



# Oil Patch Quarterly

Exclusive Program Managed by Sisk & Company

Second Quarter 2008

## INSURANCE NOTES

### Independent Contractor Rules

As a general rule, the Workers' Compensation Act is intended to cover every business activity including those conducted through the services of subcontractors. A business cannot avoid being an employer merely by referring to its employees as independent contractors. The employer has the burden of proving that the employment relationship meets the requirements of Colorado law.

There may be instances where a policyholder believes that an injured worker's claim should be denied because the individual was thought to be an independent contractor rather than an employee. If it becomes evident, after analyzing the facts, that a true independent contractor status does not exist, then the individual would be considered an employee and eligible for benefits under the policyholder's policy.

If an independent subcontractor fails to maintain workers' compensation insurance for its employees, as required by Colorado law, the business that hired the independent contractor may be deemed to be the injured employee's statutory employer and thus required to provide workers' compensation insurance coverage.

### More oil, gas work leads to more deaths: Highway related accidents a leading cause

As the oil and gas industry in the United States has grown in the last 15 years, so has the industry's death rate, according to a new study from the Centers for Disease Control and Prevention.

Results from the study, presented in the CDC's Morbidity and Mortality Weekly Report (Vol. 57, No. 16), indicate that the increase in the number of operational drilling and workover rigs in the United States correlates with the number of deaths and the worker fatality rate.

In 1993, the industry had 2,146 operating rigs, 94 fatalities and a fatality rate of 25.3 deaths per 100,000 workers. In 2006, the numbers increased to 3,221 rigs, 123 fatalities and a rate of 31.9. The intervening years likewise showed a strong correlation between the number of rigs, worker deaths and fatality rates.

Between 2003 and 2006, about half of the deaths were due to highway motor vehicle crashes (27 percent) and being struck by tools or equipment (22 percent). To reduce these deaths, CDC recommended that employers work with federal and state agencies to promote seat belt use, and that public health officials work with industry groups to establish controls that remove workers from danger.

We see the same trends in the MSEA as the CDC reported from their national research. The number of struck-by accidents have been declining over the past 3 years but as a group these are very costly injuries. The single most costly injuries are the vehicle accidents that result in fatal injuries. With all the travel we do in the oil patch, vehicle safety programs, defensive driving training and safe driving safety meetings should be regular business activities.





## LESSONS LEARNED

### Overview - What is included in the average weekly wage?

The employee (and his truck) was hired to deliver goods and was paid by the mile. The employee sustained a low back injury while on the job and the claim was reported Pinnacol. Pinnacol admitted liability on the claim and used the employee pay stubs to calculate benefits. (However, when the injured employee was not hauling, the company would cover the cost of hotels for the employee.) After several months of being off work, the injured worker hired an attorney who made the claim that the employee had used the sleeper of his truck as his residence and due to the fact the injured worker was not able to drive, the employee would need to find a more permanent residence. The case went to hearing and the ALJ found that Pinnacol was responsible for an additional \$215.00 per week to cover lodging.

### The Lesson:

Anything that can be assigned a monetary value (mileage, gas money, meals, lodging, and health insurance) are included in the average weekly wage. This can raise the weekly payout to the employee considerably. If you are unsure if a fringe benefit should be included in the reported weekly earnings, make sure to discuss with the Pinnacol Claims Rep.

## Safety Culture: Moving from Good to Great

No matter what your specific business is, as a supervisor or employer/owner, you are charged with preventing employee injuries. This is a major challenge to say the least. Many companies have good safety performance while others seem to struggle. Have you ever wondered what is different and what can you do to have a good safety record? Many times the difference can be attributed to the safety culture of the business. But what does developing a safety culture mean?

The concept of a good safety culture is easy to say, but much harder to explain. There is no "standard" for what is a good safety culture. As a business owner you have experienced that safety is something well beyond regulation and is much more than compliance with the OSHA rules. A company with a safety culture has clearly defined values that are communicated by all levels of management and commitment to safety is demonstrated daily in word as well as deed. These values are ultimately shared throughout the organization, focusing on the importance of safety and keeping safety roles balanced favorably with company production or profit interests. In addition, a good safety culture promotes an open environment for resolving safety problems, questions and general concerns.

In essence, safety culture involves the values, attitudes, competencies and behaviors of a group or individual within an organization. To progress from a good to great safety culture, an organization and its people should determine what actions prove there is a commitment to safety, set goals for proficiency in safety programs and create good communication channels between management and personnel.

When you are looking at your safety program, it is important to look at your work activity from the perspective of safety, quality, cost and productivity and develop work processes that improve corporate performance in all these areas. Companies should consider opportunities to improve established procedures and work processes and then follow through on decisions/plan to improve. It is important for companies to conduct these management assessments and to evaluate whether any changes implemented have delivered the expected results. Companies with great safety cultures are always questioning the way they do things to determine if they are using the best practices to improve results and to anticipate adverse events.



## Americans Have Pessimistic View of Accident Prevention

The National Safety Council released findings from a new survey on attitudes toward safety issues. The results are disappointing because it shows nearly one-third of Americans believes nothing can be done to prevent accidental injuries. This is alarming and poses a problem for preventing workplace accidents.

