EHS Support
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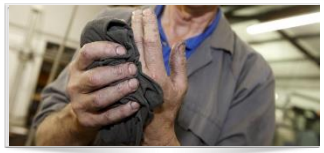
Consider This

HEALTH & SAFETY NEWSLETTER
AUGUST 2016



Management of Solvent-Contaminated Rags

Soil Classification

Trenches and Excavations

Increased Penalties and Personal Liability Under the Act

Captain Obvious

Ladder Safety? There's an App for That

Work Safe. Live Safe. Stay Safe.

Management of Solvent-Contaminated Rags

Whether you are an EH&S Manager or departmental Supervisor, one item you may have to contend with is solvent-soaked rags and the requirements from the Occupational Health and Safety Administration (OSHA) and the Environmental Protection Agency (EPA).

Typically, soiled rags are used in cleaning or degreasing operations together with a solvent or mixture of solvents. Solvents are used on rags in workplaces for a variety of reasons, including applying finishes and degreasing or otherwise cleaning equipment. Solvents are also highly flammable. Although OSHA and the EPA are both advocating the use of safer materials, it is still very common for rags contaminated with solvents to be used in American workplaces.

Discarded rags could contain toxic levels of characteristic hazardous waste such as lead or methyl ethyl ketone (MEK). It is even more likely that the discarded rags may be contaminated with an F-listed hazardous waste such as a solvent or degreaser (typically acetone, xylene, toluene, MEK, MIK, tetrachloroethylene, trichloroethylene). Solid wastes mixed with listed hazardous waste generally remain a listed hazardous waste.

Rags that are hazardous waste and must be disposed of are as follows:

- Soiled rags that are used to remove applied solvents from equipment during cleaning operations if F-listed solvents are used or if the resulting mixture is ignitable.
- Soiled rags to which an F-listed or ignitable solvent has been added for cleaning purposes.
- Soiled rags used to clean up a spill of a hazardous material such as solvents or other ignitable materials.
- Rags that are non-hazardous and can be disposed of into the sanitary trash.
- Soiled rags used to clean up spilled paint.
- Soiled rags used in the cleaning operations involving non-hazardous chemicals.
- Soiled rags used in the application of stains.
- Rags contaminated with oils where no solvents are involved.

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Management of Solvent-Contaminated Rags (Cont.)

Action: Train Your Workers

Prepare a policy for the management of contaminated rags. The employees responsible for the proper disposal of the rags in the metal safety cans must know the basic safety rules for working with flammable liquids, including:

- Know the flash point of the liquid.
- Keep all sources of ignition away (e.g., open flames, cigarettes, sparks).
- Use only approved fireproof containers for storage or transfer.
- Keep containers closed when not in use.
- Follow all warning for working with flammable liquids, including:
  - Signs
  - Instructions on labels and SDSs
  - Company rules.

- The flash point is the lowest temperature at which vapors from a liquid are concentrated enough to be ignited.
- Flammable liquids have a flash point below 199.4 degrees Fahrenheit.
- The lower the flash point, the more hazardous the liquid.
- The vapors from the liquid can catch fire, even at low temperatures.
- Safety data sheets (SDSs) indicate the flash point.

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Soil Classification

When digging soil for trenching and excavation purposes, the type of soil being dug has to be determined prior to disturbing the land. A competent person shall classify the soil into the different classification types – Type A, Type B, and Type C. Soil can only be made up of one of these three types, or can have layers of two or three types. It is important to know and understand what type of soil you are working with to ensure you are utilizing the proper safety procedures and equipment to complete the job safely. The soil types are described below.

Types of Soil

- **Type A** - Cohesive soils with an unconfined compressive strength of 1.5 ton per square foot or greater. Type A examples are clay, silty clay, sandy clay and clay loam. Cemented soils are also considered type A.
- **Type B** - Cohesive soil with an unconfirmed compressive strength greater than 0.5 tons per square foot but less than 1.5 tons per square foot. Type B examples are angular gravel (similar to crushed rock), silt, silt loam, sandy loam and, in some cases, silty clay loam and sandy clay loam.
- **Type C** - Cohesive soils with an unconfined compressive strength of 0.5 tons per square foot or less. Type C examples are granular soils including gravel, sand and loamy sand. Also soils from which water is freely seeping. When excavating type C soils, it must be sloped to a 4 to 1 (4 ft. horizontal to 1 ft. vertical ratio).

