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OSHA's Confined Space Rule Puts The Squeeze on Construction

By: Adele L. Abrams, Esq., CMSP

On May 4, 2015, OSHA released its long-pending 162-page final rule establishing a confined space standard for construction industry. The rule, which takes effect on August 3, 2015, largely tracks the agency's general industry standard but also borrows from consensus standard ANSI Z117 and includes provisions reflecting technological advances such as the ability to conduct continuous atmospheric monitoring. The standard is codified at 29 CFR Part 1926.1200 through 1213. A lawsuit was filed on May 14, 2015, by the Texas Association of Builders, who have asked the US Court of Appeals for the Fifth Circuit to throw the rule out, claiming: "OSHA's final rule is arbitrary and capricious, not supported by substantial evidence in the record considered as a whole, an abuse of discretion, or otherwise not in accordance with law."

Currently, OSHA generally enforces safety hazards in construction-sector confined spaces either through Part 1926.21 (employee training on hazards involved with a task, necessary precautions, and personal protective equipment) or via the General Duty Clause (Section 5(a)(1) of the OSH Act) as a "recognized hazard." Now that there is a specific confined space rule, enforcement under the General Duty Clause should cease.

Confined spaces – such as manholes, crawl spaces, and tanks – are not designed for continuous occupancy and are difficult to exit in the event of an

emergency. They also can have dangerous atmospheres (including gases, chemicals, carbon monoxide or oxygen depletion). In addition to exposure to toxic substances, workers in confined spaces face life-threatening hazards including engulfment, electrocutions, explosions, and asphyxiation.

Construction workers often perform tasks in confined spaces - work areas that (1) are large enough for an employee to enter, (2) have limited means of entry or exit, and (3) are not designed for continuous occupancy. These spaces can present physical and atmospheric hazards that can be prevented if addressed prior to entering the space to perform work. The new rule creates a permit program that employers must follow for those areas classified as "permit required confined spaces" (PRCS).

The final rule affects establishments involved with building, highway construction, bridges, tunnels, utility lines and other projects requiring work in areas that meet the definition of confined space. Both general contractors and specialty trades will be covered, including those in residential construction work.

OSHA estimates that 5 fatalities and 780 injuries per year would be prevented, with associated savings of \$93.6 million per year. The compliance cost per year will be approximately \$60 million across all construction sectors. Most of the cost is associated with the employer's obligation to evaluate confined spaces, classify them and exchange of information with various entities, but there are extra costs arising

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from atmospheric monitoring requirements, training, rescue capability, written program requirements, permits and review procedures, attendants, ventilation, and hazard isolation. OSHA represents in its preamble that the rule is deemed “economically feasible in every affected industry sector.

In the rule’s Scope, OSHA clarifies that examples of confined spaces in construction include (but are not limited to): bins, boilers, pits, manholes, tanks, incinerators, scrubbers, HVAC ducts, concrete pier columns, transformer vaults, water mains, precast concrete and other pre-formed units, drilled shafts, enclosed beams, vessels, digesters, lift stations, cesspools, silos, air receivers, turbines, bag houses and mixers/reactors. However, the standard does not apply to excavations covered under Subpart P, to diving construction activities under Subpart Y, or to underground construction covered by Subpart S. OSHA notes that where the new rule applies and there is a provision that addresses a confined space hazard in another applicable OSHA standard, both rules must be followed.

The standard defines “permit-required confined space” as one with at least one of the following characteristics: (1) contains or has the potential to contain a hazardous atmosphere; (2) contains a material that has the potential for engulfing an entrant; (3) has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor that slopes downward and tapers to a smaller cross-section; or (4) contains any other recognized serious safety or health hazard.

Some spaces may have a “hazardous atmosphere” which is defined as any flammable gas, vapor or mist that exceeds 20 percent of its lower flammability limit (LFL), airborne combustible dust that meets or exceeds its LFL, oxygen content below 19.5 percent or above 23.5 percent, an atmosphere that contains air contaminants or toxics that could result in employee exposure in excess of its dose or permissible exposure limit, or any atmosphere that is “immediately dangerous to life or health.”

An “entry supervisor” is required and this must be a qualified person (employer, foreman or crew chief) tasked with determining if acceptable entry conditions are present at a permit space, authorizing entry and overseeing entry operations, as well as terminating entry when required. This supervisor can also serve as an attendant or as an authorized entrant as long as

they are trained and equipped as required by the standard for each role the person fills.

