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What Consultants Need to Know and Do About AIHA/ANSI Z10

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In July 2005, the American Industrial Hygiene Association (AIHA) and the American National Standards Institute (ANSI) released AIHA/ANSI Z10-2005, Occupational Safety and Health Management Systems (ANSI Z10). It will no doubt be a seminal event in the history of our profession and in years to come will prove to be a major vehicle by which future safety efforts are driven. The reader is referred to Fred Manuele's article in *Professional Safety* entitled "ANSI Z10: A New Benchmark for Safety Management Systems" in which he says the standard "will have a significant and favorable impact on the content of the practice of safety..." (*Professional Safety*, Volume 51, No. 2; page 25). Further evidence of the impact of this standard can be found in Adele Abram's article in the same journal just this past June entitled "Legal Perspectives on ANSI Z10". In this article Ms. Abrams lays out a clear case for the significant implications for safety professional (*Professional Safety*, Volume 51, No. 6; pp. 41-43).

Since last summer, there have been a multitude of opportunities for safety professionals to learn more about this standard, including an ASSE-sponsored audio-conference, presentations at the PDC in both 2005 and 2006, and articles by various safety professionals in *Professional Safety* as well as several of the Practice Specialty newsletters. The following article is the Consultants Practice Specialty's (CPS) attempts to weigh in on this critical document and give our membership some information and ideas about how it will impact our practices. It will also provide suggestions on how consultants can begin to prepare for and be proactive about the changes that will come from this Standard.

The focus of this article will not be to provide an exhaustive description of ANSI Z10 nor will this article attempt to cover key components; that has already been done quite well in the articles referenced above. Safety consultants are advised, however, to make it a priority to obtain a copy of ANSI Z10 and read it thoroughly, if they have not already done so. It is this author's perspective that the implications for safety consultants are important and require some immediate proactive strategies regardless of whether the consultant is in a solo private practice or a large multi-office, multi-state operation, or anything in between. The obligations and activities addressed in the following paragraphs fall under two separate and distinct spheres – the obligations to our clients and the legal implications for our practices.

Safety consultants need to take some time to notify their clients about the release of ANSI Z10, describe fully its major components, and engage in a dialogue regarding potential long-range implications to specific company safety programs. In order to fully digest ANSI Z10 and determine a course of action, this dialogue will need to occur over a period of time, involving perhaps as much as six months or more of intense scrutiny and review, depending upon the sophistication of the client's existing safety management program.

Consultants must be certain to advise their clients about two key areas that have significant financial and legal implications; the first that OSHA may in time use ANSI Z10 as a justification for General Duty Clause citations and second that OSHA will be required to consider ANSI Z10 whenever it once again takes up the development of a safety and health management standard in its regulatory agenda.

In 1989, OSHA established non-mandatory guidelines for the establishment of safety and health management systems for employers. According to the OSHA website, "...effective management of worker safety and health protection is a decisive factor in reducing the extent and the severity of work-related injuries and illnesses. Effective management addresses all work-related hazards, including those potential hazards that could result from a change in worksite conditions or practices. Additionally, it addresses hazards whether or not they are regulated by government standards." (<http://www.osha.gov/SLTC/safetyhealth/index.html>)

OSHA has devoted numerous pages of its website to the promotion of these guidelines, including a widely distributed publication and an online e-tool. OSHA Compliance Health and Safety Officers spend time during their compliance inspections discussing these programs and how to implement them. In addition, other OSHA personnel regularly discuss the importance of employer-based safety and health management programs in their public presentations and other engagements. Moreover compliance with this OSHA guideline is a fundamental expectation for companies seeking Voluntary Protection Program (VPP) status.

Shortly after the initial publication of these guidelines, OSHA further proposed the creation of a draft Safety and Health Management Standard in the 1990's. Although the effort was later withdrawn from the regulatory agenda, OSHA has consistently signaled that it believes in the importance of a standardized safety and health management system for employers. When and if the agency will ever finalize its earlier efforts and create an enforceable Standard remains unknowable, but a proactive company has by now modeled their safety management program at least in part after the tenants of the OSHA guidelines.

ANSI Z10 has many components that are similar in content and proposed practice to the OSHA program, however, ANSI Z10 goes much further in its requirements for the use of risk assessment hierarchies and safety through design mandates. It uses a continuous improvement model based upon the

Plan-Do-Check-Act quality management system. As such, its focus lends itself more thoroughly to the management of a safety program.

While neither the OSHA Safety Management Guidelines nor ANSI Z10 are mandatory standards, in time it seems likely that the ANSI Z10 Standard will become the benchmark around which safety and health management programs are measured and acquire a quasi-official status. Once this occurs, the typical course of action for OSHA would be to begin using ANSI Z10 to support a General Duty Clause citation following a workplace inspection. While it would be surprising to see such a citation in the next year or two, clients need to become aware of the near-term liability.

