

# SAFETY / OSHA UPDATE

A Newsletter from High Safety Consulting Services, Ltd.

Information on Safety & Health in Your Workplace



## NEW YEAR TIME BALLS

This year saw a new 'high-tech' ball drop in Times Square. It was quite amazing to watch. The first ball was constructed of iron and glass and consisted of a hundred 25-watt light-bulbs to celebrate the 1907-1908 New Year. I am not sure that "dropping the ball" fits the New Year's concept...but perhaps it fits for the exit of 2008, which was a year introducing challenges into our economy and organizations.

The actual idea of dropping a ball to signal the passage of time dates back to 1883. The first "time-ball" was installed on England's Royal Observatory but had nothing to do with New Year's Eve. The ball would drop at one o'clock every afternoon, allowing the captains of nearby ships to set their chronometers. Others were installed over the years in various locations and some are still operable today. The change of the year gives many of us time to pause and to reflect on the past year and perhaps establish some resolutions for the year ahead. I've learned that reflection and goal setting are worthwhile activities. I encourage you to do this on various levels...professionally, personally and spiritually.

It is also interesting to note what other things people drop to celebrate New Years in and around our region! In fact, the concept of dropping something other than a ball seems to be particularly in vogue in Pennsylvania compared to other states. Lancaster raises a red rose. Other items dropped or raised for the new year in PA include: a shoe, a beaver, a wooden cow, an Indy car, a pretzel, a pickle, a goat, a frog, a wrench, a bologna, a sled, a chicken, a beer, a cigar, a steamroller and 2009 ping pong balls to name a few!

To learn more about the Times' Squares' new ball see:

[http://www.timessquarenyc.org/nye/nye\\_ball.html](http://www.timessquarenyc.org/nye/nye_ball.html)

## 2009 Training Schedule Released

The 2009 training catalog is available for download on-line at [www.highsafety.com](http://www.highsafety.com). If you would like a hardcopy of this brochure, let us know and we'll be happy to send one to you. We

have a number of new programs being offered in 2009. Also check our site frequently for new programs not included in our schedule. We will be working with the OSHA Training Institute (OTI) via the Mid-Atlantic OSHA Training Center to deliver some programs in the Lancaster area. The next programs available are the OSHA 503: Update for General Industry Outreach Trainers and the OSHA 511: OSHA General Industry 30-Hour Course in Voluntary Compliance. The 503 program is required every four years for General Industry trainers to maintain their trainer status. (Note: The OSHA 501 course is a pre-requisite for the 503 course.) This program is scheduled for January 26 through January 28. The 511 program covers a wide-range of topics and meets the pre-requisite for the General Industry trainer's course. This program will run from February 23 to February 26. If you are interested in either of these programs, register on-line at <http://www.oshamidatlantic.org/>. The 511 program is currently not on their site, but will be soon. You can also register by calling them directly or if you want us to transfer the registration information we will be happy to do that too.

### **E-Training**

Over the past several years, I have sought an e-training provider that would do to things: (1) provide a reasonable quality training opportunity for our clients and (2) provide a reasonable level of cost-sharing. To-date, I have found mostly that the quality of e-training is severely lacking and in some cases actually providing misinformation which could be hazardous, if followed. I will continue to seek an e-training provider that meets our expectations. E-training can not meet all of the regulatory training requirements, as some training standards require the demonstration of knowledge or skills. I have participated in a number of e-training courses, from Health Physics (3 credits) to Hazard Communication (1 hour). Some are very well organized and presented. Others are not. A recent OSHA interpretation on HazWoper points to the need to be cautious when using e-training to meet your training obligations. In a November 22, 1994, letter of interpretation OSHA states. "In OSHA's view, self-paced, interactive computer-based training can serve as a valuable training tool in the context of an overall training program. However, use of computer-based training by itself would not be sufficient to meet the intent of most of OSHA's training requirements, in particular those of HAZWOPER." (Our next "live, compliant" Hazwoper Classes are listed below)