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Soil Classification (Cont.)

The following definitions need to be understood to properly classify soils:

- Cemented soil is a soil in which particles are held together by a chemical agent.
- Cohesive soil means clay or soil with a high clay content which has cohesive strength.
- Dry soil is soil that does not display visible signs of moisture content.
- Fissured soil is soil material that has a tendency to break with little resistance.
- Granular soil means gravel, sand, or silt with little or no clay content and has no cohesive strength.
- Moist soil means a condition which looks and feels damp.
- Saturated soil is a soil in which the voids are filled with water.

What is a competent person?

A competent person is an individual, designated by the employer, who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to workers, and who is authorized to take prompt corrective measures to eliminate them.

Under the Excavation standards, tasks performed by the competent person include:

- Classifying soil
- Inspecting protective systems
- Designing structural ramps
- Monitoring water removal equipment
- Conducting site inspections.

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Trenches and Excavations

As understood prior to disturbing any soil, the types of soil should be determined. After that it will be determined whether we need a trench or an excavation. The differences between a trench and an excavation are defined below:

- **Trench:** A narrow excavation made below the earths' surface. The depth is greater than the width. However the width (measured at the bottom) cannot be greater than 15 feet.
- **Excavation**: A man made cut, cavity, trench, or depression in the earths' surface made by earth removal. A trench can be labeled an excavation if it exceeds the above criteria.

Trench

Excavation

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Trenches and Excavations (Cont.)

In addition to classifying the soil and determining whether a trench or excavation will be dug, proper safety precautions need to be considered prior to the commencement of work. Below are the minimum safety procedures to follow:

- **Call before digging:** Call all utility companies related to your job. This includes gas, sewer, telephone, water lines and electrical.
- **Procure necessary tools**: Shoring systems, structural ramps if needed, trench boxes or trench shields or other means of shoring.
- If the excavation is 4 ft. or deeper there must be a safe means for entrance and egress. (A ladder placed each 25 ft. of lateral travel will suffice).
- Any previously disturbed soil, no matter what the physical makeup of the soil, will be determined to be type C. In this case the excavation has to be sloped in accordance with the OSHA 29 CFR 1926 standard.

Barricades play an important role during excavating and when workers are working in and around excavations. When approaching the edge of the excavation, where the operator's sightlines might be obstructed, pedestrians should be use hand signals when approaching. Workers who are exposed to vehicular traffic shall wear highly visible vest. A type 3 barricade that is sturdy to deter vehicular traffic shall be installed. This type of barricade can be of a cement product or polyurethane that is filled with water.

Over 800 deaths in the United States each year happen while working in and around excavations.

Most of these deaths are caused due to a cave-in. Subpart P of the OSHA 29 CFR 1926 manual offers a wealth of information concerning safety procedures and materials to use while excavating and working in excavations.

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OSHA Update: Increased Penalties and Personal Liability Under the Act

The Occupational Safety and Health Act (OSHA or the Act) requires employers to provide a safe workplace for employees, and there are abundant requirements of employers which require strict attention to detail. Many requirements necessitate ongoing oversight and updating, especially those involving record-keeping. By way of example, work-related inpatient hospitalizations, amputation or an employee's loss of an eye , must be reported within 24 hours, and fatalities must be reported within eight hours. Failure to comply with OSHA laws and regulations results in substantial penalties, which increased by 78% beginning on **August 1, 2016**:

Type of Violation	Previous Maximum Penalty	New Maximum Penalty
Serious Other-Than-Serious Posting Requirements	$7,000 per violation	$12, 471 per violation
Failure to Abate	$7,000 per day beyond abatement date	$12,471 per day beyond abatement date
Willful or Repeated	$70,000 per violation	$124,709 per violation

Severe violations and significant enforcement cases are published on OSHA's website for all to see, creating a public relations disincentive.

