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Big Dust-Up

Why Did OSHA Initiate a Combustible Dust Rulemaking Now?

By Eric J. Conn

Combustible dusts are solids ground into fine particles that can present a fire or explosion hazard when suspended in air. Combustible dust can take many forms, including wood, plastics, rubber, metals, grain and sugar.

Over the past 30 years, there have been almost 300 known dust fires and explosions in the U.S., resulting in hundreds of workplace injuries and fatalities.

Until now, OSHA has regulated the hazards of combustible dust through various general industry standards (e.g., housekeeping and electrical standards) as well as OSHA's General Duty Clause, which requires employers to protect their employees against serious "recognized" hazards. However, in an Advance Notice of Proposed Rulemaking (ANPR) published in the October 21, 2009 Federal Register, OSHA announced its intent to develop a comprehensive combustible dust safety standard.

Combustible dust explosions are not a new phenomenon, and OSHA has regulated industries susceptible to hazards of combustible dust for decades. So what is driving OSHA's decision to promulgate a combustible dust standard? Why now?

There are three reasons why OSHA is engaging in a rulemaking for a comprehensive combustible dust standard:

Following the 2008 catastrophic dust explosion at an Imperial Sugar plant, which took the lives of 14 workers, OSHA has been under pressure from the public, legislators, and the U.S. Chemical Safety and Hazard Investigation Board to develop a combustible dust standard.

OSHA's inspections under its combustible dust National Emphasis Program have resulted in a high percentage of violations cited under the General Duty Clause, rather than a specific safety standard. This led OSHA to conclude that it needed a new comprehensive combustible dust standard.

OSHA under President George W. Bush emphasized voluntary compliance programs,

whereas President Obama's OSHA has made it clear that rulemaking is a top priority.

Imperial Sugar and the CSB

In 2006, after several high profile industrial combustible dust incidents, the U.S. Chemical Safety and Hazard Investigation Board (CSB) conducted a combustible dust study and reported that over the previous 25 years, there had been more than 275 dust fires and explosions in U.S. industrial facilities, resulting in almost 1,000 injuries or fatalities.

The CSB concluded that industry and safety professionals lacked awareness of combustible dust hazards, National Fire Protection Association (NFPA) and other national consensus standards were not being followed, state and local fire codes were not effectively addressing combustible dust, and OSHA's focus had been on enforcement activities triggered by incidents rather than on developing a standard to regulate combustible dust.

Then, on February 7, 2008, a catastrophic combustible dust explosion struck the Imperial Sugar plant in Port Wentworth, Georgia, claiming the lives of 14 workers and injuring three dozen more. The CSB investigated the incident, and in its final report, formally recommended that OSHA "proceed expeditiously . . . to conduct rulemaking, to promulgate a comprehensive standard to reduce or eliminate hazards from fire and explosion from combustible powders and dust."

In addition to the CSB's recommendation, OSHA has also felt pressure to develop a combustible dust standard from the public, industry and labor organizations, and legislators.

Combustible Dust National Emphasis Program

In October 2007, OSHA initiated a combustible dust National Emphasis Program (NEP) to increase OSHA's enforcement activities in industries that generate and handle combustible dust. Two years into the NEP, OSHA

gave an account of its enforcement efforts, and reported that it had conducted more than 1,000 combustible dust NEP inspections, covering workplaces in 64 industries and the issuance of nearly 5,000 citations.

The most noteworthy statistic from the NEP, however, has been the high percentage of citations issued under the General Duty Clause. Roughly one in every four citations from the NEP has been issued under the General Duty Clause (a rate of approximately 25 percent), as compared to a rate of less than 4 percent from all other OSHA inspections. Accordingly, OSHA concluded that its existing standards do not provide a sufficiently comprehensive set of requirements to address the hazards of combustible dust.

OSHA Rulemaking – A Renewed Effort

For eight years, OSHA under President George W. Bush emphasized voluntary compliance programs more so than traditional rulemaking. Indeed, during the Bush presidency, OSHA promulgated fewer new safety standards than it did during each of the Clinton, George H.W. Bush and Reagan administrations. President Obama's OSHA, by contrast, clearly prefers mandatory regulations.

The Obama administration has stated that rulemaking will be a priority of OSHA. All industries should expect significant increases in rulemaking activity, including development of the Global Harmonization standard for hazard communication, the revised walking/working surfaces standard, another attempt at an ergonomics standard, an effort to revise many chemical permissible exposure limits, a safety and health programs standard, and the combustible dust standard.

Interested parties have until Jan. 19, 2010 to offer written comments on OSHA's combustible dust ANPR. Comments can be submitted electronically at www.regulations.gov. If your company operates one of the nearly 1 million workplaces or employs any of the approximately 22 million workers in the industries that generate or handle combustible dust, now is the time to actively participate in the process that will determine the form and content of this important new standard.

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