### **Personal Protective Equipment Non-Compliance Presents Greater Fine Potentials**

On December 12, 2008 OSHA changed some of the enforcement specifications of the PPE standard. However this was not done in the PPE section of the rule -- it is instead located at 29 CFR 1910.9 for general industry and 29 CFR 1926.20 for construction. This new provision states that OSHA can impose instance-by-instance penalty for EACH instance of non-compliance for failing to provide PPE or failing to train workers on PPE. In addition, all of the chemical-specific-related standards have been modified to permit the use of the instance-by-instance penalties related to hazard education and PPE. This means that a facility in which OSHA determines that hardhats are required but are not provided, could face a penalty for each employee exposed and each employee not trained. OSHA's egregious citation policy which established the practice for

the agency to use instance-by-instance penalty was destroyed by a legal challenge which made its way through the OSHA Review Commission and the US 5<sup>th</sup> Circuit Court of Appeals. As a result of this challenge, OSHA lost some of its teeth. This was a case where an employer (Eric Ho) willfully and knowingly exposed workers to significant hazards (asbestos) without any regard for their personal health. If any case deserved an egregious policy treatment it was the Eric Ho case. The American Society of Safety Engineers (ASSE) supported OSHA in their attempts to fight the case and preserve the egregious penalty policy. The ASSE was not supportive however of the newly enacted legislation and had written a letter of concern regarding the potential penalty outcomes of the newly modified rule. See the letter from ASSE at:

<http://www.asse.org/professionalaaffairs/govtaffairs/docs/091808OSHAPPEe.doc>

The bottom line on this new provision: it becomes much more important than ever before to make sure you have completed your written and certified hazard assessments for PPE (General Industry Employers) and that all employers assure employees are using PPE in accordance with the specifications and that good records are available documenting the training of each and every worker using PPE. Note that the standard states “Each affected employee shall demonstrate an understanding of the training specified”. This infers, but does not outright require, testing on key topics rather than just maintaining a roster of training attendees. In the end, this change re-establishes the egregious policy for OSHA but in a form that is more likely to be used more regularly with all employers found to be in non-compliance.

### **THIS IS SCARY!**

As a consultant, I realize that I am exposed to professional liability and as a result we have purchased insurance to cover this exposure since day one. But for others in the roles of safety director, coordinator or manager -- the concept of personal liability and even criminal liability has traditionally been perceived as limited and unlikely. A recent article (12/22/08) in ENR reports that a New York Safety Manager for Bovis Lend Lease, LLC has been charged with manslaughter for firefighter deaths that occurred on a demolition site. A standpipe was non-operable and not fixed or reported and this condition is alleged to have contributed to the firefighter deaths when a fire broke out at the site. Since I don't believe that insurance is available for criminal liability exposure, we are left with the emphasis on identification and reporting of hazards. Occasionally, I have had site personnel indicate that they would address an issue that I found “in the near future”. I can accept this as a consultant while advising against it because it is not my role to “fix” the issue. However, if I were a safety manager with the authority to have the issue addressed, it would be important to remove the item, take it out of service and/or have it addressed immediately. Cases like this should have the effect of increased vigilance and a lack of “hazard exposure flexibility” provided by some in our profession.

### **UPCOMING COURSES**

**Hazwoper Update** (January 9 in Wilkes-Barre or February 20 in State College): This program is designed to provide the required update training as specified in the Hazwoper regulation for those individuals involved in operations of hazardous waste clean-up. This program will also provide education focused on refresher training for spill response operations in an industrial setting.

**OSHA 503: Update for General Industry Outreach Trainers** (January 26 – 28 in Lancaster): This program is required every four years for General Industry trainers to maintain their trainer status. (Note: The OSHA 501: Trainer Course in Occupational Safety and Health Standards for General Industry is a pre-requisite for the 503 course.)

**Rough Terrain Forklift Operators Course** (January 30 in Manheim): Operators of forklifts must be trained in their use in accordance with the OSHA rule. This program addresses the classroom portion of the required training. The operator's company will provide hands-on training and observation documentation to complete the training requirements. Certification forms and certification cards are available for operators that successfully complete all requirements for certification. This course will be held at the ABC facility.

**OSHA 511: OSHA General Industry 30-Hour Course in Voluntary Compliance** (February 23 – 26 in Lancaster): The 511 program covers a wide-range of topics and meets the pre-requisite for the General Industry trainer's course.

**Defensive Driving Course** (March 19 in Manheim): Motor vehicle accidents continue to be the number one cause of workplace death in most segments and the leading cause of accidental death in the U.S. This National Safety Council course will provide drivers with important driving safety tips and practices that can reduce the risk of injury or death. How employees operate company vehicles can significantly affect a company's image and liability. This course is an excellent investment of time and resources for anyone wishing to reduce their level of risk to this daily hazard. This program will be held at the ABC facility.

**OSHA 30-hour Construction Course** (March 31, April 2, April 7 & April 14 in Manheim): This class is our most in-depth OSHA education program. The program provides attendees a comprehensive education on the OSHA rules and requirements that apply to construction work. This program is ideal for safety coordinators, project managers, site supervisors and safety committee members. This program will be held at the ABC facility.

**NOTE: All of our prior newsletters are archived on our website under the "Contact Us" Tab**