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Employers Face Numerous OSHA & EPA Compliance Issues In The Aftermath Of Hurricane Katrina

The employer has many obligations under OSHA relating to the reopening and/or clean-up of worksites in the aftermath of Hurricane Katrina which include:

- providing potable water for drinking and washing,
- providing toilet and sanitation facilities,
- inspecting electrical and other equipment prior to restarting it to ensure that it has not been damaged and will create an electrical or other hazard,
- inspecting chemicals and other hazardous materials stored on site to ensure that the containers are not damaged or leaking and will not cause a safety or health hazard.

Since many of the flooded facilities may have had toxic or infectious materials (potentially typhus, cholera, tetanus) in the floodwater from outside sources, the employees who are involved in the clean-up will need to be trained about these potential hazards and provided with personal protective equipment (gloves, boots, goggles, other clothing) prior to performing the clean-up. First aid must be made available which may require training of employees and obtaining first aid supplies.

If the facility has sustained structural damage, the employer cannot allow the employees to enter until the hazard has been assessed and interim protective shoring or other action has been put in place. If employees refuse to work because of a belief there is imminent danger, the employer must recognize that this is conduct protected from retaliation or other adverse action until the employer can objectively demonstrate that there is no such hazard.

If any employees contract an occupational disease or illness from exposure to any flood related hazards, this disease may need to be recorded on the employer's 300 OSHA Log. If the employer determines that there has been a release of regulated substances into the air, water or ground from the site, there may be a requirement to notify the federal or state EPA and to remediate the release or spill.

If the employer reasonably expects the employee to be exposed to a health hazard in the work environment which may require inoculation to protect against a disease (particularly if the Centers for Disease Control, the National Institute for Occupational Safety and Health or another recognized health organization recommends such inoculations), the employer must offer the inoculation. The employee may decline the inoculation and the employer will, at that time, be faced with an employment decision regarding the employee's work status.

In addition, the employer must retrain the employees in the employer's emergency action plan to ensure that employees are aware of what actions to take in the event that a fire or other emergency occurs in the workplace.

If you have questions on these or any other compliance issues, please contact the Seyfarth Shaw attorney with whom you normally work or any attorney on our website at www.seyfarth.com.

