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## Fired Up Over FRC

Ever since March 19, 2010 when OSHA published a memorandum entitled "Enforcement Policy for Flame-Resistant Clothing in Gas Drilling, Well Servicing, and Production-Related Operations," the resulting controversy has escalated until it has finally reached its own flash point.

Flame Retardant Clothing, or FRC, was designed to protect against a flash fire that, by definition, only lasts three to five seconds. It is not protective beyond that point except for the fact that the fabric is self-extinguishing.

Flash fires occur when a flammable vapor cloud above the lower explosive limit (LEL) concentration reaches an ignition source. Such scenarios are extremely rare. This is precisely where the debate often begins.

While the oil and gas industry has successfully worked to significantly reduce the risk of all fire incidents, these efforts have not eliminated the occurrence of flash fires, nor the resulting burn injuries and fatalities. The use of FRC does improve the chance of a worker surviving and regaining quality of life after a flash fire, as well as significantly reducing both the extent and severity of burn injuries to the body (though not the face or head.)



However, there is a huge side note to keep in mind: FRC only reduces these severe consequences in the very specific circumstance of a flash fire. Otherwise, they introduce new problems

such as increasing the risk of heat-related illnesses and presenting hygiene and trip hazards if not maintained properly.

Although some companies (generally the major players in the industry who have plenty of money to throw at the problem) have simply issued FRC to all their people, there is a growing movement that believes this is a major overreach by OSHA worth pushing back on. In a letter to Assistant Secretary of Labor for Occupational Safety and Health David Michaels, Rep. Jeffrey Landry from Louisiana requested that OSHA "immediately address the negative effects that burdensome regulations," such as requiring FRC, could have on small businesses in his Gulf of Mexico district.

Noting FRC is relatively expensive, Landry concludes, "We cannot continue to place the burden on the backs of our small business workers. They are the lifeblood of the American economy." The differences between the OSHA FRC mandate affecting larger companies vs. smaller companies can be clearly seen.

While worker safety is their top priority, the AESC (Association of Energy Service Companies) has a lot to say on the subject of FRC. Amongst their concerns, they worry about OSHA bypassing a long-established rulemaking process, which ordinarily would entail lengthy deliberations before new safety requirements are implemented. The Occupational Safety & Health Reporter™ stated, "OSHA decided to issue the policy as an enforcement

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memo rather [than] undergo a rulemaking process because the latter could take years." The AESC and other industrial organizations worry about this setting a precedent for future mandates. They also worry about errors in the data used as the basis for OSHA's memo. A review by the International Association of Drilling Contractors (IADC) concluded that none of the fatalities cited by OSHA were the result of drilling operations and two of them were not flash fire events.

The first legal challenge to OSHA's ruling came on June 8, 2012 in *Secretary of Labor v. Petro-Hunt*, OSHRCJ No. 11-0873, when Occupational Safety and Health Review Commission Administrative Law Judge Patrick Augustine ruled in favor of Petro-Hunt. The organization had appealed a citation that resulted in \$5,390 in fines after a fire at one of its wells. The judge determined that, not only did OSHA fail to establish any proof that Petro-Hunt's location provided risk of flash fire hazards, but in issuing the memorandum they had overstepped their bounds. The judge ruled that OSHA was attempting to circumvent its own process by issuing a memo to cover what actually constitutes a new rule. ...Continued on Page 3

## **V** Times When a Systemic Change is Not the Answer

In the business of solving problems and preventing adverse events from occurring or recurring, it seems intuitive to always put in place a long-term, broadly applied solution. Though permanent, systemic solutions are usually the ideal answer to operational and safety problems, there are circumstances in which they are not the right response and may make things worse. The vPSI System™ is designed to expose such pretenders.

**I Low probability / low consequence events:** Although it is possible to imagine a catastrophic outcome for almost every situation, the worst-case may not necessarily be the most likely scenario, or at all probable. No matter the anticipated consequences, low probability events may not warrant corrective action at all, much less management system changes. Similarly, an event that is very likely to happen but has low potential for harm may not require a systemic solution. The vPSI counted versus non-counted determination provides a logical framework that allows an organization to decide if a problem is worth the expenditure of valuable resources.

**II Non-preventable events:** The ultimate goal of an incident investigation is to prevent the event from happening again. If the event is not preventable, expending resources to come up with a permanent solution is an exercise in futility. While such events are non-counted in vPSI terms, many organizations feel under pressure to do something (anything!), so they put in place permanent rules, processes or system changes that cannot actually prevent the event. Although politically more palatable because something was done, feel-good activities will fail the “E” element of the vPSI Test™; they cannot be effective against a non-preventable event.



