



Worrying Challenges in Performing Embedded or Plant Shutdown Work

Insights

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After 35 years of practice, certain issues keep me awake at night. One concern is about contractors working onsite or embedded in a working plant or other facility. Examples include year-round or shutdown work at power plants, pulp and paper mills, refineries, and other complex operations. These types of operations pose difficult issues involving locking out and eliminating a wide variety of hazards, such as evaluating Confined Spaces or Permit Required Confined Spaces (PRCS), and anticipating site-specific industrial hygiene, fall-protection, and electrical hazards. Plant maintenance crews have my respect because it's amazing that anyone, even with superpowers, could keep track of the miles of piping and electrical cables, and the everchanging physical plant and production processes.

Both the owner and the contractors have strong reason to ensure that contractors and subs are aware of all site-specific hazards, so I never ascribe bad motivation to owners. Nevertheless, these sophisticated sites present hundreds of chances for a contractor to be caught unaware of a unique site hazard.

Let's outline a few challenges:

- No contractor, even if embedded year-round, can know a plant as well as the owner.
- Processes changes can have unanticipated affects on worker safety. Safety and supervisory personnel with whom a contractor deals may not be aware of a rerouted pipe or a change in chemicals used in the water purification process that alters Lock Out procedures or introduces a hazard to a previous non-permit confined space.
- Plant Safety personnel may not be responsible for environmental compliance and may be unaware that changes made to address water or air pollution concerns can affect hazards to which contractors are exposed.
- Good owners want Lock Out to be properly carried out and may require a Contractor to follow the owner's LOTO procedures, or more commonly to require owner personnel to perform necessary lock out. This is a reasonable strategy, but what does a contractor do if the LOTO procedure is inadequate or wrongly performed.
- Other contractors on site may interfere with scaffolding, create fall hazards, or otherwise expose a contractor's employer to hazards.

Rule One: A Contractor remains responsible for protecting its employees and complying with OSHA standards.

No employer may rely upon another employer to protect his or her own employees.

A contractor must still evaluate the work, develop a site safety process, do daily safety briefs, and determine the site-specific training, procedures, and PPE. If the contractor gets it wrong, even because of erroneous information from an owner, OSHA will cite the contractor. More importantly, contractor employees may be injured or killed.

Now, consider that an owner may honestly be determined to prevent injuries and violations by enforcing the owner's procedures, but what if they are wrong, or if the owner's personnel wrongly evaluated a confined space or did not lock out all energy sources? Steam, pressurized liquid, low O₂, and H₂S are unforgiving.

Basic Legal Principal ... sort-of.

Common sense suggests that a contractor should be held to a lower standard of knowledge of the site and its hazards, as one court concluded:

... it is impossible for a particular employer to anticipate all the hazards which others may create as the work progresses, or to constantly inspect the entire jobsite to detect violations by others"). Gulf States, Inc., 7 O.S.H. (BNA) ¶ 2152 ALJ Nov. 30, 1979) quoting Grossman Steel & Aluminum Corp., 4 OSH (BNA) ¶ 1185 (O.S.H.R.C. May 12, 1976).

To establish constructive knowledge of the hazard. "The test is whether the Secretary established that [Jacobs] could have discovered the violative condition through the exercise of reasonable diligence." Jacobs Field Services of N. Am., Inc., & Its Successors, Respondent, 2015 O.S.H. Dec. (CCH) ¶ 33445 (2015)

In practice, OSHA does not waver in its conviction that the exposing employer has the duty to protect its employees ... period.

Commonsense Responses.

You will never be able to obtain the same level of knowledge as the owner, so document your efforts to do so, and to address unexpected hazards.

Confined Spaces – Do not accept another parties' evaluations without making some effort to confirm. Based on the facts you possess, conduct your own evaluation using your procedures, and if you decide that it is a PRCS, work with the owner on this issue.

Never violate your own procedures to reclassify a space as non-PRCS unless that's the proper decision.

Owners have an interest in limiting or eliminating as many PRCS as possible. That's reasonable.

Neither OSHA or employers like PRCS. Owners or other contractors may push to classify a space as non-PRCS. Listen to the arguments. The other party may have more information and be correct but exercise due diligence to make this determination.

Involve and educate your employees who manage the owner client so tat you can address these safety issues while protecting a vital customer relationship.

Lock Out - Walk with owner employees as they carry out lock out. Your people may be less knowledgeable about the site than the owner's personnel, but they can confirm that the LOTO was done in compliance with the owner procedures. If an owner refuses to compensate for the time spent shadowing the owner employees doing LOTO, ask them to consider how it would look in later litigation against both parties if they refused to authorize a reasonable request for an additional set of eyes.

If a site does not have adequate IH testing to justify evaluations, conduct your own testing and monitoring.

Check for stairs with inadequate railings, noncompliant scaffolding, and nonroutine work requiring fall protection, lifts or scaffolds.

Authorize supervisors and foremen to refuse work reasonably considered unsafe.

Above all, do whatever it takes to work with an owner and other contractors to ensure safety. Involve the necessary managers who bid work and maintain customer relationships.

Related People



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