# OSHA and the Fire Investigator

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Once upon a time, a fire investigator was investigating a large loss in a small town. He did all of the necessary steps, including hiring casual laborers to dig out the debris, a contractor to provide heavy equipment and a private security firm to keep unauthorized people off of the property. At the end of the investigation, the fire investigator left the site feeling satisfied that he had done a good job of analyzing the facts of the event.

However, three weeks after the fire scene examination was complete, a representative of the Federal Government arrived and evaluated the fire investigator's work. Based on what this representative of the Federal Government saw and learned from interviewing the fire investigator, he cited the fire investigator's employer for violation of federal regulations pertaining to employee safety in the workplace. The citation was not contested and the fine was substantial.

Does this sound like a fairy tale or something that is not possible today? It is the truth. The investigator was me, and the Federal Government's representative was an inspector from the Occupational Safety and Health Administration (OSHA). The violations that I was cited for, and my employer was fined several thousand dollars for, were not for flagrant attempts to endanger workers on the fire scene. Instead, the violations were for failure to have a written Hazard Communication Program and failure to warn of the dangers of silica, commonly known as sand!

Do you as a practicing fire investigator, or your employer, have a written Hazard Communication Program? Do you even know what a Hazard Communication Program is? Do you know what steps you must take prior to allowing an employee to enter a fire scene? Do you know which Material Safety Data Sheets (MSDS) you need to have on-site and who needs training on these MSDS's? If you cannot answer "yes" to all of these questions (and more), then you are at risk in being cited by OSHA if they inspect your fire scene.

The Congress of the United States established in 1988 that non-manufacturing sectors must comply with OSHA's standards in an attempt to make all workplaces safer for employees. The effort has long been associated with companies such as manufacturers that employ many employees. You might envision a large sprawling complex of buildings where multiple activities are occurring simultaneously, many of these activities clearly dangerous to an unsuspecting employee. Actually, the law pertains to any private employer who has employees, no matter how many. The federal regulations behind the OSHA law are numerous. If you don't have a copy, I suggest you get one. They can be

seen at the public library, but once you start reading it, you will realize that you need your own copy. Read it! It is clearly written and covers all aspects of the law.

## BEFORE GOING TO THE FIRE SCENE

Before you consider going to another fire scene, you should develop a written Hazard Communication Program (HCP). A Hazard Communication Program is a written document that is used to list all potential hazardous substances that an employee may come in contact with and their location within the structure; a list of MSDS's for these hazardous substances; a checklist of various pieces of information listed on the MSDS's; a discussion on container labeling; a list of everyone who has had training on the MSDS's including who trained them and when; and a list for a contractor that has come on-site including information on the contractor so that an OSHA inspector can find out if they are in compliance.

Another requirement of OSHA is that every private employer have a safety program. A safety program is an illness and injury prevention program. **The manner in which a safety program works is by discussing various situations that are routinely encountered by the employees, and the employer's recommended practice that the employees should follow**. The program can consist of a stated objective, implementation procedures, the use of tools and equipment, fire prevention, welding and cutting procedures, excavation and scaffolding requirements, accident reporting and investigating. Commonly, the HCP is an attachment of the safety program.

While you are developing these documents, you might as well get started putting together a library of Material Safety Data Sheets [MSDS]. The OSHA regulations require that each MSDS have certain information listed on it. Make sure you know what information is required and that yours has it. I suggest you start getting together a library of MSDS because some are not easy to find. For instance, federal regulations requiring MSDS's did not come about until after everyone quit using asbestos. So, no one made up an MSDS on asbestos. Once this fact came to light, someone ordered a company who had manufactured asbestos products to produce a MSDS on it. When I tried to find one I spent several hours calling around before I was successful. Likewise, if you go looking for silica's MSDS, you may be in for quite a hunt. Apparently, California recently decided that silica should be listed as a hazardous substance; so the Federal OSHA regulations are including it. Again, I got my copy from OSHA because it was not readily available. I suggest you consider all of the common hazardous substances that you might encounter on a fire scene and get a MSDS for each of them. This can include freon, petroleum fuels, petroleum oils, etc. The list can go on for a long while.

