



December 2015 4th Quarter 2015

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A Letter From Our Chair

Matthew Kanneberg Director of Safety & Health, Paper Solutions WestRock



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As another year comes to a close, I want to personally thank all of our member locations, the PPSA board of directors and our vendor members for their commitment to safety. We are all on a challenging, yet necessary journey to injury free. As an industry, we continue to make improvements and we have so many great leaders and engagement examples to guide the way. Our challenge is to be relentless and never be satisfied with 'good' in safety...we must achieve safety excellence in all we do!

• Mr. Know it All / Defining I would like to take a moment to welcome Steve Ledford from Georgia Pacific as he was appointed to the PPSA Board of Directors in November as an ad-hoc board member. Steve is the Division Safety Manager for Gypsum Operations with GP and brings more than 30 years in related industry experience. We certainly look forward to Steve's experience, passion and partnership as we continue to support our industry safety needs.

> Even though we are still seven months away from a warm summer conference, I am excited to see the conference planning committee hard at work putting together another quality event. Our 73rd Annual Safety Conference will be at The Battle House Renaissance in Mobile, Alabama, June 5-8, 2016 for what promises to be a unique learning experience. Here is what's new:

- Safety Committee / Team Challenge Competition and Award See application within the quarterly report!
- 10 Hour Compliance Fundamentals Workshop (similar to OSHA 10 but designed for our industry)
- 4 Hour Aging Workforce Workshop...how to manage and deal with this challenge!

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In addition, our general sessions cover a wide variety of topics including skills that can improve working relationships and insights that help us prevent errors. We will also benefit from case studies in our industry that provide valuable information to improve workplace safety. The PPSA conference will provide updates on the constantly evolving safety regulatory environment. It also represents unique opportunities to learn about leading edge safety technology from industry suppliers, and network with a large group of safety professionals. It's not too early to SAVE-THE-DATE!

As always, we appreciate your feedback and suggestions on how to make the association better, what courses and webinars to plan and what ways we can better serve your needs. And again, we truly appreciate your support!

I sincerely wish you and your employees a safe and prosperous 2016!

Best Regards,

Matthew Kanneberg, PPSA Board Chair

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Legal Corner

Submitted by Lawrence P. Halprin, Partner—Keller and Heckman LLP

It May or May Not Be Sound Jurisprudence, But It Is Clearly Bad Public Policy—Part II

In the Legal Corner of the March 2015 PPSA Quarterly Report, Eric Hobbs discussed a troubling decision of the U.S. Supreme Court known as *Perez v. Mortgage Bankers Association* (March 9, 2015) and hinted at the quagmire it might create for the regulated community. Fast forward three months to June 2015 and the regulated community finds itself quickly settling into the quicksand.

Prior to *Perez*, in a case known as *Paralyzed Veterans*, the U.S. Court of Appeals for the District of Columbia (the D.C. Circuit) had struck what seemed to be a reasonable balance between the authority of a regulatory agency to re-interpret the law and the regulated community's need to minimize uncertainty. *Paralyzed Veterans* generally held that once a regulatory agency had established its interpretation of an ambiguous rule that it adopted through a public rulemaking, the agency could not materially change that interpretation except through another public rulmaking. There was also a line of related cases, based on the Supreme Court's decision in *Auer v. Robbins*, holding that courts generally must defer to an agency's reasonable interpretation of an ambiguous rule that it adopted through a public rulemaking.

Perez overruled Paralyzed Veterans as an erroneous interpretation of the Administrative Procedure Act, which allows agencies to issue and modify "interpretative rules," but not "legislative rules," without a rulemaking. Read together, the double whammy principles of Perez and Auer generally appear to permit a government agency (e.g., OSHA) to unilaterally change its interpretation of an ambiguous rule adopted by the agency through a public rulemaking, without further rulemaking, whenever the agency determines a different interpretation would better achieve the goals of the underlying statute (e.g., the OSH Act), and the agency's new interpretation is reasonable. This generally would appear to be the case even where the change is material, the regulated community relied on the prior interpretation, and the prior interpretation was in effect for a long period of time.

In *Perez*, the Court suggested that there may be extraordinary situations where detrimental reliance on an agency's prior interpretation of a rule is so substantial that the agency's new interpretation may be unreasonable. The Court also suggested that changing agency interpretations of a rule would be entitled to less deference than a longstanding interpretation. However, these limitations appear to fall far short of the due process protections contemplated by the U.S.Constitution, and that is the crux of the problem.

