

Occupational Health & Safety and Archeology

by Charles M. Niquette

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Worker Safety is an issue of which all employers need more than just a passing knowledge. There are a whole host of rules and regulations that apply to the day-to-day operation of our businesses whether we do government contracting or not. Unfortunately, many of us are ignorant of our responsibilities in this arena. To address the problem directly, ACRA has formed a Worker Safety Committee, chaired by Loretta Neumann, to look into the matter of OSHA compliance in detail. At this time, the committee is considering a series of regional training courses to be held in different parts of the country, perhaps to be hosted by both ACRA and OSHA. In addition, the committee will attempt to contact OSHA in the nation's capital and to work with the agency in developing a set of guidelines that are oriented toward our profession rather than trying to make archeological field work conform to the standards of the construction industry.

To illustrate my point about employer ignorance, I am sharing with you my own recent experience with OSHA. I do so for two reasons: (1) that others may learn from my mistake; and (2) to emphasize the severe repercussions possible for those who fail to take

responsible action. For those of you who cruise the Information Highway, particularly prior to the demise of ACRA-L, the following description of events is old news. I am reprinting it for the benefit of ACRA members who are not on-line or for those who are, but missed this particular thread on ACRA-L.

My firm has been working in southeastern Indiana recently. The work we were doing consisted of a sub-surface reconnaissance of the project area. This included the recovery of solid cores and the excavation of a series of backhoe trenches. The latter were stepped so that no trench contained more than a 4 ft. vertical face, and each of these contained a corresponding 4 ft. horizontal platform before the next, and deeper vertical face was excavated. Based upon a long history of doing this kind of work, and working under the supervision and with the advice of a number of safety officials from (for example the Department of Transportation and the Corps of Engineers), we thought that we were not only legal, but that we were providing a safe working environment for our employees. Nevertheless, this was not the case.

A disgruntled neighboring landowner apparently

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Member Alert

The Labor Relations Committee of ACRA wants to alert members to closely review federal solicitations and contracts that are prepared under the Service Contract Act of 1965 (SCA). Department of Labor Wage Determinations for labor categories within your scope of work may be attached to these solicitations and contracts. Read your documents carefully, paying particular attention to Occupation Code 29020 (Archeological Technician) and Standard Clause 52.222-41 (which specifically refers to the SCA), because you will be at risk if you are not paying the "prevailing wage" as established by the Department of Labor (i.e., the wage determination).

Please refer to 28 CFR Sec. 39.170, which discusses compliance procedures; 28 CFR Sec. 4.6, which discusses wage determinations and the Service Contract Act; and 28 CFR 4.187 which discusses wage issue liabilities. To obtain copies of these documents contact your local federal bookstore, the Government Printing Office, or download them from the World Wide Web (WWW). A WWW link to the Code of Federal Regulations (CFR) is provided at ACRA's web site at <http://www.mindspring.com/~wheaton/ACRA.html>. Once at the CFR site, search on appropriate title.

For Additional information please contact Tom Wheaton (ACRA Executive Director) or W. Kevin Pape (Chair, Labor Relations Committee).

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OSHA..

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called the Indiana Occupational Safety and Health Administration (IOSHA) and reported that my firm was responsible for unsafe working conditions and that my employees were in jeopardy. The neighboring landowner was kind enough to ride with the inspector so that he could find where we were working. The end result was multiple violations. These are summarized below:

1. "Hard hats are not worn." Hard hats must be worn whenever you are working in the trenches.
2. "No shoring or other cave-in protection." This refers to units under excavation. Wood or hydraulic shoring is required within the trench on both sides around the area where the unit will be excavated.
3. "One employee is working lower than other without protection from falling material." Hard hats needed and/or don't be lower than other employee!
4. "No ladder in the trench."
5. "Spoil is stacked to edge of trench." Spoil needs to be 2 feet or more from the surface edge of the trench wall.
6. "No Hazard Communication Program (HCP) available."
7. "OSHA Form 200 is not available." This refers to a log sheet which is kept in the field for OSHA inspection. The form lists such things as people who were hurt, how long they were off work, how they were they hurt, etc.
8. "MSDS are not available." This refers to Material Safety Data Sheet (MSDS). This is a form which you receive from suppliers of equipment such as pumps, etc., which use hazardous waste (oil, gasoline etc.). The Data Sheet should be shown to all employees so they are aware of how to deal with the waste. The fact that we were NOT using any pumps or other equipment that produced hazardous waste didn't seem to matter to the inspector.
9. "Employees have not had hazard communication training."

