



CUSTOMIZED TRAINING, INSPECTION AND CONSULTING SERVICES
FOR THE CRANE, LIFTING AND HEAVY EQUIPMENT INDUSTRY

“Construction” Versus “Maintenance” As It Pertains To the New OSHA Crane Law

By Larry Kime, Senior Instructor

On August 9, 2010, OSHA released the final rule on Cranes and Derrick in Construction. Included in this rule are major requirements for qualifications of crane operators. Since the construction requirements are more specific for operator qualifications than the General Industry requirements, it seems more appropriate to discuss the differences between Construction and General Industry (e.g. maintenance activities).

In OSHA 29CFR1926.32 (g) definition of “Construction Work” means work for construction, alteration, and/or repair, including painting and decorating.(1)”

Under OSHA “29CFR1910.12 (a) for “Standards” --The standards prescribed in part 1926 of this chapter are adopted as occupational safety and health standards under section 6 of the Act and shall apply, according to the provisions thereof, to every employment and place of employment of every employee engaged in construction work. Each employer shall protect the employment and places of employment of each of his employees engaged in construction work by complying with the appropriate standard prescribed in this paragraph.(2)”

Throughout the OSHA rules, there is not a crystal clear definition for “maintenance”, nor a clear distinction between terms such as “maintenance”, “repair”, or “refurbishment.” “Maintenance activities” can be defined as making or keeping a structure, fixture or foundation (substrates) in proper condition in a routine, scheduled, or anticipated fashion. This definition implies “keeping equipment working in its existing state, i.e., preventing its failure or decline.” However, this definition, (taken from the directive on confined spaces) is not dispositive; and, consequently, determinations of whether a contractor is engaged in maintenance operations rather than construction activities must be made on a case-by-case basis, taking into account all information available at a particular site.(3)”

“Construction work is also not limited to new construction, but can include the repair of existing facilities or the replacement of structures and their components. For example, the replacement of one utility pole with a new, identical pole would be maintenance; however, if it were replaced with an improved pole or equipment, it would be considered construction. (4)”

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“In addition to the concept of one-for-one replacement versus improvement, the scale and complexity of the project are relevant. This takes into consideration concepts such as the amount of time and material required to complete the job. For example, if a steel beam in a building had deteriorated and was to be replaced by a new, but identical beam, the project would be considered a construction repair rather than maintenance because of the replacement project's scale and complexity. Also, if a bridge was to be stripped and re-painted, that would be considered construction work even if the repainting were done on a scheduled basis. Replacement of a section of limestone cladding on a building, though not necessarily a large project in terms of scale, would typically be considered construction because it is a complex task in view of the steps involved and tools and equipment needed to do the work. (4)”

Simply adding a mobile crane to maintenance work could raise the level of work to the scope of construction.

The interpretation provided by OSHA shows that it does not matter who uses the crane or where the crane is being used, if the crane is performing work that could be classified as construction then the construction standards apply. The type of crane being used will affect which standard applies, 29CFR1926.1438 (a) excludes the “following equipment when used in construction and permanently installed in a facility: overhead and gantry cranes, including semi gantry, cantilever gantry, wall cranes, storage bridge cranes, and others having the same fundamental characteristics.(5)”

“In other instances, where an activity cannot be easily classified as construction or maintenance even when measured against all of the above factors, the activity should be classified so as to allow application of the more protective 1910 or 1926 standard, depending on the hazard. In such cases the citation should be issued in the alternative with the emphasis on the more protective standard. (3)”

Since crane operator qualifications/certification in the construction standards are more protective than the general industry standards, when there is a question as to whether an activity is construction or general industry then the construction standards apply. It is CICB's recommendation that all crane operators be training and qualified/certified to the new Crane and Derrick Standard.

OSHA's interpretations in the August 11, 1994 memorandum for Regional Administrators and OSHA's November 18, 2003 letter to Mr. Knobbs are referenced in this report.

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Footnotes

- (1) 29CFR1929.32 (g)
- (2) 29CFR1910.12 (a)
- (3) OSHA's August 11, 1994 Memorandum for Regional Administrators
- (4) OSHA's November 18, 2003 letter to Mr. Knobbs
- (5) 29CFR1926.1438 (a)