



OSHA Fall Protection Hearing, January 20, 2011 ILTA's Oral Testimony

Good morning. My name is Peter Weaver. I am the Director of Regulatory Compliance and Safety for the International Liquid Terminals Association, based in Washington, D.C.

About ILTA

ILTA is an international trade association that represents 81 commercial operators of bulk liquid terminals, aboveground storage tank facilities, and pipeline companies located in the United States and 47 other countries. In addition, ILTA includes in its membership about 350 companies that are suppliers of products and services to the liquid storage industry.

ILTA member facilities include deepwater, barge, and pipeline terminals whose bulk liquid commodities are essential to the national and international economies. These terminals interconnect with and provide services to the various modes of bulk liquid carriers, including oceangoing tankers, barges, tank trucks, rail cars, and pipelines. The commodities handled include a variety of chemicals, crude oil, petroleum products, renewable fuels, asphalt, animal fats and oils, vegetable oils, molasses, and fertilizers. The customers who store products at these terminals include oil producers, chemical manufacturers, product manufacturers, food growers and producers, as well as utilities, transportation companies, commodity brokers, government agencies, and the military.

Comments

My testimony today addresses three areas of concern for the terminal industry:

- 1) OSHA's proposed requirements for travel restraint lines;
- 2) A separate rulemaking on fall protection from rolling stock and motor vehicles; and
- 3) The absence of an explicit grandfather provision for existing railings.

Turning to the first issue, ILTA opposes the application of fall arrest system standards to restraint lines as required in paragraph (c)(14) of the proposed rule [p. 28907]. OSHA proposed this approach based on a hypothetical situation where a presumptively mal-designed restraint line installation is required to function as a fall-arrest line. A properly designed and installed, permanently attached restraint line, by definition, prevents the fall from occurring in the first place. This proposed requirement would eliminate the distinction between the definitions of a restraint line and a fall-arrest line, or lifeline. It is unnecessary to require that a restraint line meet the more burdensome standard.

ILTA recommends that OSHA, in defining restraint line requirements, use language from its current proposal for personal fall arrest systems, included in paragraph (d)(1)(iii) [p. 28911], which would require these lines to have sufficient strength to withstand twice the potential impact energy of the design shock load, rather than to sustain the minimum 5,000 pound strain that is required of lifeline. We suggest that OSHA consider clarifying that a safety line installation possessing a reasonable potential to function as a life line would be subject to the corresponding requirements for life line, regardless of whether the facility has inappropriately characterized it as restraint line.

Moving to the second issue, ILTA strongly believes that a separate, prescriptive rulemaking to cover falls from rolling stock and commercial motor vehicles would not serve the best interests of terminal company employees in most effectively protecting them.

Practices in the terminal industry are consistent with OSHA Program Directive #100-76 relating to guardrails on loading rack platforms, which has been in place since October of 1978. This program directive to OSHA Regional Administrators recognizes that tank trucks come in many different configurations - the same could be said for railcars -, and thus allows for inconsistent use of guardrails on loading or unloading platforms. In light of solutions developed over the past three decades, this directive provides facilities flexibility in implementing the most appropriate fall protection systems for their operations based on the unique requirements at each location. The OSHA directive separately states that "safety belts and lanyards should not be used when loading flammable liquids because the employee should be able to move freely in case of a fire." Given the distinct safety concerns associated with flammable liquids, for instance, a one-size-fits all solution to fall protection on commercial vehicles and rolling-stock could leave some workers exposed to other, potentially fatal hazards.

Existing fall data for the terminal industry indicates that a rulemaking on fall protection from rolling stock and motor vehicles would be unwarranted. Current ILTA terminal member safety performance data indicates that fall protection measures currently in place for rolling stock and motor vehicles are effective in protecting workers commensurate with the risk. According to ILTA's most recent (2010) annual Safety Survey, based on OSHA Form 300A, respondents reported the loading and unloading of over 1-3/4 million trucks and railcars for the year. Of 221 total injuries reported by these participants, 32 involved a fall and of those, only six involved rolling stock or a commercial motor vehicle. That equals a mere 2.7 percent of the total number of recordable incidents at these facilities. It should be noted that the percent of employees exposed to railcar and tank truck operations at any given facility would be in the range of very few to 100 percent. ILTA does not believe that compelling a standardized approach to fall protection in these instances is likely to drive overall safety improvements. Cost notwithstanding, new fall-protection requirements for rolling-stock bring with them a high likelihood of offsetting, unintended consequences, such as the inability to escape from a fire.

Finally, with regard to the treatment of existing guardrails, ILTA notes that in previous rulemakings for walking-working surfaces, proposed in 1990 and 2003, OSHA included a “grandfather provision” which would exempt existing guardrails from additional height requirements (55 *FR* 13360 and 68 *FR* 23528 respectively). They permitted a height of 36-inches for guardrails that had been previously installed. Under the May 2010 proposal, however, OSHA indicates a minimum height of 42-inches but does not specify any grandfathering for existing guardrails. Table V-17 of the Proposed Rule (Sec. 1910.29(f)(1)(ii)) [p. 29010] references a nominal height requirement of 36-inches for existing stair rail systems installed within 60-days of the effective date for the final rule, but not for guardrails. ILTA believes that this omission requires clarification in the final rule to avoid the potential for confusion.

It is ILTA’s position that in the absence of data suggesting that existing 36” railings pose a material workplace hazard, a requirement to retrofit railings at terminal facilities would be unreasonable. Including the costs of degassing tanks prior to beginning hot work, and lost revenues, implementation costs would easily reach into hundreds of thousands dollars at typical terminal facilities. Not only would exorbitant costs be involved, but ILTA member companies are concerned about introducing significant safety exposures through the process of installation, potentially aggravated by inadequate time constraints for compliance.

ILTA supports OSHA’s proposed increase in the nominal height of 42-inches for guardrails installed within 60 days of the effective date of the final rule, and ILTA strongly urges OSHA to include an explicit grandfather provision permitting a guardrail height of 36-inches for all existing installations prior to that 60-day provision. Absent such a provision, the final rule could be interpreted as requiring the retrofit of existing installations.

Conclusion

To conclude, the International Liquid Terminals Association appreciates the opportunity to make these comments. I would be happy to answer any questions that you might have.