Everyone who is an “affected employee” must be trained, in both a language and vocabulary that the employee can understand, prior to performing assigned duties, or when assigned duties change or a change in hazards occurs. The training must establish proficiency in the assigned duties and employers must maintain training records that list the employee and trainer(s) names, and date of training. The records must be maintained as long as the worker is an employee.

In essence, before workers can enter a confined space, the employer must provide pre-entry planning that includes evaluation of the space, identification of means of entry and exit, proper ventilation methods, and elimination or control of all potential hazards in the space. The atmosphere must be tested and all hazards must be continuously monitored, rescue procedures must be determined (along with necessary equipment), and if air is not safe for workers, proper protections must be made available. Written programs are required for all PRCS.

There are several new requirements that distinguish the construction rule from the general industry counterpart. The construction rule has more detailed provisions requiring coordinated activities when there are multiple employers at the worksite, to make sure that new hazards are not introduced by workers performing tasks outside the confined space (e.g., running a generator that could emit carbon monoxide into the confinement). It requires a competent person to evaluate the work site and identify confined spaces, including PRCS. Continuous atmospheric monitoring is required whenever possible, as well as continuous monitoring for engulfment hazards. The rule also allows for suspension of a permit (instead of cancellation) in the event that conditions change and require evacuation of a space – however, the space must be restored to original entry conditions before re-entry.

In addition employers who allow workers to enter a space without a complete permit system must prevent exposure to physical hazards through methods such as lockout/tagout. If an employer is going to rely on local emergency services for responders to rescue workers in a confined space, they must give the employer

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advance notice if they will be unavailable for a period of time due to other emergencies, training etc.

If a general contractor hires a subcontractor to do confined space work, the two entities must discuss spaces on the site and their hazards before and after entry. OSHA has the right to cite both employers for the other's violations under its Multi-Employer Worksite doctrine.

The rule will initially affect companies in states with federal OSHA programs, but all state plan states will have to adopt the new standard or one more stringent. The rule is quite complex and more information can be obtained from the Law Office at 301-595-3520 (DC area) or 303-228-2170 (Denver).

Proposed Changes To The Procedural Rules for the Black Lung Benefits Act

By: Sarah Korwan, Esq.

On April 29, 2015, the Department of Labor's Office of Workers' Compensation Programs ("OWCP") proposed several procedural revisions to the Black Lung Benefits Act (See [Act](#)). The proposed changes address disclosure of medical information developed in connection with a benefits claim and establish that a coal mine operator is obligated to pay benefits, even during post-award appeals or proceedings.

Regarding the payment of benefits following an award, the proposed changes to the Act mandate that an operator is obligated to comply with the terms of an award, even if it is seeking modification to the award. (See 20 CFR 725.310, Modification of awards and denials). This means that an operator must pay all benefits due on a claim, even while seeking to overturn or modify that award through an appeal proceeding. According to the OWCP, apparently some operators frequently withhold payment of benefits to claimants, relying on a modification request to avoid payment. This transfers the financial burden to the Trust Fund. To enforce this change, an operator's request for modification will be denied unless the operator can prove that it has complied with all of its obligation under the award, and any other currently effective award (such as an attorney fee award).

There is one exception to this proposed change. The Benefits Review Board, or a reviewing court, may issue a stay pending its resolution of an appeal based on a finding that "irreparable injury would otherwise ensue to the employer or carrier." (See 20 CFR 725.502(a)(1)).

The second significant proposed change effects

dissemination of medical records obtained in regards to the claim and imposes sanctions for failure to comply. (See 20 CFR 725.413, Disclosure of Medical Information.) Specifically, the new provision requires parties to disclose all medical information developed in connection with a claim. Currently, the coal miner and the operator can develop medical information as their resources allow and then select which information they choose to submit into evidence. However, the proposed rule would require that a party or "party's agent", which would include its attorney, to disclose medical information within 30 days of receipt of such information, no later than 20 days before a hearing if one has been scheduled by an administrative law judge. In addition, the new rule provides that an examining physicians' opinions and findings are included in the definition of "medical information", and therefore, must be disclosed.