As it happened, the OSHA inspection occurred late on a Wednesday afternoon. The inspector stated that we had one day to comply with the violations. He was informed that we would be finished with trench work on Thursday and only mapping thereafter. Therefore, he agreed, we could complete our work and work on the various violations later. When I informed him that we would be finished and therefore obviously not able to comply with some of the violations as they would no longer apply, he said that backfilling the trenches would deal with this. He wanted pictures of the trenches during backfilling and after completion.

According to the Inspector, a list of violations and fines would come in a letter in approximately 2 weeks. He indicated that it was important that the

exact number of employees working for the company (not just this project - but all projects) at this time be documented as a "discount" is given on the fine with regard to the size of the company. For example, a 60% reduction in the fine is given to a company with 25 or less employees. When the letter is received by the company (registered mail) we have 15 days to call for an "informal conference." The inspector recommended that we do this. He said that it is an opportunity to go over the violations and voice our comments. There is also the potential for a reduction in fines during the informal conference if it is agreed that some of the violations are incorrect/unjustified/unnecessary.

When I received the certified letter, I learned that these violations had generated a fine of \$11,500.00. I immediately requested and was granted an informal conference with the Indiana Director of the Construction Compliance Section of IOSHA. The purpose of such meetings are to settle the matter without litigation.

It was obvious from the very beginning of the meeting that I was the first archeologist to have the pleasure of an informal conference, at least with this particular Director. She was quite pleasant, very serious and considerably confused about the role of archeologists in construction projects. I spent a great deal of time talking to her about the purpose of backhoe trenching, our need for vertical faces (as opposed to sloped walls) and the fact that we are very frequently working well ahead of any active construction in a particular project area. I tried to convey to her that worker safety was not a frill or a luxury, but that it was good business. I told her about my firm's past experience in working with DOT and Corps safety officials and the actions we had taken in this particular instance, based on our prior experience with these various safety officials, to insure that no worker was placed at risk. She was intelligent, attentive and asked very good questions.

In the end, all of the violations were upheld, but the penalties were drastically reduced. My fines came down from \$11,500.00 to \$500.00. Both the Director and I consider this first brush with IOSHA to be a warning, and I fully expect them to throw the book at me if we are found in violation in the future. I do not intend for this to happen!

I did learn that you can ask for a voluntary inspection on future jobs. This allows you to be inspected without fear of penalties, but provides you with the information necessary to be legal if you aren't already. As ACRA's Worker Safety Committee will be reporting to the membership in the future, there are also a whole host of training programs available for you and your employees, but most are oriented toward construction workers as opposed to archeological field work. Still, if you are working in alluvial soils - most of which will be classified as Class C, it is well worth the effort to find out, without penalties, if you are legal or not! You also should know that each state has its own state plan for OSHA compliance. Some states have laws requiring that their state plan be "no more stringent" than the federal law and others may be more stringent than the federal law. In other words, you need to be aware of both in any given state in which you work.

Insurance For Your Business: Do You Know What You Need?

Over the next few issues of the ACRA Newsletter, I will review some key points to consider when implementing or reviewing your insurance program. As some of you know, I was a speaker at the ACRA National Conference in Washington last October. Because some members were not in attendance and there was a concurrent seminar, it was thought that a review of key points discussed there would be helpful.

The major point I want to emphasize this month is that insurance should be an integral part of your business plan. Every company has their own particular needs. One company may require coverage that another does not. That is why every company needs to take the time to fully evaluate their potential exposures to losses.

