

# **The Impact Of OSHA Upon Waste-To-Energy Employers**

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This paper is prepared for those who are not OSHA specialists. The objective is to provide a broad overview of the requirements and enforcement of the Occupational Safety and Health Act as it applies to waste-to-energy employers.

## **WHO ARE THE SAFETY AND HEALTH REGULATORS?**

The federal Occupational Safety and Health Act ("the Act")<sup>1</sup> governs occupational safety and health among private employers in states subject to federal jurisdiction. This includes private employers who operate facilities under agreements with state or local government agencies.

OSHA addresses only safety and health in employment. It does not regulate public safety.

Twenty-six states have obtained OSHA's approval of their state's plan for the enforcement of safety and health regulation.<sup>2</sup> In those states, private and some public employers are subject to state-administered safety and health programs.

In states subject to federal jurisdiction, the Act is enforced by the United States Department of Labor ("DOL"), through its Occupational Safety and Health Administration ("OSHA"). When employers challenge (or "contest") citations issued by OSHA, the cases are adjudicated by the Occupational Safety and Health Review Commission ("OSHRC"), an independent federal agency which is not part of DOL. OSHRC consists of three Commissioners appointed by the President with the advice and consent of the United States Senate. OSHRC delegates to Administrative Law Judges ("ALJ's") the task of conducting trials on contests of OSHA citations.

In state plans, each state has its own mechanism for enforcing safety and health standards, and for adjudicating citation contests.

## **WHAT ARE AN EMPLOYER'S OBLIGATIONS UNDER OSHA?**

Employers have two main obligations under OSHA. First, they must comply with specific regulations, called standards, which OSHA issues. Standards address particular workplace hazards. Some are quite specific in their requirements. Others are stated more generally in terms of objectives employers are to achieve; these are called "performance standards."

When Congress passed the Act and created OSHA in 1971, it realized that the agency would not have the time or resources to issue a standard governing every hazard to which employees may be exposed in American industry. Desiring to protect employees nonetheless, Congress included in the Act the so-called "General Duty Clause."<sup>3</sup> That provision states:

5(a) Each employer -

- (1) shall furnish to each of this 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.

As a practical matter, this section means that employers must protect their employees against hazards that are recognized in the industry as presenting danger. "Recognition" often is established by reference to sources such as national consensus standards (*e.g.*, standards issued by ANSI, ASME, or other similar standards-setting organizations). Thus, waste-to-energy employers should understand that they must keep abreast of developments in the industry as to safety and health, because even though OSHA may not have issued a standard addressing a particular hazard or practice, the employer may be cited for not having taken the precautions to address such a hazard that others in the industry have concluded are prudent.

It is important to understand that there need not be an accident for there to be an OSHA violation. Unlike in other areas of law, such as ordinary negligence, the violation consists of an employer exposing an employee to a prohibited hazard of which the employer knew or should have known. The hazard need not result in an accident for there to be a violation.

## **STANDARDS OF PARTICULAR CONCERN TO WASTE-TO-ENERGY EMPLOYERS**

OSHA has issued so many standards that it would be impossible to include a comprehensive review in this paper. Some of the standards which are of particular interest to waste-to-energy employers are the following:

### **1) Control of Hazardous Energy Sources, 29 CFR § 1910.147**

This standard sets forth detailed requirements for the control of machinery and equipment during operations and maintenance. It is one of the most oft-cited OSHA standards.

### **2) Permit Entry Confined Spaces, 29 CFR § 1910.146**

This standard sets forth requirements for procedures to be followed when entering and working in confined spaces, and when performing rescue within such spaces.

### **3) Process Safety Management of Highly Hazardous Chemicals 29 CFR § 1910.119**

This is one of OSHA's most important recent standards. Where sufficient quantities of those hazardous chemicals listed in the standard are located at a facility, the standard imposes detailed requirements for the development of process hazards analyses, and other procedures, aimed at avoiding catastrophic accidents.

The PSM standard is closely related to a new regulation promulgated by the Environmental Protection Agency under the Clean Air Act, known as the section "112(r)" rule. That rule imposes requirements aimed at avoiding accidental releases of hazardous chemicals.

**4) Hazardous Waste Operations and Emergency Response, 29 CFR § 1910.120**

This standard specifies precautions to be taken at hazardous waste cleanup sites. It also contains requirements for procedures to be implemented in the event of an emergency at any type of industrial facility. It is closely related to OSHA standards on fire safety.

**5) Bloodborne Pathogens, 29 CFR § 1910.1030**

This standard specifies procedures to be taken where an employee may be exposed to bloodborne pathogens. It is important in the waste-to-energy industry where employees may be exposed to medical waste, including sharps.

**6) Occupational Exposure to Cadmium, 29 CFR § 1910.1027**

This standard establishes permissible limits for employee exposure to cadmium, as well as procedures for minimizing and monitoring exposure.

**7) Personal protective equipment, 29 CFR § 1910.132-138**

These standards include requirements for equipment to protect employees from a variety of hazards, including eye and face, respiratory, head, foot, electrical and hand protection. 29 CFR § 1910.132 includes a requirement that the employer perform an assessment of its workplace to determine what hazards requiring personal protective equipment may be present.

**CURRENT ISSUES INVOLVING OSHA**

**1) Ergonomics**

In recent years, OSHA has become concerned with so-called "ergonomic" hazards. In 1992, it began to develop a proposed standard to address these hazards. However, when the Republicans took control of Congress following the 1994 elections, riders to the legislation authorizing OSHA's budget prohibited the agency from developing the standard.

Now, however, there are no legal impediments to OSHA's work on the issue. Accordingly, the agency has resumed work in developing a proposed standard. It is expected to be highly controversial.

One state plan state - California - is nearing final completion of a standard addressing ergonomics.

**2) Safety and Health Programs**

OSHA has been discussing a possible new, comprehensive standard that would require all employers to develop safety and health programs. Superficially, the concept seems appealing. However, as the details of what OSHA may be contemplating have become known, there is growing concern in industry that OSHA may be preparing to impose a detailed and burdensome new set of requirements upon industry. This issue, too, is expected to be controversial if OSHA determines to move ahead with the development of a proposed standard.

1. 29 U.S.C. § 651, *et seq.*

2. The following states have approved state plans: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

3. Section 5(a)(1) of the Act, 29 U.S.C. § 654(a)(1).

**KEY WORDS:**

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STANDARDS

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