The proposed rule is intended to give miners full access to the information to protect the miner's health. The OWCP has stated that, "(e)xperience has demonstrated that miners may be harmed if they do not have access to all information about their health, including information that is not submitted for the record."

Sanctions for failure to disclose the medical evidence include, but are not limited to, a default decision against the non-disclosing party; disqualifying the non-disclosing party's attorney from further participation in the claim proceedings; and relieving the claimant who files a subsequent claim from the impact of any modification, if the non-disclosed evidence predates the denial of the prior claim and the non-disclosing party is the operator.

Finally, a less significant modification was proposed by Congressman David McKinley of West Virginia, who introduced legislation known as the "Burdensome Paperwork Reduction for our Miners Act", intended to streamline the red tape for application of benefits. Apparently, upwards of 50 pages are required at times, merely to apply for benefits, which is a burden on the applicant and the taxpayer. If passed, the Department of Labor will be required to eliminate redundancies in the application process and reduce the number of forms that are required when seeking benefits. The comment period for the proposed rules is until June 29, 2015. Comments may be submitted electronically through the federal e-rulemaking portal at www.regulations.gov using the identifying RIN number 1240-AA10. For assistance submitting comments, contact the Law Office.

Review Commission Issues Decision on OSHA PPE Standards

By: Gary Visscher , Esq.

A recent decision by the Occupational Safety and Health Review Commission, *Sec. of Labor v. Wal-Mart Distribution Center #6016*, addressed several provisions in OSHA's personal protective equipment (PPE) standards, and may provide employers with useful guidance when trying to determine whether PPE is required.

OSHA's PPE standards (including protection for eyes, face, head and extremities) are written as "performance standards." Although the PPE standards are generally quite specific as to the types of protections that must be provided when PPE is required, the standards are not very helpful in letting employers and employees know if PPE must be provided. Instead, the standard requires that employers "assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE)." 1910.132 (d). The standard does not say how the employer should know whether the hazards present "necessitate the use of" PPE. OSHA's standards on eye and face protection (1910.133), head protection (1910.135), and foot protection (1910.136) also do not state when such protections are required; each of those standards describes the types of protections required for "each affected employee," if the employer determines that there are hazards present which "necessitate the use" of PPE.

In practice, OSHA often determines that there are hazards which "necessitate the use" of PPE when a specific employee injury occurs which might have been prevented or reduced by the use of PPE. In *Wal-Mart Distribution Center*, however, OSHA did not premise the need to provide PPE on a specific employee injury. Instead, OSHA attempted to rely on past years' injury logs to show that the distribution center had previously had employee injuries involving eyes and face, feet, and hands. The Commission, however, found that the number and lack of specific information about those previous injuries was not sufficient to have given the company "fair notice" that eye, feet, and hand PPE was necessary.

OSHA also argued that the company had "notice" that PPE was necessary due to "industry custom." The employees involved were "order fillers" at the distribution center. The compliance officer testified that in her experience other employers in "warehouse-type" workplaces required safety glasses, protective

footwear, and hand protection. However, the compliance officer's testimony was not backed up by other evidence, and the company safety director gave contradicting testimony as to industry practice. The Commission found that OSHA had failed to meet its burden of proof.

Although the Commission ruled in Wal-Mart's favor on the three citations alleging failure to provide PPE for eyes, feet, and hands, the Commission agreed with the Secretary on the fourth citation, alleging that Wal-Mart failed to conduct the hazard assessment required by 1910.132 (d). The inspection took place at a company distribution center located in Texas. Wal-Mart acknowledged that it had not conducted a site-specific hazard assessment for that facility, however, the company argued that it had conducted an assessment at another distribution center, located in Arkansas, and that the two distribution centers were essentially the same and nearly identical operations. OSHA argued that 1910.132 (d) requires a site specific hazard assessment, even if the operations between the two facilities are the same, and the majority of the Review Commission agreed with OSHA on that point.

In dissent on the affirmed citation, Commissioner McDougall said that the company's "global assessment" was allowed under OSHA's "performance-oriented" standard. The dissent noted that OSHA had not offered any evidence "to contradict Wal-Mart's evidence that all 120 distribution centers are 'cookie cutters' and 'virtually identical,' or, likewise, Wal-Mart's evidence that the operations and order fillers' job duties are 'identical.'" The dissent also argued that the citation should have been reclassified as "de minimis" since "we are all in agreement that there was no hazard necessitating the use of PPE."