It was thought to be fundamental that a statute or rule which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. *Connally v. General Constr. Co.* Under a proper application of that principle, an OSHA rule must give an employer fair warning of the conduct it prohibits or requires, and it must provide a reasonably clear standard of culpability to circumscribe the discretion of the enforcing authority and its agents. *Dravo Corp. v. OSHRC*. Unfortunately, the courts have bought into the products of the dysfunctional rulemaking process. Instead of sending the rule back to the issuing agency and mandating that it be written so that men of common intelligence need not guess at its meaning, the courts have established principles that give the agencies almost every incentive to draft ambiguous rules that sidestep difficult issues and allow them to be continuously reinterpreted to impose requirements well beyond those contemplated at the time of the rulemaking.

In his March 2015 article, Eric Hobbs referred to an OSHA initiativethat some might reasonably refer to as the OSHA Noise Standard debacle. For many years, following adverse court decisions, OSHA had interpreted its noise standard to allow the use of personal hearing protection (rather than engineering or administrative controls) to reduce ambient noise exposures of not more than 100 dB (8-hr TWA) to the OSHA PEL or the lower hearing conservation limit. In January 2010, OSHA announced plans to withdraw this interpretation. OSHA's apparent position was that a rulemaking was not required to implement this change, but OSHA needed to provide fair notice to the regulated community.

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¹This article represents the views of the author and may not represent the views of Keller and Heckman LLP or its clients. This article is not intended to provide legal advice and may not be relied upon for that purpose.

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The firestorm response from the regulated community reflected a determination that the retroactive changes that would have been required by OSHA's re-interpretation of the noise rule would have been incredibly disruptive to ongoing operations, that the required engineering controls would have cost billions of dollars, and that many businesses would have closed or relocated overseas. However, it was a bi-partisan letter from the chair and ranking member of the responsible committee in the U.S. Senate that led the Department of Labor to conclude this misadventure needed to be brought to a close.

In June of 2015, liberated from the constraints of *Paralyzed Veterans* by the Supreme Court's decision in *Perez*, OSHA issued three enforcement guidance memoranda announcing three retroactive interpretations of OSHA Process Safety Management (PSM) Standard. The three memoranda address: (1) the scope of the "retail exemption" from coverage of the standard; (2) whether and how much of a mixture containing a "highly hazardous chemical" (HHC) is counted in determining whether a threshold quantity of the HHC is present for purposes of triggering PSM coverage; and (3) whether the covered process was designed in accordance with "recognized and generally accepted good engineering practices" (REGAGAP).

OSHA's PSM Standard is the most complex and paper-intensive OSHA safety standard ever adopted by the agency. The effect of the first two memoranda was to significantly increase the number of processes and facilities subject to the PSM Standard on a retroactive basis, with no prior notice or opportunity for public input, and no phase-in period. Many of the newly-covered facilities had no prior experience with the OSHA PSM standard. It is likely that many employers designed their processes to operate with dilute concentrations of the HHCs so that, under the prior OSHA interpretation, the processes would not be subject to the PSM Standard.

OSHA's RAGAGEP memorandum indicates that compliance with a national consensus safety standard would be viewed as a safe harbor for compliance with RAGAGEP with respect to the safety issues addressed by the national consensus standard. If OSHA had stopped there, the regulated community would have limited concerns with OSHA's efforts to address this issue on a generic basis for purposes of administrative convenience. Unfortunately, the memorandum also appears to say that, if the employer does not comply with the applicable national consensus standard, the employer will be required to demonstrate that the engineering practices it implemented are at least as effective as the applicable national consensus standards. The practical effect of the third memorandum was to significantly increase the engineering design and operating requirements applicable to processes subject to the PSM Standard on a retroactive basis, with no prior notice or opportunity for public input, and no phase-in period. What is particularly egregious about the third memorandum is that the initial PSM proposal would have incorporated all applicable national consensus safety standards into the PSM Standard. We filed comments in the initial rulemaking objecting to that approach on several grounds: (1) that OSHA had not identified those thousands of standards; (2) that none of those standards had been developed through the required OSHA rulemaking process; (3) that there was insufficient time to identify all of those standards and subject them to public comment through the OSHA rulemaking process; (4) that those standards were constantly being updated and it would be unlawful to incorporate the latest edition of each standard because they would not have been through an OSHA rulemaking; and (5) that national consensus standards were not adopted for purposes of use as mandatory government standards. In an extraordinary moment, shortly after we filed a third set of comments objecting to OSHA's approach on this issue, Joanne Slattery, OSHA's Project Officer for the OSHA PSM Standard, telephoned me and said "OSHA is putting up the white flag" on this issue. OSHA subsequently adopted the RAGAGEP approach. Given that history, the RAGAGEP memorandum appears to contradict OSHA's resolution of this issue during the rulemaking.

