

Scene Investigations and OSHA – Better Safe Than Sorry

The image is iconic. Eleven workers sitting on a giant steel cross beam during the construction of the Empire State Building – sitting unharnessed, hundreds of feet above the ground enjoying their lunch. WWOD – What would OSHA do? As you ponder the image, the thought may hit you: how many fire investigators have you seen doing something just as risky while at a fire scene? Every fire scene poses some danger to investigators and those dangers must be accounted for and protected against to satisfy the federal law known as the Williams-Steiger Occupational Safety and Health Act.

The Occupational Safety and Health Act was passed in 1970 and has dramatically increased workplace safety. The purpose of the Act was to make all workplaces safer for employees. The Occupational Safety Health Administration (OSHA) was created to direct national compliance initiatives in occupational safety and health as required under the Act. In 1998, Congress extended OSHA regulations to cover non-manufacturing sectors. Today, it applies to all private employers regardless of the number of employees an organization may have. It applies to every fire scene where fire investigators are engaged in performing an origin and cause investigation.

Fire and scene investigators can be exposed to hazards as they comb through a scene and debris following a fire. Often times there is no way to identify those hazards before they are confronted with them. OSHA has recognized the unusual nature of this activity and does focus on training as a key element of complying with its regulations. The level of training is dictated by the status of the scene as declared by the incident commander. If the incident commander is still in control, then the situation is still considered to be an emergency. In that instance, OSHA will expect that on-site investigators have been trained in accordance with the Hazardous Waste Operations and Emergency Response Standard (HAZWOPER), which requires, amongst other things, a minimum of 40 hours of instruction regarding hazardous substance and health hazards, plus annual continuing education. If the incident commander has declared an emergency over, then HAZWOPER training may not be required, but on-site investigators are still expected to have training in personal protective equipment, respiratory protection, and head and foot hazards. They will also be expected to have training that will allow them to identify risks associated with electrical systems, mechanical systems and fall protection. Many times incident commanders remain involved in the investigation after the emergency itself has been addressed. In those instances, it is not always clear what the status of the scene is and whether HAZWOPER training is required.

As a scene investigation progresses, many organizations become involved. As a result, fire scenes often become a multi-employer location. These separate employers, through their individual employees, must work together while representing various and often competing interests, while remaining mindful of the dangers that can beset their work area. Under OSHA regulations, site owners must implement site control plans to control workers' exposure to hazardous substances, and exclude untrained individuals from zones where hazardous substances may be present. OSHA mandates that each employer take the steps to provide a safe working environment, but it is common for OSHA to issue multiple citations to separate organizations where a danger is not sufficiently addressed. Note that an injury does not need to occur in order for OSHA regulations to be violated. An employer may be subject to OSHA scrutiny if it either creates or fails to eliminate a danger, or otherwise does not ensure that its employees are properly trained on how to best deal with the danger.

To properly account for these dangers, site control plans are required under OSHA to identify dangers that are present. Site control plans (SCP) are often standardized documents that can be tailored for individual scenes. An SCP will typically include a site map, site work zones, the use of a buddy system, site communication protocols, safe-work practices, and where to obtain medical



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assistance in the event of an injury. The SCP should also include a Hazard Communication Program (HCP). The HCP should identify what potentially hazardous substances have been identified, where they are located, and the steps needed to gain access to those areas. The Material Data Safety sheets (MSDS) for each of those items must also be included in the HCP. Finally, the protocol should include a container labeling protocol for those items. The MSDS sheet requirement can be onerous, especially when one considers the different materials that may be present following a fire, including fuels, aerosols, paints, asbestos, silica and dust (from concretes, ceiling tiles and walls), and fuels. All these items would require MSDS sheets in order to have a proper HCP.

Site work zone boundaries should be identified both in the SCP and on site so that areas containing hazards are easily identifiable. The boundary between hazardous and safe areas should be defined with a physical security boundary. This can be done with the assistance of structural engineers and industrial hygienists. That professional information should be included in the final version of the SCP.

At most fire scenes, a lead fire investigator is designated. That person should disseminate the SCP and the HCP at the beginning of any joint scene examination. Everyone in the joint scene examination should sign in to be accounted if something unforeseen occurs. The safety briefing includes a review of the SCP and HCP. The investigator confirms the levels of training and proper safety equipment, including boots, safety vests, hard hats and respiratory masks. An applicable communication protocol is in place in case an emergency develops. On more complex or larger losses, a separate site safety expert is recommended, whose sole role is to help develop SCPs and HCPs and verify that everyone is following the rules set forth in those documents.

As the investigation moves forward, the SCP and HCP may be modified as needed. Briefings at the beginning and the end of each day also help ensure communication of issues and help with the continuity of the investigation. Finally, depending on the nature and type of loss, daily inspections by structural engineers and industrial hygienists may be necessary.

Many fire investigators follow these rules already and have incorporated many of OSHA's requirements, not because OSHA requires them to do so, but because they recognize the need for safety while processing a fire scene. At the end of the day, safety is paramount. Following these steps and maintaining the documentation establishes your investigation complied with the pertinent OSHA regulations. If there's no documentation, OSHA's position is automatically that it did not happen. Finally, leave the scene as safe as possible when all is said and done. Failing to leave a scene safe or without sufficient warnings can be an OSHA violation.

Fire scenes are inherently dangerous. Many fire investigators have been surrounded by these dangers their entire careers and have grown comfortable with these hazards, and at times, too comfortable. "This is the way I've always done things" or "I'll just sign a waiver" are common utterances. Those statements are not a defense to an OSHA violation. Following OSHA's requirements may slow down the investigation and make it more expensive, but it will be safer for all involved. Gone are the days where it is acceptable to sit on a steel beam, untethered, hundreds of feet above the ground without any thought about safety.

For additional information on OSHA regulations at fire scenes, please feel free to contact any Subrogation attorney at Cozen O'Connor.