Inspector General To Audit MSHA'S Penalty Collection Efforts

By: Diana R. Schroeder , Esq.

MSHA's delinquent penalty collection system is back in the news. The Department of Labor's (DOL) watchdog arm, the DOL Office of the Inspector General (IG), recently announced that the office is conducting an audit or investigation of MSHA's inability to collect on civil penalties assessed for mine safety violations. This audit is a result of the

MSHA Audit, Con't

controversial National Public Radio / Mine Safety and Health News (NPR / MSHN) multi-part series which was published beginning November 12, 2014. MSHA officials declined comment on the audit, according to NPR.

The NPR/MSHN series documented MSHA's penalty collection efforts over a 20-year period, and reported that mines with delinquent fines are statistically linked with the mine controller's injury rates, according to MSHA's data. The series reported that over \$70 million in unpaid or delinquent fines were assessed at more than 4,000 mines. The more troubling data reported that mines with delinquent penalties since 2009 have an injury rate that is 50% higher than mines that paid their penalties on time, and mines with penalties older than 2009 had injury rates that were 71% higher than mines that paid penalties on time. NPR/MSHN then released information on how the data was collected, and clarified that in order to be considered "delinquent", the penalties had to be at least 90 days late, and did not include penalties that were classified as "on hold" due to ongoing appeals. The data was also aggregated by corporate owner, or "controller" as opposed to by individual mines or operators, so that total corporate debt could be reported. Finally, data collection only included delinquent penalties that were actually considered "final" – either the penalties were not contested, or the penalty amount was upheld after contest, or after all appeals were exhausted.

The DOL IG media liaison commented recently that after the NPR/MSHN series was circulated throughout the IG's office, the decision was made to initiate an audit of the MSHA penalty process. NPR reported that the IG found the series "informative", and that the office was still in the early stages of determining the scope of the audit. The IG audit will target MSHA's penalty assessment process and also the penalty collection process.

News of the IG audit surfaced several weeks after the April 22, 2015 introduction of the Robert C. Byrd Mine Safety Protection Act of 2015 (H.R. 1926) by Rep. Robert "Bobby" Scott (D-VA). At introduction, the aggressive "Byrd bill" had 12 other democratic co-sponsors. The Byrd bill includes a provision that would permit MSHA to shut down mines with delinquent penalties over 6 months from date of final order, under a withdrawal order. (See our Firm's [May 4, 2015 Newsletter article](#) for details of the Byrd bill). In addition to MSHA's ability to shut down mines

with delinquent penalties, the bill includes provisions that would increase penalties, give MSHA subpoena power over persons and documents, redefine "significant & substantial" and "imminent danger" in order to apply these classifications to more alleged violations, effectively prohibit the Review Commission from decreasing penalties assessed under the point system (the Commission currently has the discretion to decrease or increase penalties), and the bill would make the penalties subject to "prejudgment interest" in an effort to discourage mine operators from filing contests of the penalties assessed. These are only a few of the Byrd bill's provisions which will have a serious impact on mines of any size, if passed into law.

Watch for more news and updates on the Inspector General audit of MSHA, and also the progress of the Byrd bill through Congress.

OSHA, MSHA Publish Updated Regulatory Agenda By: Gary Visscher, Esq.

True to recent practice of releasing the semi-annual "Regulatory Agenda" just before a national holiday, the Obama Administration released its Spring 2015 Agenda on Friday, May 22, when most people's attention was on holiday weekend plans.

The Regulatory Agenda lists agency regulations which are being worked on, and on which the "next step" in the regulatory process is expected to occur over the next year. The Regulatory Agenda thus provides an indication of which new regulations are current agency priorities and, for the regulated community, notice as to what new rules are most likely to be implemented in the near future. The Agenda includes dates for the expected action, though those are often taken as aspirational.

The Agenda posted (the Regulatory Agenda is no longer published in the Federal Register but is only available on-line, at www.reg.gov) for OSHA and MSHA includes a total of 32 items – 23 for OSHA and 9 for MSHA. In addition, OSHA lists several items as "long term actions," which are regulations that are still open but on the back burner.

