

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



May 16, 1990

Mr. Kenneth E. Krauska, President
National Association of Plumbing-Heating-
Cooling Contractors
Post Office Box 6808
Falls Church, Virginia 22046-1148

Dear Mr. Krauska:

Thank you for your letter of March 15, regarding the availability of material safety data sheets (MSDSs) on construction sites, as required under the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS), 29 CFR 1926.59. I apologize for the delay in this response.

As you are aware, the HCS "Multi-employer workplaces" provision at [29 CFR 1910.1200(e)(2)] states that employers who use or store hazardous chemicals at a worksite in such a way that the employees of other employers may be exposed are required to incorporate additional elements into their hazard communication program. On a multi-employer worksite, each employer's hazard communication program must specify the method that the employer will use to provide the other employers with copies of his MSDSs, or the method he will use to make them available at a central location. The number of MSDSs that a contractor must have depends on the method used on the site to provide information to other employers.

If MSDSs are not maintained at a central location, each contractor must provide MSDSs to the other employers for each hazardous chemical the other employers' employees may be exposed to while working. Although a contractor does not actually have to physically give another employer the MSDS, he must make it available at the worksite for review. In some circumstances, a contractor may prefer to distribute copies of MSDS to other employers rather than provide continual access to those MSDSs.

If the contractor chooses to rely on a method of sharing his MSDSs at a central location, where a copy of all the employers' MSDSs will be kept, the method must also provide for access to them at all times employees are working on the site. If the party who has agreed to maintain all MSDSs at a central location does not provide for access to MSDSs at all times that employees are on-site, then that party would normally be cited for a violation of [1910.1200(g)(8)]. However, if the MSDSs are not available because the contractor failed to provide them, then that contractor would normally be cited.

Each contractor has a responsibility to ensure that his employees have ready access to MSDSs for each hazardous chemical in the workplace during each work shift. If a contractor relies on another employer to maintain his MSDSs, and the MSDSs are unavailable to that contractor's employees, the contractor could be cited under [1910.1200(g)(8)], unless it is determined that he has a legitimate defense to a citation. OSHA's compliance and enforcement policies at multi-

employer worksites, including legitimate defense, are set forth in the Agency's [Multi-Employer Citation Policy Compliance Directive CPL 02-00-124]. A copy of these sections of the [Multi-Employer Citation Policy] is enclosed for your information and review.

[Correction 8/23/2004. The multi-employer citation section of the Field Operations Manual was superseded by the Multi-Employer Citation Policy, Directive CPL 02-00-124. Information was stricken that no longer reflects current OSHA policy.]

The intent of OSHA's HCS is met on a multi-employer worksite when information on the hazards of chemical substances at the worksite is transmitted to or shared with all affected employers and their employees, and that information is readily accessible to employees when they are in their work areas. The ultimate goal of all OSHA policies and any resultant enforcement actions is to ensure safe and healthful workplaces by the most efficient means known. I can assure you that this is the Agency's intent behind any and all enforcement actions taken by OSHA personnel at the workplaces we inspect. The HCS, being a "performance-oriented" standard, gives employers the flexibility to adapt the rule to the needs of the workplace situation, instead of having to follow specific, rigid requirements. Employers will, therefore, have to exercise more judgement in implementing an appropriate and effective program in order to meet the intent of the standard.

I hope this helps to explain OSHA's approach to enforcement regarding the contracting community and that this may help clarify our policies in response to your member companies' concerns. Please feel free to contact us again if we can be of further assistance.

Sincerely,

Gerard F. Scannell
Assistant Secretary

Enclosure

[CPL 02-00-124 - Multi-Employer Citation Policy.]

[Correction 8/23/2004. On June 20, 1996 OSHA issued a final rule to consolidate repetitive provisions of the CFRs (FR 61:31427-31434). Section 1926.59 was revised and the requirements applicable to construction work were made identical to those set forth at Sec. 1910.1200.]

March 15, 1990

Mr. Gerard F. Scannell
Assistant Secretary for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Mr. Scannell:

This letter concerns Material Safety Data Sheets (MSDSs), and the uncertainty that many construction contractors are experiencing as to who bears the responsibility for maintaining these to ensure worker access to them.

A construction site usually consists of a general contractor and any number of subcontractors. As required by OSHA's Hazard Communication Standard (HCS), a subcontractor must have MSDSs for the hazardous substances he uses. These must be available not only to his own employees, but to any others on the site who might be exposed to those chemicals.

I have been informed by the general contractor on a job that exposure to empty containers still constitutes exposure and, since he maintains a trash bin used by everyone on the site, that he must have a copy of everyone's MSDS's. It has always been my understanding that a subcontractor need only have one set of MSDSs. However, the general contractor may have several jobs going at once and, if he leaves the site and locks his office trailer, where the MSDS's for everyone are kept, then any subcontractor could be cited for their absence.

This leaves us uncertain as to whether a subcontractor must maintain two sets of MSDSs, particularly in light of the erratic enforcement to which the construction industry has been subjected since the HCS was expanded.

I would appreciate hearing your comments on this situation, so that NAPHCC can keep its members properly informed on their responsibilities under HazCom. Thank you for your attention to this matter.

Sincerely,

Kenneth E. Krauska, President