Many companies simply do not consider insurance to be a "major issue". Often times the cost of the insurance is focused on, rather than the coverage it provides. Obviously cost is important, but I have yet to have anyone mention cost once a loss has occurred.

I would strongly recommend that you take the time to review your insurance program. Call your agent and set an appointment to review your coverages. Ask for suggestions on how to improve it. Be comfortable that it is the right program for your company.

In the next issue I will give some suggestions on Professional Liability insurance.

Chris Butler
C & D Butler, Inc.

Professional Liability Insurance

We have received a number of requests recently for information on professional liability insurance coverage. We have given these individuals the phone number of our agent, who is also an associate member of ACRA. This is one of the benefits of membership, so please keep this confidential within the ACRA community, otherwise there is not much point to providing such services and searching out discounts for you. If you are being required by a client to have professional liability insurance or would like to find out whether you need it, please call Tom Wheaton at 770 498 4155.

Communications and ACRA-L

If there is anything you would like to know about ACRA, please ask Tom Wheaton or one of the officers, or send a letter to the editor. This newsletter is one of our main channels of communication with the membership, please help us communicate better with you by supporting it and asking questions and raising concerns.

For those of you who have e-mail and want to keep abreast of the latest issues and developments in CRM contracting, and who would like to participate in national discussions with other contractors, federal agency personnel, non-profits and others dealing with the overriding issues of CRM, consider joining ACRA-L. This past fall, the list subscribers discussed OSHA problems, non-profits versus profits, a national conference to rewrite how historic preservation is conducted in this country, Section 106, lobbying congress, and other issues. The discussions between SHPOs and contractors, non-profit and for-profit business owners, historians and archaeologists, etc., were always interesting and informative, even if a little heated once in a while. We have moved ACRA-L to a new provider (more expensive but worth the extra cost). If you would like to join in the fun, send this one line message, SUBSCRIBE ACRA-L <your name here as you would like to be listed> to this address, LISTPROC@LISTPROC.NONPROFIT.NET Please do not send anything else in your message. Remember that the mailing list is case insensitive, unlike the web. Once approved you will get a list of commands and a message explaining the list rules.

For those of you with World Wide Web access, either through an online service (AOL, CompuServe, Delphi, etc.) or a direct internet connection, drop by our web page at <http://www.mindspring.com/~wheaton/ACRA.html>. Remember that the web is case sensitive. Check out your company's listing as an ACRA member, ACRA suppliers, general information on ACRA, and links to other web sites dealing with preservation law, federal procurements, and online databases in various disciplines, etc.

Fund Raising

A little less than one-half of the membership has paid 1996 dues. We greatly appreciate your renewal and are glad that we have provided a service that you continue to support. Last year we accomplished a lot and look forward to an even more successful year in 1996. We have some very serious issues to deal with this year, and it will take the concerted efforts (mostly uncompensated) of our membership and board to handle them. To keep things running and to provide you with the information you need to make critical business decisions costs money. Mailings, brochures, this newsletter, ACRA-L, organizing a national conference, accounting, administration (at cost), governmental relations, etc., are not free. We ran a deficit last year, and it will take time to pay that off. Compared to most trade associations we have a very limited budget. We need every one of you to send in your dues as soon as you can, and to enlist new members to spread the burden.

We Are Not Alone!

It has come to our attention that non-members are reading our newsletter. While this is flattering, and it is encouraging that others are interested in our attempts to professionalize cultural resources consulting, there is not much point in charging some readers for the newsletter when others get it for free. Rather than passing along the newsletter for free, we suggest that you encourage others to join ACRA as associate or full members. We could certainly use the income.

