

ANSI A10.33: Multi-Employer Worksite Safety & Health Programs

Adele L. Abrams, Esq., CMSP
Law Office of Adele L. Abrams PC

www.safety-law.com

Overview

- ASSE is the Secretariat of ANSI A10 Committee – standards for construction & demolition safety and health
- A10.33-2011 released as update to 2004 version – substantive changes made (doubled in length)
- Key concept is assignment of duties, legal responsibilities, and oversight
- National consensus standards – can be adopted by OSHA under T2 Act/OMB A-119, and enforced through General Duty Clause (Sec. 5(a)(1) of OSH Act)
- Can also be recognized by tort judges, arbitrators, and for contract interpretation
 - Often contracts are obtained by OSHA to determine relative roles of parties in enforcement and oversight of SH&E duties.

ANSI Standard Criteria

- A10.33 is one of a series of standards
- Serves as guide to contractors, labor and equipment manufacturers
- To become enforceable as a standard by governmental agencies, would have to be adopted a formal rule, using APA procedures
- ANSI standards are normally updated every 5 years; last A10.33 was in 2004
- Standards are developed by “consensus”: when substantial agreement exists among directly and materially affected interests (more than simple majority, but NOT unanimity)

A10.33 Development Committee

- Variety of interests represented on committee, including:
 - ASSE
 - Associated General Contractors of America
 - Associated Builders and Contractors
 - Association of Union Constructors
 - AFL-CIO Building & Construction Trades Dept
 - Teamsters, Boilermakers, Electrical Workers, Operating Engineers, and other unions
 - Insurance company representatives
 - Safety and health professionals/consultants
 - Many individual construction companies
 - NIOSH and OSHA

Subjects Addressed

- Definitions
 - Can be used for contract interpretation
- Project Safety & Health Requirements
 - May be tie-in with state OSHA I2P2 requirements (and forthcoming federal OSHA rulemaking)
- Disciplinary Procedures
 - Must watch for CBA provisions
 - OSHA scrutiny of incentive/discipline programs as “employee’s rights/whistleblower” issue under Sec. 11C of OSH Act
- Designation, Responsibilities, Corrective Act and Presence on Project for:
 - Senior Project Supervisors
 - Senior Contractor Supervisors

Subjects Addressed

- Construction Process Plan: document and tests
- Pre-Work Planning: project survey, hazard analysis, pre-phase planning meeting
- Emergency Plan
- Permit System
- Notification
- Training: Responsibilities, and types of training
- Changes to Protective Measures
- Owner’s Representative Role
- Non-Mandatory Appendixes
 - NOTE: Standard cross-refs A10.38 – Basic Elements of an Employer’s Program to Provide a Safe and Healthful Work Environment and also Construction Users Roundtable UP-800 Series: Program Management

Appendixes: Forms and Templates

- Model Contractor Safety & Health Program
- Job Hazard Analysis
- Monthly Status Report
- Project Safety & Health Forms
 - Construction Process Planning
 - Pre-work Planning
 - Project Safety and Health Record/Log
 - Permit Critical Operations Log
 - Permit/Critical Operations to Perform Work
 - Hazardous Condition Report
 - Project Safety and Health Poster
 - Subcontractor Safety Documentation
- Survey of Job Site
- Glossary

Variations from Old Version

2011 Version

- Scope: minimum elements and activities of program that defines duties and responsibilities of construction employers working on a construction project where multiple employers are or will be engaged in the common undertaking to complete a construction project.
- Adds that purpose is both safe and healthful work environment, and also cost effective construction.
- Includes 9 new definitions (e.g., JSA, Project S&H Plan, Owner's Designated Safety Representative, Qualified Person)

2004 Version

- Scope: minimum elements and activities of program that defines duties and responsibilities of construction employers working on a construction project where there is a single Project Constructor supervising and controlling project.
- Cost effectiveness not considered addressed.

Project S&H Requirements

- Project docs should require compliance with A10.33, and all applicable fed, state and local S&H laws by all contractors, subs, and suppliers working on project
- Design plans should improve constructability and minimize safety hazards during construction phase of project
- Each contractor shall develop, document & implement site-specific S&H plan commensurate with scope of activities, sufficient to ensure compliance
- Owner's responsibilities include being held responsible for implementing bidding system to evaluate bidders' S&H performance, and imposing special plans where appropriate, including hiring qualified S&H professional, enhanced training or more frequent inspections.

Project S&H Plan

- Responsibility of project constructor
- S&H plan should be specific to the scope of work performed, submitted to owner for review to ensure it meets both regulatory requirements and industry best practices
- Document must be in writing (Forms in Appendixes)
- Owner's designated safety rep must certify in writing that plan is adequate for work to be performed and meets company and regulatory requirements.
- Plans must be available to all construction workers on the project.
- Contractors or personnel under owner's control but not under project constructor must follow the minimum rules in the Project S&H Plan.
- Plan must include:
 - Description of S&H responsibilities, authority and supervision at all levels (project management → individual craft crew leaders, plus competent persons)
 - Evaluation of contractor S&H plans to determine if appropriate
 - Monitoring/documenting implementation of the plans
 - Maintenance of accurate I/I and incident records
 - Assessing contractors' supervisors' qualifications
 - Ensuring all imminent danger conditions are immediately reported along with actions to control or abate hazard
 - Ensuring work stops at such locations until hazards are corrected