17 animal casualties so far in 2006,  
Nigel Freeman on [geograph.org.uk](http://geograph.org.uk)

**III Individual issue rather than system problem:** If an individual is ignoring policies or taking unnecessary risks, then instituting new rules, policies or management controls for the entire organization will not only fail to prevent that person from repeating the undesirable behaviors, it sends the wrong message to everyone else. Since system solutions are not relevant to individual problems, such activities will also fail the “E” element of the vPSI Test™.

**IV Honest error:** Extrapolating a typical human error rate of 5 to 10 mistakes per hour over the number of working

hours makes it clear that there is the potential for an extremely large number of problems. Most of these will not have significant consequences, but occasionally and unpredictably they do,



Terminator, image by Dariog136  
on [www.arteyfotografia.com](http://www.arteyfotografia.com)

when the holes in the cheese align and something goes really wrong. But if the initiating problem was a simple human error, what can an organization do? As Alexander Pope said, “To err is human.” Until the machines take over the world, mistakes will continue to be made. Unfortunately, many feel the need to take extravagant and sometimes costly organization-wide steps to attempt to prevent recurrence when in reality, errors happen. These efforts fail the “E” element of the vPSI Test™ based on their ineffectiveness.

**V Management system already has elements that “should” have prevented the event:** Organizations utilize business processes and management systems such as procurement specifications, training requirements, pre-task planning, standard operating procedures, etc. If existing systems failed to prevent an unplanned event, then creating an entirely new process may simply generate additional bureaucracy. Situations of this type require careful cause and effect analysis before developing corrective actions to ensure their relevance. Replacing or modifying a current process that is not working as intended may be effective as a corrective action. On the other hand, the unplanned event may be the result of an individual problem or honest error, rather than a system failure. In these cases, an organization level change is irrelevant and will fail the “E” element of the vPSI Test™ on that basis.

Existing processes and procedures are the ideal home for permanent solutions to organizational problems. However, trying to solve these issues with inappropriate responses is the leading cause of corporate bureaucracy. A heavy bureaucratic load is costly, makes the organization more cumbersome, and forces people to work inefficiently.

## **The Journey to Zero...Via Australia**

In September 2012 at the SPE/APPEA International Conference on HSE in Oil and Gas E&P in Perth, Australia, Norman Ritchie will present his paper “Five Reasons We Are Not Getting To Zero”. His role at the event has now been expanded to include participating as a panelist for the Special Session, “The Challenge of Getting to Zero.”

## Yet Another Reason to Review Your Safety Incentive Scheme

The Spring 2012 H-E-A-R Say article on OSHA's March memorandum "Employer Safety Incentive and Disincentive Policies and Practices" elicited a variety of interesting reader comments, including a little known US tax law perspective.



womeninbusiness.about.com

required to be reported as taxable income. Certain rules must be followed in order to satisfy the code, including a requirement that not everyone receives an award, and that a "meaningful ceremony" be held to present the awards to recipients.

awards using a corporate credit card, and have your manager (who's in on the game) approve the expense... which will work very well right up until the slow moving machinery of your corporate reporting system, or the taxman, connects the dots and potentially career limiting questions begin to be asked.

In some circumstances, non-monetary safety awards may be viewed as simply an attempt to provide and receive tax-free compensation. If a cash equivalent is not reported as W-2 income, then there may be some negative consequences when Big Brother finds out about it.

Of course, the easy way out is to buy handfuls of Starbucks gift cards, iPads or other high value safety

Readers in countries other than the US must abide by the rules and regulations of their local jurisdictions.

Our recommendation: before you start handing out safety awards of more than token value, be sure to seek guidance from an appropriate tax authority within your organization.

### Fired Up Over FRC

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Although this ruling is a victory for groups like the AESC and the IADC, this is not the end of this controversy. OSHA might decide to appeal the judge's decision, or they might go through the correct rule-making process per the Administrative Procedures Act. Until then, organizations will have to decide whether to require FRC or whether FRC would introduce more problems than it solves.

In the US, the Internal Revenue Code includes a provision for giving people bona fide safety awards that are not

In the meantime, OSHA has agreed to "carefully consider" how to enforce PPE and FRC standards and the industry has agreed to develop better practices. According to Jim Shelton of OSHA, speaking at a recent Greater Houston STEPS meeting, OSHA will still cite employers if they felt FRC should have been used, they will just no longer reference the memo.