In addition, as Adele Abrams discusses in her *Professional Safety* article, OSHA is mandated under the requirements of the National Technology Transfer and Advancement Act (NTTA) (15 USC §272) and the Office of Management and Budget's (OMB) Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" to consider any existing voluntary consensus standards instead of developing their own standard. This must be done unless it would be counter to existing law or not practical to do. (Abrams, *Professional Safety*, p. 41).

All of the above point to the need to engage in meaningful dialogue with clients now about the state of their safety and health management systems. For those clients who are ahead of the game and already meet or exceed the OSHA guidelines, it is now the time to begin to work with them to be certain that they now meet or exceed ANSI Z10, which requires a full and comprehensive risk assessment/hierarchy process.

In addition to the implications for consultants and their relationships with their clients, the increased liability incurred directly by the consultant surrounding ANSI Z10 is deserving of more than a little of our time and consideration. Adele Abrams summed up the issue exceedingly well when she said "SH&E professionals have an obligation to keep abreast of the latest knowledge and to include, to the maximum extent feasible, best practices on their safety programs and consultation activities. The fundamental difference between an ordinary suit for negligence and a suit for malpractice lies in the definition of the prevailing standard of care". (Abrams, *Professional Safety*, p. 43)

Abrams goes on to discuss how this obligation translates into the development of a professional standard of care; the "reasonable person" burden is often proven through the use of voluntary standards that have become commonly accepted practice. These professional standards of care are easy to document in litigation and serve as a means to prove the evidentiary burden. Finally Abrams indicates that professional liability or personal tort liability is proven by demonstrating a willful ignorance of best practice, such as ANSI Z10 is expected to become in future years.

Consultants must be vigilant about protecting their practices from litigation through two separate but equally vital elements – the consistent use of carefully worded contracts and insurance. Interestingly enough, the latter issue is one that the Consultants Practice Specialty has been giving significant time and attention of late in response to an expressed need by the members of the Consultants Practice Specialty. In this issue of *The Advisor* several articles can be found; one that summarizes the results of a recent survey we conducted among our members, one that provides general information about the types of insurance and how to go about determining what and how much is needed by an individual consultant.

No additional space in this article will be given over to discussion of the importance of consultants using insurance to manage liability, however, contracts and other written documents arising from the consulting relationship are another critical method safety professionals have to protect themselves as well as make clear to clients exactly what services are intended to be provided and under what specific circumstances. Through carefully worded contracts, ANSI Z10 (or some other legitimate method) should guide the consulting relationship or project and form the basis of recommendations to clients. An obvious location for language to this effect is in the Scope of Work section of the contract where the specific activities of the consultants are addressed. If the Scope of Work involves a review of a client's existing safety and health management program for the purpose of making recommendations for change, it is even more essential that some standard be utilized for the review and recommendations and ANSI Z10 provides a sound basis.

In addition to contract language when appropriate, reports and other documents should reference ANSI Z10. These references can be specific, as when a client's safety management system components are being addressed and a particular section of ANSI Z10 can be referenced such as the development of a process for preventing, preparing for and responding to emergencies or the development of a feedback process on the client's program by interested parties. They can also be more general and even go so far as to be a standardized sentence or two that ends all client correspondence verifying that the consultant's work is done under the auspices of ANSI Z10.

Finally, consultants with websites that advertise their services and provide information might want to consider adding some information, references, and links to ANSI Z10. This not only serves to continue to inform existing and potential clients as well as visitors, but also further reinforces the consultant's commitment to the utilizing ANSI Z10 in all aspects of their practice. Other promotional materials such as brochures and company profiles can also incorporate ANSI Z10 references.

In summary, ANSI Z10 is a voluntary consensus standard that merits the rigorous attention of every safety consultant. Some specific actions that can be taken now and in the future include:

1. Obtain and carefully review a copy of ANSI Z10.
2. Read the two Professional Safety articles identified above written by Fred Manuele and Adele Abrams.
3. Be on the lookout for seminars and newsletter articles detailing ANSI Z10 and make an effort to attend them.
4. Encourage your local ASSE Chapter to sponsor a monthly technical meeting on this topic.
5. Initiate a dialogue with current clients about how their safety and health management programs measure up to the elements of ANSI Z10. Encourage clients to engage in a specific and documented review process matching their current program against ANSI Z10.
6. Consult with your legal council about methods to incorporate the use of ANSI Z10 into your standard contract language and/or develop a few key phrases or paragraphs that can be incorporated into either existing contracts or used as an addendum when a client's contract document is utilized.
7. Evaluate methods that can be used to incorporate ANSI Z10 into regular documents and reports submitted to clients.
8. Review your current professional and general liability insurance policies and be thoroughly familiar with the expectations for conducting your consulting activities under the current standard of care.
9. Incorporate references and links to ANSI Z10 on your website or other promotional materials such as brochures and company profiles.

The Consultants Practice Specialty encourages the continual dialogue on the subject of ANSI Z10 and its impact on our practices. If you have additional comments or discussion points on this topic, please feel free to submit them to any of the members of the CPS Advisory Board, whose contact information can be found on the inside cover of every newsletter.