A TECHNICAL PUBLICATION OF ASSE’S CONSTRUCTION PRACTICE SPECIALTY

Protecting the Public on Construction & Demolition Sites

Use of ANSI/ASSE A10.34-2001 (R2012) Continues to Grow

ANSI/ASSE A10.34 is considered by many to be a primary document in the U.S. for ensuring the protection of the public on or adjacent to construction and demolition sites. The 20-page standard does not contain rigid specifications for controlling the myriad hazards that may exist; rather it explains how to address each hazard that could exist, and how to create a plan on how an employer will mitigate or separate a given hazard from the public (or separate the public from that hazard). The standard acts as a good checklist to alert all management personnel of common factors that create public-involved incidents and liability for constructors.

The standard was initially approved in 2001, then was reaffirmed in 2005 and 2012. The A10.34 subgroup is currently revising the standard and expects to issue a proposed revised standard sometime in 2017. The substantive revision is expected to expand some requirements while clarifying others.

OSH professionals often ask whether the standard applies to demolition projects since demolition is not specifically included in the scope statement. The answer is yes, as the standard’s full title includes demolition, as does the foreword; the ANSI/ASSE A10.6 Demolition Standard is specifically referenced as well. The upcoming revision will include more coverage of demolition and public protection from such sites.

A Look Inside the Standard

The standard is organized into four sections:
• Section 1 includes the general introduction, scope, purpose, responsibility statement and exceptions. It provides an overall structure for the standard and, thus, does not address the specifics of hazard/exposure assessment and remediation.
• Section 2 presents the standard’s definitions and nomenclature. The section is not overly detailed as the A10 Accredited Standards Committee believes the standard’s contents should drive definitions, not vice versa.
• Section 3 is the heart of the standard. It contains guidelines for public hazard control plans; explains the purpose; identifies hazards to consider; and discusses an emergency action plan.
• Section 4 presents a checklist that OSH professionals can use to review public safety issues on construction and demolition sites.

The standard alerts management to common factors that create public-involved incidents and liability for constructors.
Examples of Recognition

One primary way that a voluntary consensus standard gets incorporated into practice is through its inclusion (via direct citation) in contracts, work agreements, specifications and similar documents. Let’s look at several representative examples.

Government Agency

This example comes from a state governmental agency and shows how the A10.34 might be required in a contract:

In addition to the detailed requirements included in the provisions of this contract, comply with 29 CFR 1926, comply with 29 CFR 1910 as incorporated by reference within 29 CFR 1926, comply with ASSE A10.34 and all applicable [federal, state, and local] laws, ordinances, criteria, rules and regulations. . . .

In the interim, take all necessary action to restore and maintain safe working conditions in order to safeguard onsite personnel, visitors, the public (as defined by ASSE/SAFE A10.34) and the environment. . . .

Public Training

The Los Angeles Unified School District uses A10.34 for training. This presentation illustrates how the school district uses the standard.

U.S. Army Corps of Engineers

Public Safety: Requirements for work area delineation, traffic control devices, and the use of flag persons shall be considered and as per ANSI A10.34. Public service announcements shall be used as needed to promote safety of the public exposed to USACE activities. Barriers and fencing shall be considered in restricting the public from operation sites. It is also necessary for all contact with the public to be handled in a courteous manner. (See ANSI A10.34.)

Judicial Council of California

Another positive example comes from the Administrative Office of the Courts Courthouse Construction Program’s project safety guidance manual (published in October 2012). This example addresses a large renovation and construction project.

Protection of the Public: All necessary precautions to prevent injury to the public or damage to property of others should be taken. The prime contractor should develop and submit for review a public protection program pursuant to the requirements of ANSI standard A10.34, “Public Protection in Construction Zones,” and any other applicable regulations. . . .

Body of Knowledge

ASSE’s Body of Knowledge contains a PowerPoint presentation on the standard.

A10.34: Questions & Answers

Barry Cole, a former chair of the A10.34 subgroup, shared these questions and answers from a webinar he delivered. This information offers additional insight into the value of the A10.34 standard.

1) Does OSHA have any jurisdiction over public hazard exposures? My position has always been that it does not, but can you cite any examples of case law or regulatory record where OSHA has addressed public related safety issues on construction sites?

As a general rule OSHA does not and cannot enforce its rules on a constructor, or cite a constructor, when the constructor controls, exposes, or creates a hazard for the public. Most safety professionals know of more than a few OSHA inspections that were generated by public concern for their own safety, but OSHA responded because there was also a potential for worker safety concerns.