All three of OSHA's June 2015 PSM memoranda have been challenged in pending court proceedings. It is unclear how those cases will be resolved. Fundamental due process cries out for immediate relief for the regulated community rather than court decisions advising employers that they will have to wait for OSHA citation contests to challenge OSHA's positions on these issues. It seems unconscionable to require employers to wait until they have been cited for alleged violations of the PSM Standard to challenge OSHA's re-interpretations of the rule, to which the courts give deference, despite years of employer reliance on the prior interpretations. Faced with this Hobbsian choice, employers may be forced to forego good faith challenges to OSHA re-interpretations of OSHA rules to avoid the risk of exposure to willful citations. In these circumstances, it is quite understandable that the regulated community would seek relief from Congress, which apparently delegated its legislative powers to the Federal regulatory agencies without adequate controls on their use.

One can only imagine how OSHA might interpret, and re-interpret, and further re-interpret, a rule prohibiting "any practice, policy or procedure that, in any way and to any degree, may be perceived as tending to discourage the reporting of a work-related injury or illness."





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This award honors a pulp & paper industry safety committee/team that has made a significant contribution to safety & health at their location, company, or within the industry. In order to receive this award, a committee/team must apply for it, be selected as a finalist by the PPSA Awards Committee and lastly receive the most votes by conference attendees at the PPSA safety conference. The winning site will receive the Industry Safety Committee/Team Award trophy and be highlighted on the PPSA website and upcoming quarterly report.

To apply for this award, please complete this form and submit it along with your accompanying information via email or regular mail no later than **February 1**, **2016**.

Executive Eagle Award Nominations

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This prestigious award is given each year to honor a pulp & paper industry executive that has made a significant contribution to the safety & health programs within their area or areas of direct responsibility and has a demonstrable record of support for the Pulp & Paper Safety Association. To nominate an Executive for this award, please review the nomination procedure, complete this application and submit it along with your accompanying information via email or regular mail.

All nominations must be received in the association office by **March 23, 2016** for the preceding award year.

Safety Innovator Award Application

Print this application

This award goes to the one facility demonstrating the most innovative safety improvement product/process implemented between January 1, 2015 through April 17, 2016. In order to receive this award, a facility must apply for it, be selected as a finalist by a PPSA Conference Board Committee and lastly receive the most votes by conference attendees at the PPSA annual safety conference. The winning site will receive the PPSA Safety Innovator Award trophy and be highlighted on the PPSA website and upcoming quarterly report.

Please submit this application to Ashley Westbrook by April 17, 2016.

For any questions regarding the awards, please contact Ashley Westbrook at 770-209-7284.

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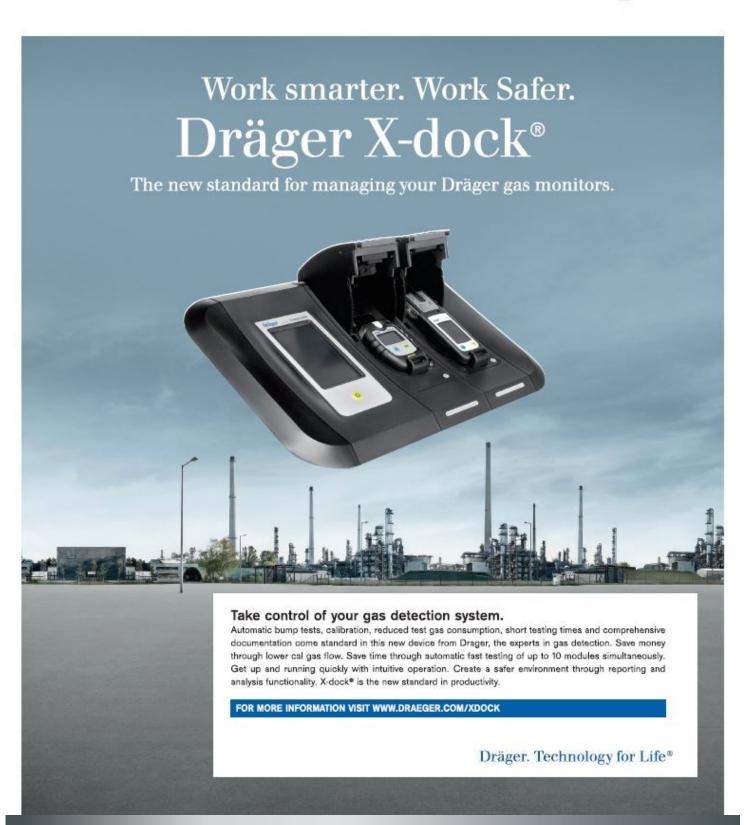
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Getting to Know Our Members