One other suggestion that I think you should consider is developing a release for your use on the fire scene. If you do as I do and work large-loss fires, then there is no doubt that you will have other employers coming on-site in the form of law firms, cause and origin investigation firms, contractors, insurance firms, etc. **Unless you wish to accept responsibility for these other organizations, you need to develop a release that clearly states that you will expect these firms to comply with all OSHA regulations**

**and you will not be held responsible for any violations that they may commit**. I have spoken with my company's attorney that we used on a fire, and we agree that you can require the signing of such a release before you allow these other firms to come on-site, assuming you have control of the fire scene. One more thing to consider on this issue is that **you need to enforce OSHA regulations whenever you are able**. By this I mean if you see someone who is entering the fire scene without proper safety equipment, then you should not allow them entry no matter if they have signed a release or not. If someone takes you in front of a judge for failing to allow them access for noncompliance of OSHA regulations, I believe you would be in a good legal position.

## INITIAL SITE WORK

Once you have arrived on-site, you should begin to think about your OSHA responsibilities immediately. You probably recognize that site security is the first priority. You cannot keep a site safe without some kind of security around it to keep out unauthorized persons. Since I routinely work large fire losses, security begins with the identification and retaining of a security firm and the erection of a physical barrier around the fire scene. I can usually rely on advice from my general adjuster, the local authorities, or the property owner. You may find that the property owner is the best source of a security system if the owner has security already in place. After you have the security in place, make sure that they know who is giving them direction and who is authorized to come on-site. I rely on a written list of authorized persons and require security to keep a log of who has come on-site including times of entry and departure.

The next step is a physical examination of the fire scene for the purpose of identification of all hazardous substances that exist on-site (and probably could exist on-site). The OSHA regulations specify that you must warn employees and protect them from any hazardous substance that they may come in contact with. So, make sure that you do a thorough assessment of the fire contact with in the workplace. In our case, the workplace is the fire scene. So, your HCP should be written in such a fashion that you can take a copy to the fire scene and fill in the appropriate blanks and attach the appropriate MSDS's.

Aside from a physical examination, you will probably need to take samples of various items to determine if hazardous substances are present. Such samples include ceiling, wall and floor surfaces that may contain asbestos and masonry surfaces and mortar to see if they contain silica. If you are on a site where employees are normally present, you should ask the employer for a list of MSDS's that they already have for that particular workplace.

Another thing to be doing during the initial site assessment is to assess the structural stability of the fire scene including the identification of any hazard associated with the fire scene such as standing water, shock hazard, fall hazard, collapse hazard, etc. Again, the list can be quite long depending on the complexity of the fire scene. You must identify every area where the employee will be placed at risk by some characteristic of the scene. Once you have identified these areas and conditions, you need to take the

appropriate steps to protect the employee from the hazard. This may include roping off that area and not allowing entry to it. Or, you may need to build a structure for the protection of the employee. Again, the appropriate steps will be dictated by the risk and the OSHA regulations that address that risk. Make sure you have your copy of the regulations with you for easy consultation.

One point to note on the assessment of the site for risk identification is, if you are not an engineer, your assessment of the structure for soundness may not be acceptable by OSHA. During my experience with the OSHA inspector, I was asked if I was familiar with engineering principals, strength of materials, construction principals, etc. Even after I said I was an engineer, I had to explain what experience I had that would allow me to make such an assessment. If you are not sure that you qualify to make such an assessment, consider hiring a structural engineer that can qualify. That person can also help in the recognition of hazardous substances and the sampling and testing of materials.

Once you have identified all potential hazards and hazardous substances, obtain a MSDS for each of the substances and begin to write your Hazard Communication Program. You need to get this document done as soon as possible. If the fire scene is a large one, there will certainly be more people coming who will want access to the scene. If you are the person in charge of the fire scene, you must be prepared to address the OSHA regulations with these people. If someone is demanding access to the site and you are not finished with your HCP, consider that you may be held responsible by OSHA if you did not comply with their regulations when you decide to go ahead and give them access.

Once the HCP is written, you must train all of your employees on it. I also offer to train anyone else that wishes to attend, including persons from other firms. If they choose to not attend, then I require that they comply with OSHA regulations and give me a copy of their HCP or let me read it.

Obviously, one important aspect of this effort is that you make the fire scene safe for the employee. Generally, this means that you require that everyone wear appropriate protective clothing. The minimum generally is a hard hat, gloves, appropriate footwear and outer clothing and safety glasses. Everyone who enters the designated work area should be expected to wear these items.

