) 696-2390.

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OSHA/OSHA REGS

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