

HAZWOPER and Equivalent Training

White paper – Wm R. Bunner, CET – August, 2010

On July 7th, 2010, Federal US OSHA issued a news release that stated:

"Employees hired to be supervisors in the onshore and marine cleanup are required to receive extensive training. A rigorous 40-hour program is required under OSHA's Hazardous Waste Operation and Emergency Response Standard."

"In order to meet the certifications of this 40-hour training, a combination of classroom and hands-on, applicable experience is required. This includes instruction on the makeup and risks associated with the hazardous material(s) involved, and experience with the equipment needed for the work, safety gear and local environment."

"We have received reports that some are offering this training in significantly less than 40 hours, showing video presentations and offering only limited instruction. This training cannot be shortened to anything less than 40 hours."

OSHA either opted not to comment on, or did not detect, the practice also of claiming that individuals need not receive 40 contact hours of training because they have "equivalent" training, education, or experience.

The HAZWOPER provision for accepting "equivalent" training, education, or experience, is codified at 29 CFR 1910.120(e)(9) & 1926.65(e)(9), and 40 CFR 311(e)(9), as follows:

Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training "equivalent" to that training required in paragraphs (e)(1) through (e)(4) of this section shall not be required to provide the initial training requirements of those paragraphs to such employees and shall provide a copy of the certification or documentation to the employee upon request. Equivalent training includes any academic training or the training that existing employees might have already received from actual hazardous waste site work experiences.

According to Webster's Dictionary, "equivalent" means: *"equality of quantity, value, force, meaning, etc."*

What are the topics for which "equal" meanings should be able to be documented in order to legitimately claim that one has already received equivalent training, or has had equivalent site work experiences?

According to paragraph (e)(1), such training or experience will pertain to:

- **Hazardous substances**
- **Safety (relevant to uncontrolled hazardous waste sites)**
- **Health hazards (relevant to uncontrolled hazardous waste sites)**

This training is to include, as it pertains to uncontrolled hazardous waste site hazards:

- **Safety, health and other hazards present**
- **Personal protective equipment (PPE) (relevant to hazardous substance exposures)**
- **Work practices to minimize (hazardous waste site) risks**
- **Engineering controls and equipment**
- **Medical surveillance requirements, including signs and symptoms of overexposure and**
- **Decontamination**
- **Emergency response plans (relevant to hazardous materials & wastes)**
- **Confined space entry procedures**
- **Spill containment program**

If one's "equivalent" training and experience is not on these topics then it is not equivalent training. Having, for example, a college degree in biology, wildlife management, sociology, business, etc., or field experience observing wildlife or enforcing laws not pertaining to hazardous waste and hazardous materials, is clearly not equivalent training.

Historical perspective

At the time the HAZWOPER standard was drafted, in 1985, there were many who had received training on the topics outlined above from USEPA, some State Environmental agencies, some State Fire training agencies, and from some universities and other training sources. Also, there were many workers with experience on remedial hazardous waste sites and hazardous materials emergency response actions; many of these were under the control of USEPA, the US Corps of Engineers and the US Coast Guard, all of which required approval of safety plans that included trained workers.

Conclusion

If "equivalent" training is to be legitimately claimed in lieu of the 40-hour training required by OSHA's HAZWOPER, then that "equivalent" training must be documented and reflect the relevant topics listed above. If there is no such documentation, and/or if the topics do not reflect those required by the standard, then such training and experience is not equivalent.

While OSHA may not have the funding, staffing, or interest, to make the issue of HAZWOPER “equivalent” training a priority, future exposure litigation could raise the matter of whether HAZWOPER-related training was adequate. And, certainly, claiming HAZWOPER “equivalent” training, in order to avoid spending time and money on training, could, and should, be a factor in such litigation.

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US Department of Labor's OSHA assistant secretary concerned some oil spill workers not receiving proper training

WASHINGTON — U.S. Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels today issued the following statement regarding training for Gulf Coast oil spill clean-up:

"Employees hired to be supervisors in the onshore and marine cleanup are required to receive extensive training. A rigorous 40-hour program is required under OSHA's Hazardous Waste Operation and Emergency Response Standard.

"In order to meet the certifications of this 40-hour training, a combination of classroom and hands-on, applicable experience is required. This includes instruction on the makeup and risks associated with the hazardous material(s) involved, and experience with the equipment needed for the work, safety gear and local environment.

"We have received reports that some are offering this training in significantly less than 40 hours, showing video presentations and offering only limited instruction. This training cannot be shortened to anything less than 40 hours. Moreover, computer-based training, which could be offered over the Internet, can be used as part of an overall 40-hour HAZWOPER training course. However, such training alone does not meet the full course requirements.