Another aspect that you should consider is a daily safety briefing, or as often as necessary. This is particularity important if you use casual laborers to do some of the digging. A safety briefing includes the warning that everyone should work in a safe manner and not take chances, and can include discussing the particular characteristics of the fire scene. This seems like common sense, but it is not something that l have routinely encountered in working fire scenes with other fire investigators. I like to take this time to discuss what the employees should do if they encounter something that looks hazardous and what to do if they are injured.

All of these suggestions that I propose, and more, are covered in the OSHA regulations. **I urge you to read CFR 1910.120 and have it with you when you are on-site**. There are

many other aspects of these regulations that you should consider, and I cannot begin to cover them in this article.

## AS THE FIRE INVESTIGATION PROCEEDS

As the site evaluation proceeds, the conditions will change. You need to be aware of these changes, adapt your HCP to them, and make sure employees are protected from these additional risks.

One concern that you must recognize is that the dig out may create instability in the structure. You need to do a daily assessment of the structure and modify the site inspection report accordingly. If this requires, bring the structural engineer back on-site, then so be it. The last thing you want to occur is to have the building collapse and injury or kill someone.

If during the site evaluation you begin to displace dusts, you need to take the appropriate steps to protect the workers. You may need to continue sampling the site, including air samples, to see if the work is uncovering hazardous substances that you thought were not risks initially. If there are questions regarding the environment in the fire scene, you might consider hiring an environmental hygienist. Air sampling, water runoff and environmental pollution are issues that will probably require special expertise, and OSHA may not recognize you as sufficiently knowledgeable to handle these issues.

Another point that can be easily overlooked is someone bringing hazardous substances on-site without your knowledge. If a contractor brings a crane on-site, then you need to have MSDS's for any of the substances within that crane. Fuel oil, hydraulic oil, engine oil and other such items may need to be added to your HCP. Likewise, you will need to train your employees on these substances once you have learned they are on-site. A suggestion I offer is to forbid the entry of any substance to the site without your specific approval. This can be something as simple as a can of spray paint.

While the site processing continues, monitor the level and effort of security that you have in place. If you are using a security firm, check their paperwork to see if they are requiring the sign-in of each person and that they are confirming the identity of everyone that is coming on-site. If you have asked them to enforce that everyone on-site have a hard hat, then seeing someone without one should alert you that your security is not effective. Stop by the site during off hours and see if your guards are asleep or alert. If you find one asleep, fire him! Nothing will make everyone else stay awake as knowing you have no tolerance for such behavior.

## POST SITE WORK

Once the site is finished, you still have some important steps to take. First, make sure you have all paperwork associated with the site, including the HCP, security logs, structural analyses, lab results, hygienist reports, and accident reports (if there were any). I have been told by persons who have dealt with OSHA that OSHA's stance is that if there is no

paperwork, it never happened! Don't allow the lack of follow-up cause you to be cited for noncompliance. While you are working on the paperwork, remember to prepare a report that looks like it was done by a professional. If you produce a sloppy report, you may cause the OSHA inspector to look deeper into your effort to see if you were as sloppy in other areas of significance.

You cannot leave a site that is not safe for others to come into after you have gone without warning these future occupants of the dangers that you found. If you are aware that the roof may collapse at any time, then you need to see that someone does not walk under that roof after you have left. You may be required to stabilize the structure by demolition of the unstable areas, you may need to post signs to warn others of the danger. Consult with your client, adjuster, lawyer and property owner as to the best way to alert future occupants of these dangers. My employer has sent letters to the insured noticing them of the significant issues and copying all structural and environmental reports to them. We also suggest that the property owner consult with their own safety experts.

If you chose to demolish some or all of the structure, consider the issues associated with spoilation first. In those cases where there may be other investigations following yours, your demolition may spoil the site for the future investigators. If there are any questions, rely on the advice of your company management and your attorney.

I have not covered in detail all regulations associated with the Occupational Safety and Health Administration. I don't know all there is to know about such a complex area. Instead, my intention is to alert you to the need to learn more about OSHA and how it relates to your conducting an origin and cause investigation at a fire scene. If you have not encountered an OSHA inspector yet, then consider that when you are working a large fire loss with the resultant media coverage, that the OSHA inspector is reading about the same fire in the newspaper.