The survey found that despite their pessimistic view on prevention, respondents are recognizing that accidental injuries are a major concern, and are receptive to safety advocacy efforts. "We're encouraged that Americans recognize accidental injuries as a major concern in their everyday lives," National Safety Council President and CEO Alan C. McMillan said in a statement. "However, this survey clearly shows that we have our work cut out for us in educating Americans about how to prevent injuries from ever occurring."

Some encouraging results shows that 76 percent say their companies are concerned about injury prevention at work. Sixty-one percent believe their employer is prepared to deal with emergency situations.

## OSHA NEWS

### General Industry Focused Inspections

On March 6, 2008, OSHA issued a directive that applies to Oil and Gas called "Focused Inspections." There are many details regarding this directive, but I will only focus on a couple of key points. If you want to review the entire directive, please visit the OSHA website and type 'CPL 02-00-146' in the search block. This will allow you to see a copy of the directive. Generally, this directive was issued in an effort to improve the efficiency of the inspection process for those oil and gas businesses that have met injury and illness rate criteria.

## Noise and Protecting Hearing

Millions of employees work in places where exposures to loud noises are everyday occurrences. At first, it may not appear harmful, but overexposure to loud noise can result in hearing damage or loss of hearing. OSHA provides a few recommendations to employers and employees to help reduce the risk of hearing damage:

- If it is too loud to hear another voice from three feet away, do not work without hearing protection.
- When choosing hearing protectors, such as earplugs or earmuffs, select one that fits comfortably.
- Always turn off loud machinery before removing hearing protection.
- Have an annual hearing test if you are regularly exposed to loud noise.

Contact Dan Klimek at 303-831-7100 for useful resources on a variety Noise and Hearing Conservation issues. He will provide information on setting up hearing conservation programs, and safety meeting topics.

These focused inspections will narrow the scope of Local Emphasis Program (LEP) inspections to the most prevalent hazards within each industry. There are specific criteria used for determining whether an establishment qualifies for a focused inspection.

- Compare establishment's historical OSHA-300 data with the national average rates for their industry;
- If rates are generally equal to or less than the national average – Qualified for Focused; If rates generally exceed the national average then the scope would revert to a comprehensive.

Continued on page 4 – OSHA Update





## OSHA update - continued from page 3

So how does the Focused Inspection differ? If you qualify the OSHA inspector will look for the most prevalent hazards related to oil and gas, which are: Struck-by, Falls, Caught-in, and Exposure to harmful substances. An inspector will always site safety violations that are in “plain view” while doing an inspection and the inspection may revert back to a comprehensive inspection if the OSHA inspector observes a significant number of serious safety and health hazards.

For a business to qualify for a focused inspection one of the following criteria needs to be met.

- Category 1: DART and DAFWII rates for at least two of the last three years is at or below the industry average – Focused Inspection
- Category 2: If the DART rate is at or below the national average for two or more years and the DAFWII rate is at or below the national average for only one of the last three years – may qualify for Focused Inspection



At Sisk we make every reasonable effort to help MSEA clients design and manage their loss control and safety programs. One of our new MSEA benefits is a custom website dedicated to MSEA members and all businesses working in the oil patch. Our goal for this website is to be the industry’s first choice when companies are looking for oil and gas support.

The address of this website is [www.gomsea.org](http://www.gomsea.org). There are two exciting aspects of this website.

- First, this site lists events and provides information to all businesses interested in the oil patch safety. You can even register for upcoming seminars on this website.
- Secondly, this website provides a portal to a new safety services website that is a special benefit for MSEA members. That special benefit is PetroDocs.

PetroDocs ([www.petrodocs.com](http://www.petrodocs.com)) is a new concept website that contains hundreds (and soon to be many more) of programs, presentations, safety meetings, etc. that are designed to help improve safety in the oil patch or help with OSHA compliance. As an MSEA member you will have access to the site. Check it out and since we are adding new content daily, let us know if you have problems accessing the site or finding a specific program.

## Contact Information

The Mountain States Energy Alliance (MSEA) is a not for profit association dedicated to helping members create a safer work environment in the oil and gas industry. The MSEA offers an exclusive workers’ compensation program underwritten by Pinnacol Assurance for its members. MSEA members receive a 4% discount on their workers’ compensation premium and may also qualify for a dividend payment based on favorable loss experience of the group. To see if your company qualifies for the program or for more information about the MSEA program contact one of the following.

Mike Eastop  
Dave Tacha  
Jeff Parent  
Tom Sisk

For benefit information contact:  
Todd Heiserman  
Dutch Ross

**If you have questions or comments about this newsletter, contact:**  
Dan Klimek  
Loss Control and Safety Manager

E-mail: [dklimek@tjsisk.com](mailto:dklimek@tjsisk.com)

# SISK & CO.



1700 Broadway, Suite 1000  
Denver, Colorado 80290  
Phone 888.333.6620  
303.831.7100  
Fax 303.831.7377