## Combining Business with Pleasure

vPSI consultants travel extensively in the course of their work and, wherever possible, try to fit in some pleasure alongside their serious business.

After a recent training class at Southwestern Energy's facility in the small town of Center, Texas, our consultants enjoyed the kind of fine dining normally to be expected in a large city. Located on the historic square, Whalen's has delicious, fusion style food, elegantly plated and served.



Still smarting from the firestorm of controversy generated by their attempt to nominate the best gumbo in Lafayette, Louisiana in a 2010 issue of H-E-A-R Say, our consultants are hesitant to opine on the Monday all you can eat gumbo at Hoppie's Texican Grill in La Porte, Texas, other than to state that it is good and spicy. The folks at Lubrizol are lucky to work close by!

In 2008 the US Centers for Disease Control and Prevention reported that Huntington, West Virginia is the most unhealthy city in America. As a result, British celebrity chef Jamie Oliver selected Huntington as the location for his reality television show "Food Revolution." In town to train at Marathon Marine Transport, vPSI consultants recently visited Chef Jason's Du Soir Bistro and concluded that Chef Jamie would approve of their use of fresh local ingredients in the preparation of their delectable delights.

vPSI is not just about food. While training at ConocoPhillips in Anchorage, Alaska, our consultants took a moment to play in the accumulated evidence of the city's record-breaking snowfall on their way to enjoy a crab feast at Humpy's.

More vPSI travel photos can be found on our Facebook page.



## Is Discipline a Corrective Action?

John Q. Worker is working on a 6' scaffold without fall protection. His foot slips and he falls to the ground and breaks his leg. ABC Corporation now has a recordable injury on its OSHA log. When Mr. Worker comes back to work, he is fired for not using fall protection as required by company policy.

Managers are sometimes forced to enact discipline on employees for infractions of workplace rules and procedures. In a future article, we will address the question of which is a better method for an individual to learn lessons, reward or punishment. For now, our focus is on how discipline affects employees as a group.

When John's co-workers found out he was fired, the message they extracted from this event was to not get hurt at work, or at least to not get caught if they are hurt. Even if Mr. Worker had fallen but was not injured, discipline at this point still sends the message, "Don't get caught." This in turn causes employees to be less likely to report

when something goes wrong unless they absolutely cannot hide it. This might have the questionable benefit of temporarily lowering the organization's recordable injury rate, however there is a fundamental flaw. Each time something goes wrong within an organization, it reveals something that was not already known and provides the company with the opportunity to correct the problem so that it does not come up again.



Image from Kam Moye's blog Reform School Music

When employees don't feel free to report that something has gone wrong, those problems are still out there, but the organization does not have the ability to correct them.

Another question that must be asked at this point is why Mr. Worker was not wearing fall protection. Sometimes employees are blasé about the safety measures put in place, considering them to be nuisances more for the company's protection than their own. However, what if Mr. Worker did not have access to the fall protec-

tion equipment? What if the fall protection equipment provided was faulty in some way? Does Mr. Worker regularly refuse to use fall protection? Is he the only person not using fall protection? Why wasn't discipline enacted before someone was hurt? If the organization does not find out the answers to these questions prior to enforcing disciplinary measures, they may have discredited the entire safety function.

If Mr. Worker had not fallen off the scaffolding but instead had been noticed by his supervisor at elevation without fall protection, this would have been a better opportunity to enact discipline without causing the adverse effects described above. The message being sent in this scenario is that all employees not following organizational policies and procedures will face consequences.

There are clearly circumstances in which discipline is appropriate and effective as a corrective action, however combining it with the safety function is fraught with difficulty. Discipline in response to an unplanned event must be considered carefully prior to its application and possible unintended consequences identified and managed.

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### Upcoming Training Classes

**Fundamentals of vPSI Problem Solving and Accident Prevention** is vPSI Group's core class. It provides attendees with the tools necessary to do a critical analysis of their corrective actions and problem solving efforts.

We currently have two workshops scheduled in Houston: September 19th and November 7th, 2012. For more information, visit our Eventbrite page or contact us.

### New Cloud in the Cloud

Users of vPSI Group's free online Pre-Task Planning Library and Tool will be interested in its newest feature: a Tag Cloud search function!

After logging in, the words and phrases repeated most in the user's profile-driven documents are viewable and linked to the documents in which they appear. The larger the word in the tag cloud, the more frequently it is found in the user's documents. This one-click search makes using the tool even easier.



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