Project S&H Plan

- Where senior management determines that a contractor has a pattern of non-compliance, written note of deficiencies is required, along with re-evaluation or revision of plan
- Where pattern of non-compliance, disciplinary actions shall be taken
- Frequent communication updates to ensure corrective actions taken with each contractor designating one person with authority and responsibility for enforcing S&H plan
 - “Designated felon”?
- Monthly status reports to reflect current status of project, safety audits and IH monitoring (forms in Appendix C)
 - Reports would be posted at readily accessible locations (discoverable by OSHA)

Disciplinary Procedures

- All contractors must have minimum accountability policies, procedures and penalties (including termination of contracts/subcontracts) for on-compliance with S&H plan
- Contractors must have a recognition program for excellence by individuals, teams or contractors
- New OSHA Policy on Incentive & Disciplinary Programs (re: injuries/illnesses) MUST be followed!!!
 - Released 3/12/12:
<http://www.osha.gov/as/opa/whistleblowermemo.html>

Senior Project Supervisor

- SPS has “final authority and responsibility” for project S&H plan, and must:
 - Ensure correction/abatement of hazardous conditions
 - Verify that competent persons are designated by contractors/subs and keep list of names and qualifications
 - Monitor project at least daily for potentially hazardous conditions
 - Immediately notify responsible contractor and any exposing employees of conditions that may cause I/I
 - Maintain daily log to document occurrences related to S&H plan (I/I data and other metrics, current list of senior contractor supervisors, status of safety-related permits)
 - Take action in imminent danger situations
 - NOTE: A10.33 says “No work shall be performed on the project unless the senior project supervisor or designated representative(s) is present on the project”!

Senior Contractor Supervisor

- Each contractor must designate a SCS with final authority and responsibility for the contractor's S&H plan. No work is to be performed by the contractor unless its SCS is present.
- SCS is responsible for:
 - Ensuring compliance with standards and correction of all hazardous conditions
 - Designating competent persons in writing
 - Auditing contractor S&H documents weekly (forms in Appendixes D-6 and E)
 - Conducting daily inspections and documenting and correcting all hazardous conditions
 - Reporting/documenting all I/I, incidents and near misses, and investigating and implementing measures to prevent recurrence
 - Ensuring all employees are adequately trained and aware of hazards, controls and safety rules, and emergency action plans (ref. A10.26 Emergency Procedures for Construction & Demolition Sites)
 - Ensuring equipment is free of hazards and inspected before use
 - Ensuring JSA is developed for contractors' scope of work and communicated to all workers (Appendix B)
 - Ensuring workers are fit for duty and free from impairment
 - Ensuring access to first aid supplies, water, hygiene facilities, and PPE
 - Ensuring disciplinary rules are applied appropriately

Construction Process Plan

- The CPP describes construction sequence and procedures (including temp structures, shoring and bracing, cranes and derricks, traffic patterns, schedules, utilities, etc.)
- Checklist of tests including: concrete slump, soil cohesion, load capacity, air monitoring (Appendixes D-4, D-5 and E)
- Timetable and list of those responsible for conducting tests and approving continued work based on test results.

Pre-Work Planning

- Pre-Phase Planning Meeting to be held between affected contractors SPS and superintendents to review hazard assessments, plans and methods to safely execute work for each project phase.
- Before starting work, each contractor does physical survey ("walking the site"), reviewing documents, discussing with other entities
- Results of surveys must be communicated to project constructor
- Hazard analysis must be done at initiation of project (Appendixes A, B, D and E)
 - Addresses all critical stages of work and ongoing non-routine activities
 - Updated whenever changes are made to construction process to address non-routine hazards
 - JHA required where tasks are highly hazardous (e.g., confined space, critical lifts)
 - Employees must be involved in worksite safety assessments and help ID hazards and recommend corrective actions

Emergency Plans and Permits

- Project constructor must prepare project-specific emergency plan, distribute to all contractors on site
- Standard references A10.44 (LOTO) and Appendices D-4 and D-5 concerning permits required for confined space, hot work, critical lists.
- Owner is to inform project constructor of such site conditions that require permits in advance or present special requirements (hidden utilities, chemical hazards, etc.)
- Project Constructor must notify owner of high hazard activities, chemical, critical structures, complex processes that will be used or exist during construction
- Each Specialty contractor shall communicate to employees and supervisors procedures for permitted activities.

Training & Changes to Measures

- When a protective measure is altered or removed (e.g., railing or guard), contractor shall provide alternative measures with equivalent protection, and receive written authorization in advance from project constructor to proceed.
- A10.33 provides information on supervisory and employee training, including:
 - Project Safety Orientation
 - Job Specific Training
 - Site-Specific Training
 - Safety Meetings

Owner's Representative

- Owner must have a designated S&H representative, who must review with the owner the project's organization to ensure continuity and accountability for safety
- The owner's rep shall regularly review the project to determine effectiveness of the project S&H plan
- Non-compliance with the plan or programs must be corrected.

Other Information - Appendixes

- Appendix A: Model Contractor Safety and Health Program (from OSHA Handbook for Construction, modified to concur with A10.33 language and industry usage)
- Appendix B: Job Hazard Analysis explanation and model form
- Appendix C: Monthly Status Report
- Appendix D: Project Safety & Health Forms (various plans and phases)
- Appendix E: Survey of Job Site
- Appendix F: Glossary of terms

Questions?

Adele L. Abrams, Esq., CMSP

301-595-3520

safetylawyer@aol.com