Interview with Cathy Slater, Senior VP of Cellulose Fibers, Weyerhaeuser



Why is safety important to you?

To me, this question is exactly like asking: Why are people important to you? People are what make everything at work possible — the amazing products we make that improve lives all over the world, and the fun and satisfying environment we create as we work together to become a winning team.

So while most companies measure safety performance using numbers, for me safety is really all about the people behind the numbers. Every incident that ticks up your recordable injury rate has a story behind it — a story about a person who went to work that day expecting to return home again without incident, but who instead experienced pain or injury as a result of doing his or her job.

There's a place for numbers, of course, but they're really only good for showing you what happened in the rearview mirror. The only way to prevent injury from happening in the future is to focus on people — on the choices they make to keep themselves and others safe during every task, and also on what they believe about your commitment to safety as a leader.

What is your greatest achievement in safety?

The best thing I ever did was learn from a serious incident that happened early in my career. I had just taken on a new assignment leading a team that had a high-pressure deadline coming up. I felt like I was a good safety advocate, and I'd even been a safety manager for a while. I thought I was doing and saying everything right. But then we experienced a near-miss incident that could have resulted in a tragedy, and I had to take a hard look at my contribution to that situation as a leader. What I realized after talking with the people involved, was that on the evening of the incident, my last words to the team before leaving the site were not, "keep safety in the forefront no matter what," but "keep me posted on your progress." I did not say out loud the words I believed, which was that no dead-line was worth anyone getting hurt and that I expected them all to put safety first.

Fortunately the incident was a near miss and no one was hurt, so I got a second chance as a leader. I now never leave a conversation without confirming how important that person's safety is to me. After that experience, I developed a document that I call "Heart of Safety" and I've used it ever since as a way to have individual discussions with each person I'm responsible for about what I'm going to do to keep them safe and what I'm asking them to do to commit to safety. We typically have these discussions in February every year and it's a great way to validate caring.

What drives your passion for safety?

Safety is not something I have to figure out how to make time for. To me it's part of everything I do.

That's partly because I consider the people I work with to be like family. It may sound cliché but I really do mean it. Safety happens when there is genuine caring. And that means it's not enough to say you care. You have to cultivate caring. You need to be interested in people, understand who they are and learn something about their lives — that's what drives caring. I like knowing why people come to work every day. Why they chose their jobs. What they like to do in their free time. I like seeing pictures of their families. I feel like this is the easiest part of my job, and I hope it sets the tone for caring all the way through the organization.

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One of my greatest joys is seeing people I've worked with embrace safety as a core value — something that cannot be shaken or compromised no matter what — and then to see them take that sense of caring with them no matter where they go, at work and at home.

I also personally worked in mills for many years and know what it's like to be around moving equipment all day, with loud noises, hot surfaces, and lots of pressure to meet or exceed business targets. So I have first-hand experience in all kinds of environments and I know that no matter what you're doing — whether it's automated, manual, cold or hot — there are always plenty of risks to assess and injuries to prevent.

What advice do you have for other leaders?

My best advice is to realize the impact of the message you send. People will take their cues from you on where to spend their energy and time. By default, they will always focus on getting their job done because it's what they're expected to do. So if you don't emphasize safety, you can't expect them to assume it's a priority. You have to make it absolutely clear.

And it's not just words but actions, too. As a leader, you can't improve safety performance by just talking about it. You also need to roll up your sleeves and be a part of improving some piece of the system to role-model how it's done and to show that you really mean it.

Most importantly, make safety deeply personal. Remember that it's about relationships, not numbers. And take the time to cultivate the caring that creates an environment where people feel compelled to watch out for themselves and each other.

Upcoming Webinar

Wednesday, February 3rd at 2:00 pm EST.