OSHA

OSHA lists eight rules in "final rule" status, indicating that they plan to publish a final rule within the next 9 to 12 months. Four of the eight are procedural rules for implementing the "anti-retaliation," or whistleblower, provisions in a variety

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of new or amended statutes, ranging from the Affordable Care Act to Food Safety Modernization Act to the Surface Transportation Assistance Act. In addition, OSHA also plans to issue a final rule updating its internal agency procedures for accessing medical records during inspections and investigations.

The remaining three anticipated final rules are (1) the long-standing rulemaking on “walking-working surfaces,” (2) updating references to consensus standards in OSHA’s PPE standard for eye and face protections, and (3) requiring quarterly and annual electronic filing and posting on OSHA’s website of injury and illness records. (The rulemaking also now includes penalties on employers for preventing or discouraging employees from reporting injuries.) OSHA states that the final rule on walking-working surfaces is anticipated for August 2015. The final rule on electronic filing of injury and illnesses records is anticipated for September 2015.

OSHA also lists eight rules in the “proposed rule” stage. They include the rulemaking on crystalline silica, for which the Proposed Rule has already been issued and the comment period has ended. OSHA states that it is analyzing the comments and does not state a date for a final rule.

OSHA lists seven additional Proposed Rules (NPRMs) that it plans to issue during 2015. They include NPRMs on beryllium, amendments to the construction crane standard, and a proposed rule on crane operator qualification/certification.

OSHA also plans to issue an NPRM to overturn the D.C. Circuit’s decision in the *AKM LLC (Volks Construction) v. Sec’y of Labor*. In that case the Court of Appeals rejected OSHA’s interpretation that it may charge an employer with a recordkeeping violation beyond six months after the violation occurred, on the theory that recordkeeping violations constituted a “continuing violation” of the regulation.” OSHA is proposing a rule that would overturn the Court’s decision.

Seven rulemakings are listed in the “pre-rule stage.” They include:

- Combustible dust. OSHA anticipates initiating the SBREFA process in February 2016.
- Process Safety Management standard changes. OSHA states that the SBREFA process will begin in June 2015.

- Chemical management and Permissible Exposure Limits (PELs). The Request for Information (RFI) comment period has been extended until October 9, 2015. No subsequent action or schedule is given.
- Shipyard fall protection. OSHA states that it will issue an RFI in September 2015.
- Communication Tower Safety. The comment period on the RFI ends on June 15, 2015. No further action or schedule is listed.
- Emergency Response and Preparedness. The action listed is a June report by the NACOSH work group.
- Bloodborne pathogens. OSHA is conducting a “610 review” of the bloodborne pathogens standard’s effectiveness and costs. OSHA plans to have the review and report completed in September 2015.

The Injury and Illness Prevention Program (I2P2) rule was moved to “long term actions” in the Fall 2014 Regulatory Agenda, and it remains there in the latest listing. The rulemaking on Infectious Disease, the subject of a SBREFA review and report earlier this year, has also been moved to long-term actions, although OSHA states that a proposed rule will be issued by the end of 2016.

MSHA

MSHA lists two rules in the “final rule” stage. The first would increase fees for testing and approval of underground mine equipment. The second is MSHA’s controversial proposal to change the Part 100, civil penalty assessment procedures. MSHA anticipates issuing a final rule regarding changes to Part 100 in December 2015.

MSHA lists two rules in the “proposed rule” stage, including crystalline silica, which is listed for an NPRM in April 2016. MSHA has stated that it plans to use OSHA’s work and final standard on silica in taking up a standard for mining operations. The other proposed rule listed concerns proximity detection systems for mobile machines in underground mines, which is planned for July 2015.

Other standards and rules that MSHA has listed in the “pre-rule” stage include a health standard on exposure of underground miners to diesel exhaust (RFI in December 2015), and an RFI in September 2015 on changes to the “examination of working places in metal and nonmetal mines.” MSHA has indicated that such changes may include additional requirements regarding the persons conducting the

Regulatory Agenda, Con't

examination, the quality of the examination, and recordkeeping.

Should you have questions about any of these rulemakings, or like additional explanation or information, please let us know.