Consultant List Sent to SHPOs

Hopefully by the time you read this, ACRA will have sent out our ethics statement and a list of our full members to all 50 SHPOs and to Puerto Rico and the U.S. Virgin Islands. If, in response to our recent mailing, you did not explicitly give us your permission to use your company, you are not listed. In our cover letter we have requested the SHPOs to use this list when they are asked for recommendations on cultural resource consultants. Some states do not maintain lists, and perhaps our list will be used by such states as their only list. Other states already have a list, and we hope our list will be sent out in addition to their list. This is not certification, and our cover letter makes this very clear. It is reiterated on each page of the list that ACRA makes no warranty, explicit or implied, that a particular firm can successfully complete a specific project. The only thing we can say is that the listed members subscribe to our code of ethics and goals to professionalize the industry. Please remember that our ethics statement requires that you not conduct a project for which you do not have the qualified staff. In cases where you wish to pursue a project, and you do not have the qualified staff, you should either suggest someone else who does have the staff or you should hire the appropriate staff or subcontract the work.

ACRA Committee Reports

EDUCATION COMMITTEE REPORT

Most of the activities undertaken to date have focused on attempting to establish the nature of ACRA member concerns regarding education in cultural resource management. Input has been forthcoming from committee members and information has been distilled from ACRA-L as well, especially when the latter was burning up the Internet lines two months ago. Two areas of concern have been identified from the information so far:

1. The need to establish formal internship programs linking educational institutions with CRM companies.
2. The need to lobby academic institutions to restructure formal training programs in History, Architectural History and Anthropology to accommodate CRM tracks.

Of the two identified concerns, internship programs appear to be less controversial and already exist in several institutions. We are currently assembling a list of these programs. We are also trying to coordinate a series of activities with universities that will begin with seminars and/or lectures that will apprise students of career tracks in CRM. The University of Maryland has expressed a willingness to cooperate in this venture.

Comments on ACRA-L provided a critical forum for the second identified issue. This enabled us to analyze the concerns regarding the gap between academic training and practical skills required for actually working in CRM. Committee members are furnishing ongoing input and we hope to recommend ways to improve this situation within the next few months.

Joe Schuldenrein, Chairperson

BEST PRACTICES COMMITTEE REPORT:

The Best Practices Committee (ACRA version) has been off to a slow start, but is getting up to speed in late January and early February with a review of comments received from the ACRA membership concerning their view of the good, the bad and the ugly in the regulatory field as well as similar comments obtained from the very active first version of ACRA-L (ACRA-L 1.0) which has now been replaced with the upgraded

version of ACRA-L 2.0. The committee is sifting through the materials and will be providing comment on this by next newsletter. If you have more comments to pass on, horror stories, good stories, etc., please contact me at SAGE B@aol.com or (801) 394-0013.

Mike Polk, Chairperson

WORKER SAFETY COMMITTEE REPORT

This is the newest ACRA Committee. It is chaired by Loretta Neumann and includes Ann Giesecke, Chuck Niquette, Clark Dobbs and Joe Schuldenrein as members. Others who may wish to join need to contact Loretta. The Worker Safety Committee focuses on all matters relating to, of course, worker safety. This not only involves the Occupational Health & Safety Act (OSHA), but the interface it has with the Environmental Protection Agency (especially with regards to toxics in the work place) and the Americans with Disability Act (ADA). We are interested in all aspects, not just the implementation of OSHA relating to archaeological sites, but also in the office work place, laboratories, and other work areas. We are researching not just what the laws and regulations are, but also what training is (or is not) available and the potential of having ACRA and OSHA work together to offer training focused on our members' needs. We may, if we can, develop a manual that can be offered to our members.

Clearly this is something all ACRA members should pay attention to. Worker safety is very important from a practical point of view. But we also need to be clear about what is legally required, since some things are not self-evident and we can inadvertently do things simply through a lack of knowledge.

Loretta Neumann, Chairperson

ACRA LABOR RELATIONS COMMITTEE

The Labor Relations Committee (formerly the Wage Determinations Committee) has compiled significant information on a variety of topics relating to job descriptions and prevailing wages for Archaeological Technicians. The Committee is preparing a report of findings and recommendations for presentation to the Board.

Kevin Pape, Chairperson

Archaeology and Historic Preservation Legislative Update

CONGRESSIONAL UPDATE ON CULTURAL RESOURCES ISSUES

Updates on Interior and DOD Legacy Appropriations
By Loretta Neumann, CEHP Incorporated

Funding for the Interior Department and related agencies - including for historic preservation programs and the Advisory Council on Historic Preservation - faced an especially difficult time last year, and the battles aren't over. This is one of a handful of funding bills that have become controversial not only because of the amounts of money involved, but also because of so-called anti-environmental "riders" that were attached along the way.