But should officers, directors, or even managers be concerned about individual liability? In certain circumstances, individuals may be held liable under OSHA personally. 29 U.S.C. section 666 (a) through (e) provides for civil and criminal penalties for violations of OSHA requirements. Criminal sanctions for OSHA violations may be brought against individuals when:

1. The employer's willful violation of a standard, rule, order, or regulation has caused the death of an employee, 29 USC § 666(e),
2. The employer falsely represents its compliance with OSHA, 29 USC § 666(g), or
3. A person gives advance notice of an OSHA inspection, 29 USC § 666(f).

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OSHA Update: Increased Penalties and Personal Liability Under the Act (Cont.)

The Act defines "employer" as "a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State." 29 U.S.C. § 652(5). The term "person" means "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons." 29 U.S.C. § 652(4).

The U.S. Department of Justice, Office of the United States Attorneys Criminal Resource Manuel provides further guidance for prosecution of criminal acts under OSHA. It states:

> The term 'employer' is defined in 29 U.S.C. § 652(5) as 'a person engaged in a business affecting commerce who has employees.' The term 'employer' for civil OSHA purposes generally encompasses only the employing business entity, whether it be a corporation, a partnership or sole proprietorship. *See Skidmore v. Travelers Insurance Co*., 356 F. Supp, 670, 672 (E.D. La), aff'd, 483 F.2d 67 (5th Cir. 1973)." (emphasis added).

Criminal Resource Manual 2001-2099, § 2012. OSHA – Willful Violation of A Safety Standard Which Causes Death To An Employee. The manual goes on to state:

> For purposes of criminal enforcement, however, an individual who is a corporate officer or director, may be an 'employer' within the meaning of the Act. *United States v. Doig*, 950 F.2d 411, 415 (7th Cir. 1991) (dicta). This is particularly the case where the officer's role in operating the company is pervasive as in the case of *United States v. Cusack*, 806 F.Supp 47 (D.N.J. 1992), where the company's officer ran the corporation as if it were a sole proprietorship. Although corporate officers or directors may be charged as principals, they cannot be charged as aiders and abettors under 18 U.S.C. § 2(a)(1991). *See United States v. Doig*, 950 F.2d at 415; *United States v. Shear*, 962 F.2d 488, 493-96 (5th Cir. 1992).

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OSHA Update: Increased Penalties and Personal Liability Under the Act (Cont.)

Id. Another avenue for holding directors and officers personally liable is to "pierce the corporate veil," which can be done when individuals are using the corporation as a shield for individual actions. If there is an extremely egregious violation resulting in death or injury, a local district attorney or law enforcement officials could investigate to determine if any criminal charges could be brought against individuals.

Another potential avenue for personal liability under OSHA is in connection with whistle-blower protections under Section 11(c) of the Act, which provides that no person shall discharge or discriminate against an employee because that employee has filed a complaint, instituted a proceeding, testified in a proceeding, or exercised any other rights under OSHA. In *Perez v. Lear Corporation EEDS and Interiors et al*., filed in the Southern District of Alabama, the Secretary of Labor named three managers as defendants in the case in addition to Lear Corp., alleging OSHA violations against the individuals in connection with retaliation against employees by segregating them and denying them overtime pay. The case was filed in March 2016, so it remains to be seen whether the allegations against the individual managers will stand.

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Image source: http://fcpamericas.com/wp-content/uploads/2013/09/FCPACorporateCriminaLiability.jpgv

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Why is it that safety professionals are getting heckled when we provide reminders on basic safety information and then go into a facility to conduct a mock-OSHA audit and find the same type of potential hazards or non-compliance items over and over again? Each month we feature a "Captain Obvious" photo to share simple safety reminders that are found on jobsites every day.

CORRECTIVE ACTIONS

- Implement a ladder inspection program.
- Train employees to visually inspect ladders prior to use and to report deficiencies immediately.
- Ensure damaged ladders are tagged with “Do Not Use’ (or similar language) and immediately taken out of service.
- Do not permit employees to take damaged ladders home for personal use.

