

# Occupational Safety and Health: *Minimum Standards are Just Never Enough*

Prepared by:  
Marc K. Shaye, Esq.  
*Lippitt O'Keefe Gornbein, PLLC*

**LORMAN**<sup>®</sup>

Published on [www.lorman.com](http://www.lorman.com) - January 2020

Occupational Safety and Health: Minimum Standards are Just Never Enough, ©2020 Lorman Education Services. All Rights Reserved.

## INTRODUCING

Lorman's New Approach to Continuing Education

# ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ✓ **Unlimited Live Webinars** - 110+ live webinars added every month
- ✓ **Unlimited OnDemand and MP3 Downloads** - Over 3,800 courses available
- ✓ **Videos** - More than 1,900 available
- ✓ **Slide Decks** - More than 3,000 available
- ✓ **White Papers** - More than 1,900 available
- ✓ **Reports**
- ✓ **Articles**
- ✓ **... and much more!**

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



**Get Your All-Access Pass Today!**

**SAVE 20%**

Learn more: [www.lorman.com/pass/?s=special20](http://www.lorman.com/pass/?s=special20)

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

\*Discount cannot be combined with any other discounts.



# Occupational safety and health: Minimum standards are just never enough

By Marc K. Shaye, Esq.

Having represented clients in workplace health and safety for more than 30 years, I have realized there is one inescapable truth: Sometimes no matter how vigilant you are about safety, injury and fatalities occur.

Doing all you can, however, can minimize, if not totally eliminate the unintended consequences. I have chosen four case studies to share, which arose from personal experience and frustration borne out of tragic circumstances. All of the cases resulted in fatalities. Could they have been prevented? You decide.

## **Case #1: Blood Plasma Processing Facility**

A sophisticated and complex technology required the use of large pressurized vessels -- large enough for a worker to climb into for maintenance. The accident was on the eve of a three-day holiday, and the late afternoon shift was performing a routine maintenance purge of the tank system. The shift foreman, known to his fellow workers as the "wizard," was going through the checklist requirements to ensure the tanks were cleared and cleaned for the next processing batch. The name "wizard" came comfortably to this young man who had scored high marks in every safety program provided by his employer. He also taught his fellow employees the intricacies of the job and the safety requirements for operating all aspects of the system.

The evening of the accident, the shift foreman was aware that a critical pressure valve was not working properly. For whatever reason: constraints of time; his experience operating the equipment; and the assumptions he may have made about a relief valve protecting against pressure build-up, the "wizard" applied more and more pressure to the vessel. As he stood over the large steel lid cover to peer through the observation window, the bolted lid blew out and drove him several feet across the room to his death.

The ensuing investigation raised a number of concerns about safety, including the security afforded by the bolts on the lid cover, which were discovered to be either defective or that an insufficient number of bolts were used. Each of these concerns, including the requirements for using bolts and discarding defective bolts was addressed in detailed protocols developed by the employer. Through



training and safety programs mandated for each employee, these protocols were reinforced on a regular basis. In fact, it was apparent to the investigators that not only did this employer have a strict safety program, but that its protocols went beyond the regulations of both the Occupational Safety and Health Administration and the Food and Drug Administration for a facility that processes blood plasma.

### **Case #2: Water Main**

A construction project in Ohio involved a 96-inch water main that stretched over two miles and included the installation of manhole entrances. The circumference of these portals was very large and required temporary metal covers as construction proceeded. The covers, designed with eyebolt attachment points, could be folded back in their middle. Each day the covers were lifted on and off the shaft openings by a crane. On the day of this accident, one of the workers rode the cover, and when the cover folded, the instability caused the employee to fall 65 feet to his death. Workers had been warned not to ride the cover. The company claimed that had a supervisor been present that morning, the worker would have been ordered off the cover and reprimanded for this safety infraction.

### **Case #3: Retractable Safety Line**

The employer had a safety program with an outstanding national reputation. It mandated that all ironworkers wear a safety line with a retractable unit attached. A worker was setting deck plates on the top of a convention center expansion when he fell 65 feet to his death through a hole in the flooring. The retractable safety line, which had saved the lives of eight of the employer's workers over the years, failed.

The employer commissioned specialized laboratory studies on the equipment to determine why this retractable unit malfunctioned. Throughout six months of investigation by the federal authorities, no evidence was uncovered that suggested any safety standard had been breached. The government did not issue one citation in the matter.

### **Case #4: Staging Trusses**

An ironworker close to retirement took the assignment to earn enough money to go on a fishing trip to Oregon with his sons. The work involved repositioning 75-foot trusses from one staging area to an assembly area. The units weighed in excess of 30,000 pounds and were handled by a crane.

The construction site foreman convened a meeting of his crew before the start of work that night. As was customary, every detail of the work was reviewed, including safety procedures. The crew was



experienced and had done this procedure at least 25 times. The truss, with an eccentric plate attached, arrived at the assembly area. While attempting a controlled descent of less than six feet, the truss flopped to the ground. The employee was struck from the descending steel and was killed. He was standing close to other workers who were sure he knew that the descent had been initiated. His fellow workers were puzzled why he moved to a spot where he was in certain danger rather than move a few feet back to where he first stood.

### **Who is Responsible?**

In today's corporate climate where accountability has new and far-reaching consequences, managers and corporate officers must view workplace health and safety issues as priorities. One possible scenario when a worker dies on the job is the potential for criminal prosecution. In the case studies provided, this potential was never realized; yet, the consequences to personnel and organizational objectives were devastating.

Making safety a value is embodied in the Corporate Code of Ethics developed by the National Safety Council, <http://www.nsc.org/Pages/Home.aspx>. The Code calls on all corporations, businesses and employees to adopt an Occupational Safety and Health Code of Ethics that establishes safety and health leadership, responsibility and accountability.

- Adherence to the Code will: Commit organizations to making safety and health a core value shared by each employee.
- Recognize safety and health cannot be compromised in any decisions.
- Establish an effective system of accountability to ensure that hazards are identified and mitigated.
- Establish a goal of zero injuries and illnesses and the will to achieve it.
- Confirm the belief that all injuries are preventable.
- Create a work environment that fosters employee and management participation and employee empowerment.

### **About the Author**

*Attorney Marc K. Shaye lives in Franklin MI. He has written extensively on environmental law, hazardous liability, waste remediation and emergency response. He can be reached at [shayemk@aol.com](mailto:shayemk@aol.com).*

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.