In early December, the \$12 billion appropriations bill was rejected twice by the House, primarily because of language increasing logging in the Tongass National Forest and removing National Park Service funding for administration of the California Desert Protection Act (transferring responsibility for that area to the Bureau of Land Management) and other provisions. As approved by the Conference Committee and both the House and Senate in mid-December, the only modification to the bill was the addition of a moratorium on mining patents while Congress revises the General Mining Law of 1872.

The president subsequently vetoed the bill, and the funding was contained in the latest continuing resolution, which is scheduled to expire March 15. The levels provided are at the lower of the House and Senate bills (see below). Congress did strip the bill of the "riders," but these could return in a future measure.

Following are highlights of the major provisions of the Interior bill as negotiated by the House and Senate. Thanks largely to the monumental work of ACRA, aided by NCSHPO, Preservation Action, and other groups, the Advisory Council on Historic Preservation was saved, the Historic Preservation Fund avoided major cuts, and some Forest Service heritage funding was restored.

Historic Preservation Fund: The House had allocated \$34.434 million for HPF grants to states and tribes and historically black colleges, and \$3.5 million to the National Trust for Historic Preservation. The Senate had \$32.712 million for grants states/tribes/black colleges and \$5.6 million for the Trust. Conferees accepted the Senate amount for the states/tribes/black colleges and the House level for the National Trust.

Advisory Council on Historic Preservation: The House included \$3.063 million for the Council while the Senate had \$2.5 million. The conferees agreed to accept the lower Senate level.

Forest Service & BLM: The House cut the Forest

Service heritage program from \$18 million to \$14 million; the Senate cut that further, to \$13.130 million. The conferees split the difference, providing \$13.565 million. BLM's cultural resource program was set at \$11 million by both the House and the Senate, a sizable cut from the Administration's request of \$12.6 million.

National Park Service: Within NPS, the National Register programs would receive \$18.5 million, US/ICOMOS \$90,000, and the National Center for Preservation Technology \$1.947 million.

National Endowment for the Arts and the Humanities: Conferees agreed to \$99.5 million for NEA and \$110 million for NEH.

The DOD appropriations bill, which contains \$7 billion more than the Administration requested, passed the Congress and was signed into law by President Clinton in early December. Despite that large increase, and according to Senate Defense Appropriations staff members, only \$10 million was allocated for the DOD Legacy Program, the same amount requested in the House. This represents a decrease of more than 80 percent in funding from \$50 million in FY 1995.

However, the DOD Comptroller has decided to hold back all of the Legacy funds—\$8.3 million to pay for other "short falls" in DoD funding and \$1.7 million to the Office of the Secretary of Defense Washington Service Center as a "tax" for program administration. On December 21, ACRA initiated a letter, signed by six other national preservation organizations to Defense Secretary William J. Perry protesting the Comptroller's actions and urging him to release the funds. They noted that the Legacy Program has had "a highly beneficial impact since Congress established it in 1991 to help enhance DOD's stewardship of the 25 million acres under your care."

They cited a number of successful Legacy projects, including the identification and protection of archaeological sites; studies of ways to save and reuse historic military buildings; documentation of the participation of Native Americans in the military services during the twentieth century and interpretation of Apache Prisoner of War Villages in Oklahoma; repatriation of Native Hawaiian human remains; preservation of a World War II battlefield in Alaska and the Complex 19 Erector at Cape Canaveral, Florida.

ACRA News is a monthly publication of The American Cultural Resources Association. Our mission is to promote the professional, ethical and business practices of the cultural resources industry, including all of its affiliated disciplines, for the benefit of the resources, the public, and the members of the association.

This publication's purpose is to provide members with the latest information on the association's activities and to provide up to date information on federal and state legislative activities. All comments are welcome. Please address comments to:

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