Combustible dust is a potential safety issue at many of our sites, yet not all have a comprehensive combustible dust program in place. This webinar will review the:

- hazards associated with combustible dust
- components of a combustible dust safety program
- techniques to mitigate the hazards
- · combustible dust standards, including NFPA 652

This webinar is for anyone who needs to increase their level of understanding around combustible dust and become more knowledgeable about the ways to safeguard their facility.

About The Presenter



Jason Reason CIH, CSP, CHMM - Combustible Dust Consultant/Industrial Hygienist - Lewellyn Technology

Jason holds a B.S. Degree in Industrial Hygiene and has 12+ years of experience as an OSHA Compliance Safety and Health Officer. He has assisted OSHA in performing many combustible dust inspections and has also performed numerous combustible dust National Emphasis Program inspections at a wide range of facilities. He has trained many OSHA Compliance Officers in combustible dust inspections as well. Jason has presented at national conferences including ASSE Safety and the NFPA Combustible Dust Symposium and

currently serves on 5 NFPA combustible dust committees including the committee for NFPA 652.

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Safety University: Domtar's Practical Approach to Growing a Safety Conscious Work Environment through Learning

Submitted by: Larry Warren, Sr. Director, Health & Safety, Pulp & Paper/Corporate and Sarah Waltman, Director, Learning & Operational Effectiveness

The Introduction of a Learning System

In 2014, Domtar launched My Knowledge Tree - a learning system available to all employees anytime/anywhere. My Knowledge Tree serves many purposes from tracking and deploying required training to offering on-demand books, simulations, videos, job aids and live virtual mentoring for professional development. The content available varies from internally developed manufacturing, sales, finance, IT and even leadership topics. A key benefit to My Knowledge Tree is the reduction in costs and increase in reach compared to a single focus on instructor-led classroom training.

Safety University

Following the launch of My Knowledge Tree, safety and training leaders quickly recognized an opportunity to leverage the system for safety training and compliance. The system created a platform to offer consistent safety training company -wide. Building from the My Knowledge Tree platform, Safety University was developed to offer a library of shared safety resources. Leveraging the feedback of safety professionals across the organization, Domtar procured numerous courses, videos, job aids and books on required safety topics. These courses are now available to all employees. In 2015, Safety University was My Knowledge Tree's most accessed library.

An Agile Approach to Learning

Domtar had the opportunity to create a blended learning approach driving safety awareness, by incorporating many types of learning to increase the likelihood of behavior change (i.e., utilizing classroom in conjunction with online resources). Safety University courses can be offered as pre/post classroom actions to increase the likelihood of retention. For example, participants may be asked to complete the online "Confined Spaces" course in preparation for an in-person group case study, activity and discussion. This saves the classroom time for questions, and interactive learning. Domtar encourages local safety facilitators to use the on-line videos and job aids when they offer in-person training.

Safety University Supports Company-Wide Safety Initiatives

Safety University is now supporting important safety initiatives. For example, Domtar introduced the concept of Human Performance Improvement (HPI) and utilized Safety University to deploy online modules that define the concept and offer some simple tools for getting started. Additionally, Domtar is focusing on developing front-line supervisors, a critical area of responsibility in supporting the execution of working safely. Front-line supervisors are provided with tools in My Knowledge Tree to both further their development in safety leadership and management as well as support them in keeping their team safe. Front-line managers can print the safety job aids and share with their team prior to starting work to encourage safe work execution on one of numerous areas offered in the tool.

Through feedback from users, Safety University continues to grow and meet the safety needs of our organization.

For additional questions you may contact <u>Larry Warren</u> at 803-802-8022.

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Mr. Know it All

Submitted by: John Deveau

I am sure you have come across a know-it-all once or twice in your career.

Wouldn't it be nice if we really could "know-it-all"? But let's face it we can't know everything.

However, I believe I know a way that we all can become close to a know-it-all. It is nothing new and has been proven time and time again. It is really not that hard to do.

I consider myself rather knowledgeable in my profession but I sometimes get stumped, don't know the answer to a question, or how to do a certain task. That is when I started my know-it-all search. I look to my networking list of people I've met throughout the years that most likely have had the same experience. I have built a rather long list of contacts through colleagues I have worked with over the years, social media sites, and acquaintances at conferences such as the Pulp & Paper Safety Association. This type of relationship building is called networking.