FINDING

Damaged Metal Spreader (Locking Device) on Stepladder

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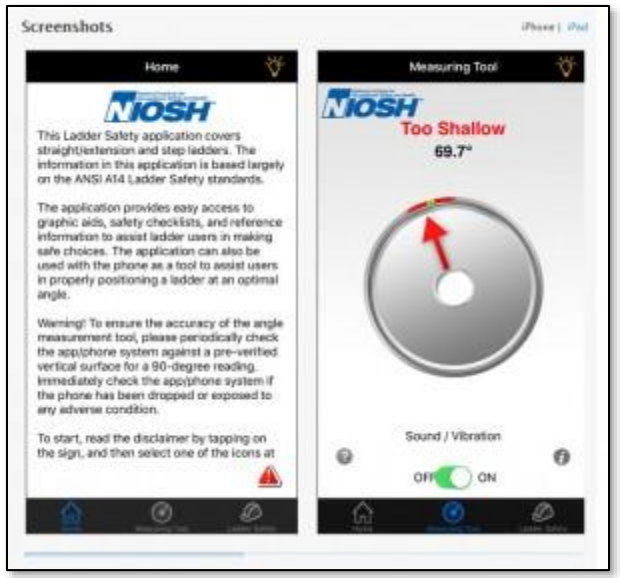
Ladder Safety? There's an App for That

The Ladder Safety app, NIOSH's first mobile application, is designed to improve extension and step ladder safety—a concern for those working in construction or any other task that requires ladder use. The app provides user-friendly guides and interactive tools to prevent major causes of falls:

- **Angle Measuring Tool**—Uses visual, sound, and vibration signals to make it easier for users to set an extension ladder at the proper angle (approximately 75 degrees) and to check the verticality of extension and step ladders.
- **Selection Tool**—Provides a procedure to select the minimum required ladder duty rating corresponding to user characteristics and task.
- **Inspection Tool**—Includes a comprehensive checklist for ladder mechanical inspection.
- **iOS and Android Mobile Devices Proper Use Tool**—Presents a set of rules for safe ladder use in a user-friendly format.
- **Accessories Tool**— Describes a number of available extension ladder safety accessories.



Using smart phone technology, the NIOSH Ladder Safety app delivers ladder safety tools, information, reference materials, and training resources into the hands of individual ladder users wherever and whenever they are needed. The app is available in English and Spanish as a free download for Apple iPhone/iPad and Google Android devices. Download for free at Apple Store and Google Play available in English and Spanish. Updated user manuals coming soon.

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Ladder Safety? There's an App for That (Cont.)

What are the causes of ladder falls?

Ladder fall injuries are a persistent hazard both in the workplace and at home. There are five major causes for ladder fall incidents:

1. **Incorrect extension ladder setup angle**—In approximately 40% of cases, the leading cause of ladder-related injuries is a ladder sliding out at the base due to an incorrect setup angle. Ladder users tend to set extension ladders at shallower angles than the optimal desired angle (75 degrees).
2. **Inappropriate ladder selection**—Selection of a ladder with the proper duty-rating is also important to avoid structural failure. However, many ladder users lack knowledge of proper ladder selection.
3. **Insufficient ladder inspection**—You can reduce the likelihood of ladder structural failure by practicing regular inspection and maintenance.
4. **Improper ladder use**—Activities such as overreaching, carrying objects, applying excessive force, slips, and missteps are also frequent causes of ladder-related fall injuries.
5. **Lack of access to ladder safety tools and information**—Small companies that account for up to 80% of all construction companies, and individual ladder users, such as homeowners, do not typically receive the required training for safe use of portable ladders. Such ladder users are difficult to reach, often do not have access to safety information, and generally lack the resources to develop or follow an effective ladder safety program.

Are ladder falls an extensive problem?

The estimated annual cost of ladder injuries in the U.S. is $11 billion, including work loss, medical, legal, liability, and pain and suffering expenses. Recent data analysis from three surveillance systems showed that in 2011, work-related ladder fall injuries in the U.S. resulted in 113 fatalities, an estimated 15,460 nonfatal injuries that involved days away from work, and an estimated 34,000 nonfatal injuries treated in emergency departments. Workers who are male, Hispanic, older, self-employed, work in smaller establishments, and work doing construction, maintenance, and repair experience higher ladder fall injury rates. There is a pressing need to address the serious problem of ladder-related falls and to reduce the resulting injury and death.

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Contact Monica Meyer at Monica.Meyer@ehs-support.com today to learn more about how we can help you manage your health and safety risks.