New “Fair Pay and Safe Workplaces” Proposed Rule Requires Disclosure of Violations of Labor Laws by Contractors in Bidding Process By: Nicholas Scala , Esq., CMSP

On May 28, 2015 the Department of Labor published a proposed rule to enforce an Executive Order (“E.O.”) requiring contractors with perspective or existing contracts over \$500,000.00 with the federal government to disclose any OSHA citations or other judgments, determinations or decisions against the company for certain labor laws in the previous three years. The “Fair Pay and Safe Workplaces” rule will enforce the E.O. provisions, and was published by the Federal Acquisition Regulation Council.

The rule will require both general and subcontractors to disclose the same information, and requires that any contractors which disclose violations establish processes to come into compliance with labor laws. Furthermore, the E.O. requires that contractors provide all employees detailed information regarding how they are paid and that the contractors must notify those individuals considered independent contractors.

The definition of “Labor Laws” in the proposed rule specifically refers to at least 15 federal statutes, from the Fair Labor Standards Act and the Occupational Safety and Health Act (OSHA) to the Americans with Disabilities Act and a recent E.O. establishing minimum wages for contractors. Additionally, violations of state plan OSHA programs will have to be disclosed and can be a basis for not receiving a contract.

Industry stakeholders and politicians in support of industry, staunchly oppose the new rule, claiming it is redundant with existing policy and the rule could blacklist contractors for alleged violations before the contractors have the opportunity to challenge the validity and of alleged violation in the adjudicative process. This position is similar to the mining industry’s objection over MSHA’s recent amendments to the Pattern of Violations (“POV”) rule, which began including issued citations, as opposed to only finally

adjudicated citations, when determining if a mine is eligible for POV status. If the rule is finalized, this and other issues will likely be litigated in order to assert industry’s opposition, and the court system will determine if provisions such as this are a violations of contractor’s rights.

Public comment regarding the Fair Pay and Safe Workplaces proposed rule are due by July 27, 2015. If you would like assistance drafting a comment, please contact the Law Office.

Greater Sage Grouse Conservation Efforts Underway to Prevent ESA Listing By: Tina M. Stanczewski , Esq., MSP

Conservation of the greater sage-grouse and its habitat spurred an environmental review by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) concerning land use management. The final review was released on May 28, 2015 and included assessment of 10 states. The sage-grouse’s habitat is declining which has triggered review for endangered species listing by the U.S. Fish and Wildlife Service (USFWS). A settlement agreement with environmental groups and the USFWS requires USFWS to determine whether the grouse should be listed by September 2015. This review enables USFS and BLM to modify current land use plans to include protection for the sage-grouse. Determination of endangered listing may occur during the summer.

Land use planning is key to the preservation of the sage-grouse. This includes maintaining sagebrush habitats WHICH covers 165 million acres. The 10 states include California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah and Wyoming. There will be new requirements when requesting permits although existing rights for locatable minerals, oil and gas development, and such should be unaffected.

This review will allow BLM and the USFS to amend land-use management plans to incorporate sage grouse protection measures. The plans will vary by state, but per the Department of Interior there will be three similar goals which hopefully would prevent the grouse from being listed as endangered:

- 1) Minimizing new or additional surface disturbance – The plans seek to reduce habitat fragmentation and protect intact habitat by implementing surface disturbance caps on development, minimizing surface

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occupancy from energy development, and identifying buffer distances around leks – areas critical to the sage-grouse life-cycle – to be considered during project implementation.

2) Improving habitat condition – While restoring lost sagebrush habitat is difficult in the short term, it is often possible to enhance habitat quality through purposeful management. Where there are unavoidable impacts to habitat from development, the plans will require mitigation to enhance and improve sage-grouse habitat.

3) Reduce threat of rangeland fire – Rangeland fire can lead to the conversion of previously healthy sagebrush habitat into non-native, cheatgrass-dominated landscapes. Experts have identified wildfire as one of the greatest threats to sagebrush habitat, particularly in the Great Basin region of Idaho, Utah, Nevada, Oregon and California.

Legislation has also been introduced by Senator Cory Gardner (R-CO), called the Sage-Grouse Protection and Conservation Act (S. 1036). The Act reflects similarities with the environmental review. It would allow states to develop their own conservation plans to prevent an endangered listing. The Act keeps the grouse as a candidate species under the ESA while conservation measures can be taken. Further, the Act restricts the Secretary of Interior from requiring expansive mineral withdrawals or restrictions on grouse habitat. A listing as an ESA would spur further restrictions on land use by business and private citizens. The last measure taken for the Act was a hearing on May 6, 2015 with the Committee on Environment and Public Works.

