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OSHA Launches Regional Emphasis Program Focused on Storage Tank Cleaning Operations

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On August 2, 2021, OSHA announced [a new Regional Emphasis Program](#) (“REP”) focused on transportation tank cleaning operations in the rail and truck shipping industries. This is the second REP launched in Region 5 in less than a month; on June 14, 2021, OSHA commenced an REP to address hazardous noise levels in the Midwest. Employers who perform tank cleaning operations in Region 5, which covers Illinois, Ohio, Wisconsin, Michigan, Minnesota and Indiana, would be well-advised to dust off their copy of [Conn Maciel Carey LLP’s OSHA Inspection Toolkit](#) and take the necessary steps to ensure they are ready for the inspections that will begin before the end of the year.



Why Is OSHA Targeting Tank Cleaning Operations?

In the REP and accompanying press release, OSHA places a special emphasis on the dangers posed by the exposure to toxic fumes from cleaning chemicals or stored products that can build up inside a storage tank, as well as risks of fire or explosion when a worker must handle volatile materials in confined spaces. Additionally, OSHA warns that the workers cleaning these tanks may “face many serious and potentially deadly hazards caused by toxic fumes from chemicals, decaying crops, waste and other substances that can expose workers to suffocation, fires and explosions.” OSHA also highlighted several fatal accidents that occurred in the Midwest, noting that Region 5 has investigated 23 worker deaths and 97 incidents in the transportation and tank cleaning industries since 2016. According to OSHA, the hazards most often found during these inspections involved the failure to prevent the inhalation of harmful substances and to follow procedures for permit-required confined space requirements.

Which Employers Will Be Targeted?

The directive notes that it covers “worksites in the business of cleaning, repair and maintaining transportation tanks,” listed as general freight trucking, support activities for rail or road transportation, waste remediation, freight transportation arrangement, materials recovery and “all other miscellaneous waste management services.”

It continues that the initiative “will focus on employers in industries typically engaged in tank cleaning activities, including trucking, rail and road transportation, remediation services, material recovery and waste management services.”

Why Should I Be Concerned About a Regional Emphasis Program?

While most employers understand that OSHA can inspect their workplace in response to an employee complaint, a referral, or a self-reported serious incident such as a fatality, amputation, or in-patient hospitalization, programmed inspections enable the agency to randomly select employers based simply on their NAICS Code. In other words, you can be selected for an inspection even if you have a spotless safety record and zero recordables simply because you operate in a certain industry.

Also, emphasis program inspections such as this are typically combined with other inspections to broaden the areas into which OSHA will look at your operations. As such, inspections prompted by complaints, referrals or incidents at a facility that performs tank cleaning, even if the initial circumstances do not involve that job task will be expanded to cover your tank cleaning operations. Likewise, if OSHA arrives at your facility to conduct an inspection under this REP and it determines that you are also on the list for another programmed inspection such as the National Emphasis Program on amputations or OSHA’s Site-Specific Targeting Program, your tank cleaning inspection will grow in scope.

What Can Employers Expect During an Inspection Under This REP?

According to the Directive, inspections conducted under this REP will include all areas at a covered facility where transportation tank cleaning operations are performed. While the REP does not give a compliance officer the authority to conduct a wall-to-wall inspection, the scope of these inspections can cover significant portions of covered worksites depending on the extent of tank cleaning operations at such sites.



At the outset of the inspection, the compliance officer will request and evaluate the following aspects of the covered employer’s worksite:

- Permit Required Confined Space Program (1910.146)
- Respiratory Protection Program (1910.134)
- Hazard Communication (1910.1200)
- Personal Protective Equipment (1910.132, 133, 135, 136 and 138)

The compliance officer will also review the site’s injury and illness records, including first aid and nursing logs for the past 5 years to look for trends that may suggest a common hazard at the workplace. Be mindful that a handful of recorded cases does not necessarily justify expanding the scope of an inspection, so do not hesitate to ask questions and consider reaching out to counsel to discuss whether OSHA is entitled to broaden its inspection. The REP lists several hazards commonly found in the tank cleaning industry, including noise, chemicals, thermal, electrical, fall, and struck-by hazards. Proactive employers should consider auditing the relevant injury and illness records—ideally with the assistance of counsel.

Will OSHA Be Engaging in Outreach Before Inspections Begin?

Yes. Under the REP, each area director “will develop an outreach plan and programs that will support their enforcement efforts, by working with compliance assistance specialists (CAS) and regional labor liaison, when available, to suggest relevant outreach materials and targeted audiences, provide guidance for how to best implement current and new outreach activities, and continue successful outreach strategies implemented in the past and/or currently being implemented.”

“Outreach activities will include letters to employers, training sessions with stakeholders, electronic information-sharing activities, public service announcements, and news release broadcasts. Enforcement activities will begin not earlier than three months after outreach is initiated and will include, but not be limited to, the inspection and review of production operations, and working conditions; injury and illness records; safety and health programs; and chemical handling and use, to identify and obtain corrections of workplace hazards at all applicable inspection sites,” the REP directive reads

“Since employees are subject to multiple hazards at industries covered by the REP, at all inspections performed under this REP, the injury and illness records, for the past five years shall be reviewed for trends that may identify a common hazard at the workplace,” it says.

When Will Inspections Begin?

According to the REP, inspections can begin no sooner than 3 months from the effective date of the program, August 2, 2021. That means inspections will likely begin as early as the first week of November 2021, so be sure to begin preparations for the inevitable programmed inspection of your covered facilities and let us know how we can help you get ready.

What Should You Do Now?

At a minimum, you should ensure that the above-referenced programs (Permit Required Confined Spaces, Respiratory Protection, Hazard Communication and PPE) are up-to-date and that you have all the necessary elements. For example, are the employees involved in tank cleaning operations completing entry permits correctly? Have you completed annual (and initial) fit testing for employees who use respirators? Did those employees undergo medical evaluations? Do you have records reflecting that covered employees received the required training under the applicable standards? Are you confident that OSHA would find the training to be effective—in other words, to the employees understand what is expected of them when cleaning tanks? Have you completed PPE assessments with the appropriate certifications?

These are just a few of the questions you should be asking as you prepare for a possible inspection under this REP. While self-audits can be helpful, you may want to consider bringing in a professional safety consultant with expertise in these areas. If you are at all concerned about what the audit will reveal, you may wish to retain counsel to manage the audit process. We at Conn Maciel Carey LLP are here to help, so please do not hesitate to reach out with questions.