Networking has long been recognized as a powerful tool for professionals of all trades. Knowing more people gives you the access to share more information and ideas. The power of networking depends on how strong your relationships are, on how much attention you require when you engage with the people in your network, and on how sought-after you are as a member of other peoples' networks. If you are known as a source of expertise and people can rely on you for expert opinions or creative solutions, you will be a more attractive networking partner. If you know other powerful people and can access them whenever you need to, you will be a more attractive network partner.

It is possible to build these kinds of relationships with people you meet on social networks. However unless you maintain contact and work with them on common concerns or problems, the relationship could be lost. It is important to maintain open lines of communication to build a trusting working relationship.

A Word of Caution: When working with others it is best to provide evidence that will back up what you are saying at the time. Therefore people will regard you as knowledgeable and maybe a little less of a know-it-all.

Hopefully I will have the pleasure of adding some of you to my list of contacts within my network of trusted professionals.

Defining "Safety"

Submitted by: Steve Gearheart

Everyone has their own definition of safety, resulting in some confusion and aggravation at times. An article by Dr. Rob Long, an expert in social psychology and principal and trainer at Human Dymensions, entitled "Safety Should Not Be About Safety" provides some insight.

"I often get called into organizations under some concern about safety, many see my work as something about 'behaviors' but that is not what I am on about," says Dr. Long. "Some think my writing is about safety but it is not, and some want me to give 'fixit' type stories and illustrations on how to improve safety at work, but I don't. Can I just say this, if your world is just about safety, then your world is too small."

To me, this means that focusing on the subjective definition of safety simply isn't good enough to meet the standards required to ensure safety exists.

"Safety... should be about living and learning," Dr. Long continues. "When safety is made into some bureaucratic, legal or club exercise, it has lost its plot. This is why I prefer to talk more about risk than about safety."

So what is the difference between risk and safety? According the Health and Safety Authority, risk is defined as "the likelihood that a person may be harmed or suffer adverse health effects if exposed to a hazard." In other words, risk is the potential created by hazards and must be assessed before safety can occur.

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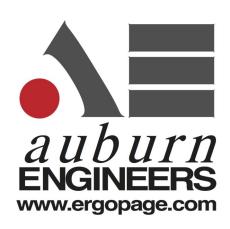
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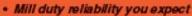


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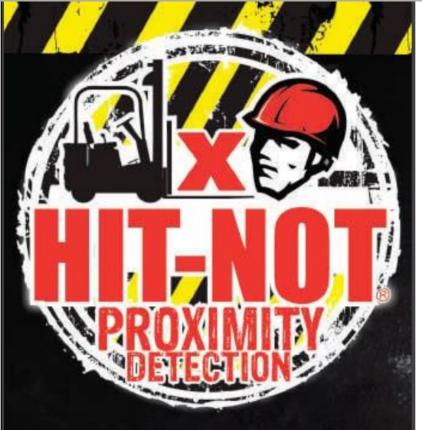
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PPSA is a non-profit, non-political, international organization, devoted to safety throughout the paper industry. From forest products to paper mills, to converting plants, to recycle collections centers, our membership is grouped by category to ensure a fair and appropriate basis for comparison.

The association began in the 1940's as the Southern Pulp and Paper Safety Association, later changing the name to reflect our widening membership base. We currently have members throughout the United States, Canada and other countries. We work to promote safety, to set reasonable and attainable goals, to educate our members, and to give the members a forum for discussion.

Membership in the Association is by operating facility, such as a paper mill, box plant, sawmill, woodlands, etc. Approximately 380 operating facilities are currently members. We also welcome supplier members as well.

Membership in the Association has many advantages:

- Participation in the Annual Health and Safety Conference and service as a member of the Board of Directors provides an opportunity for personal and professional growth.
- Participation in our webinars and training seminars.
- The Pulp and Paper Safety Association is the ONLY national organization exclusively concerned with accident prevention in the forest product industry.
- The annual Conference provides a great face-to-face networking opportunity.
- The Quarterly Report provides a way of bench-marking your own performance with others in similar operations.
- The Awards program provides a prestigious form of recognition to outstanding short-term and long-term safety performance by operating categories.
- The Association is an excellent forum for keeping up with latest OSHA standards. In-depth information on specific subjects is increasingly available at regional seminars. The cost of these seminars is minimized by virtue of holding them on a regional basis.
- The annual conference provides a fine external motivational boost to hourly Safety Committee members as recognition for their active participation in your safety program.
- The cost of membership is the lowest of any association to our knowledge.
- The attendance of vendors at our annual conference allows safety people to keep up with the latest safety equipment, tools and training.

Visit our website at www.ppsa.org for more information.

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