EPA Finds Hydraulic Fracturing Does Not Adversely Affect Water Resources By: Nicholas Scala, Esq., CMSP

Earlier this month, June 2015, the Environmental Protection Agency (“EPA”) released the results of a study conducted to determine the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources. The results of the study identify potential processes through which drinking water resources could be contaminated through hydraulic fracturing and the use, transport and disposal of “frac fluid.” Although the study found a multitude of avenues through which water resources could be contaminated, the EPA did not find evidence of widespread, systematic impacts on drinking water resources.

The result of this study will empower and provide the hydraulic fracturing industry with validation against detractors and opponents. Even though hydraulic fracturing has been used as a well stimulation method for over half a century, and it was the development of directional drilling which helped bring forth the country’s recent oil and gas boom, “fracking” has received the majority of bad press given the perception that it would contaminate water resources. Proponents of the practice have long cited a lack of evidence of drinking water contamination resulting from hydraulic fracturing, and the EPA study provides additional weight to this claim.

The study focused on potential contamination through five different activities: 1) Water Acquisition; 2) Chemical Mixing; 3) Well Injection; 4) Flowback and Produced Water; and 5) Wastewater Treatment and Waste Disposal. For each category studied, the EPA found there were potential impacts on water resources, and means through which contamination may occur. In certain instances, the EPA even references specific instances where contamination of ground or surface water occurred, which occurred during regular activities and accidents. However, considering the number of cases where drinking water was affected, in comparison to the number of wells hydraulically fractured, there is a very minimal impact and water resources.

Studies such as this by the EPA, will hopefully alleviate concerns by opponents of hydraulic fracturing and foster the continued growth and development of the country’s unconventional oil and gas reserves. These resources have been integral to the growth of the U.S. economy and there are still large, untapped, reserves in states where fracking is banned due to potential health concerns. This study gives the industry a welcomed, positive, report on hydraulic fracturing and with a bit of luck will help the industry continue to safely develop wells around the country.

SPEAKING SCHEDULE

Adele Abrams

June 23: BLR Webinar on Incident Investigations

June 26: MSHA 101 Training, Sassaman LLC, King of Prussia, PA

July 15: Midwest Employers Casualty Co Webinar on Disciplining Safety Risk-takers

July 15: Business 21 Webinar on Contractor Safety

July 23: BLR Webinar on Safety Incentive Programs

July 29: ISMSP conference, W. Palm Beach, FL, presentation on Rules to Live By

Aug 6: BLR Webinar on Legal Management of RIF and Layoff Programs

Aug 11: Business 21 Webinar on OSHA's New Reporting and Recordkeeping Requirements

Aug 12: ASSE Webinar on Legal Aspects of Starting a ESH Consulting Practice

Aug. 19: Oregon Independent Aggregates Assn., training on MSHA Emerging Issues

Aug 27: BLR Webinar on Reconciling ADA Compliance with Safety Management

Sept. 29: National Safety Council Annual Congress, Atlanta, GA, presentation on Temporary Worker and Contractor Safety

Sept 30 & Oct. 2: ASSE Region VI PDC, Myrtle Beach, SC, presentations on Temporary Worker Safety and Roundtable on Safety & Medical Marijuana

Oct 6: ND Safety Conference, Grand Forks, ND

Oct 7: Chesapeake Region Safety Council Annual Meeting, Laurel, MD, presentation on Temporary Worker Safety

Oct. 16: United Safety Associates (USA) Group, Ontario, CA, workshop on MSHA enforcement

Nov. 3: Safepro Inc., Savannah, GA, Mine Safety Training

Nov. 4: MSHA Southeast Safety Conference, Birmingham, AL, presentation on Safety & Health Management Programs

Nov. 6: MSHA Southeast Safety Conference, Birmingham, AL, Lawyer's Roundtable

Nov 9-10: NRASP Conference, Fargo, ND

Nov. 12: ASSE Construction Safety Symposium, New Orleans, LA

Dec. 8: Associated General Contractors, Fargo, ND, Keynote Presentation

Dec. 9: National Business Institute, Rockville, MD, presentations on Employment Law