In addition, we know of instances in which OSHA rules are used as an example of wrongdoing by a constructor in a civil case against the constructor where a member of the public was injured. This is a legal matter of interpretation that may change in different communities or court jurisdictions, but it is commonly called the “standard of care,” which creates an expectation for the public to get at least that much safety. I am not an attorney, but essentially if OSHA standards are the minimum expected protection for workers, then it could follow that a plaintiff can ask, “Why shouldn’t the public be entitled to the same protection?” This has to do with the standard of care in the community: What a reasonable person is expected to do (to protect another person), and what a reasonable person is allowed to expect (to be protected or not).

In the case of the bridge beam that collapsed and killed three people in Denver, CO, OSHA was invited to tell National Transportation Safety Board what it would cite if the incident were a construction incident with workers exposed. OSHA voluntarily participated, and without any investigation, agency representatives commented on what “could have” gone wrong and what “might have” been cited under OSHA standards; in some respects that became a part of the report and was treated as somewhat conclusive as to what the construction site may have done wrong.

Finally, OSHA has cited building both building owners and on-site contractors for failing to notify building occupants of asbestos activity/presence/exposure and for failing to provide anchorages and fall protection anchor points. While the OSHA standard is directed only at employees, some crossover exists from ANSI standards to both constructors and the public liability aspects.
2) Section 1.3.1 of A10.34 has a statement addressing the enforcing authority: “If the enforcing authority, project constructor or other responsible party (agent) determines that portions are not applicable and the intent of the standard is still met, then those specific sections should be deleted (or disregarded) where they do not apply.”

The enforcing authority is the entity on the job site that is in overall charge of site safety, and the implementation (voluntary) of the A10.34 standard. Typically, it is the person with overall control of the site or the activity in question. For example, it could be an owner that has contractually required a general contractor to use A10.34 to plan public protection. Like everything else, if a contract calls for something, there should be a method for the controlling entity to make sure it is done. If a project constructor implements the standard independently to control his job site, he becomes the enforcing authority. To the extent the decisions or responsibilities are delegated to others, they are agents of the enforcing authority and they could make decisions on some matters. If none of these entities is implementing or enforcing the standard, the employer of the workers who are performing the work can be the enforcing authority.

Essentially, this means that anyone who is in charge can read the standard and determine that portions of it do not apply; they can then simply disregard (or delete) that item from the standard. That is, they do not have to consider it or specify a way to abate it.

For example, a highway cut job, through virgin forested land with no buildings or underground structures nearby, the employer could determine that section 3.2.14 on vibrations and subsidence is inapplicable and, therefore, could act as though the section was removed. Similarly, on the same job, falling objects and windborne objects affecting the public might be of no concern, so section 3.2.8 could be omitted.

3) Let’s talk about subcontractors. We have a series of sites with different jobs and often the only workers on the site may be subcontractor employees. On several occasions, a subcontractor has not secured the site before leaving. What are your thoughts on this?

I think the best possible way to gain subcontractor compliance is to involve them when you develop a project’s public protection plan. The plan should address after-hours and weekend security where a subcontractor stays over or comes in on his own. Many controlling contractors simply forbid entrance to anyone who is not accompanied by a member of the controlling contractor’s company.

4) This question concerns administration of projects and compliance with the standard. What should we save in regard to recordkeeping?

I like to see documentation saved during a job, and through the reasonable period after a job when public liability claims and/or third-party injury subrogation claims are likely to come in. I recommend at least 1 year, but 3 years is better. I can cite many examples in which job progress photos would have helped defend against a claim, and in which copies of adjacent building surveys would have documented pre-project cracks, settling or other reported issues.

Records should show that a contractor had plans; that those plans were complied with; that they were corrected and improved as the project progressed; that mistakes and problems were promptly corrected; and that exposures were monitored and controlled. The best records are a living history, and they can show the
significant efforts undertaken to minimize injury and damage during construction. Such documents may be a valuable asset when defending against claims as they can show that a contractor met a standard of care that exceeds what most contractors do and complied with a progressive standard similar to A10.34.

5) How is a quality preliminary risk assessment done to address public protection issues? What can you suggest as a checklist or a model for a quality assessment?

First let’s clarify that by risk assessment you mean hazard assessment. Some think that risk assessment is simply to quantify the risk and determine the potential cost of potential losses. In this case, the objective is to determine potential hazards, then develop plans and training to make people aware of the hazards and ensure that they work and perform in a way to minimize injury or loss from these potential hazards.

Preliminary risk assessment is vital to good contracting and for public protection. Contractors as a rule conduct operational, profit, quality and contractual risk assessments (even if in only their heads) during the bidding phases of a project. If some aspects of the job are deemed riskier, they add money, time or contingency, and they devise a rough plan of how the work is going to proceed. Otherwise, contractors would arrive on a project site with a crew and ask, “What are we going to do here?” Unfortunately, many planners and bidders do not incorporate OSH into their planning. For safety, a preliminary risk assessment is vital to developing a plan to abate/prevent hazards. Otherwise, you will simply be reacting to complaints, injury and damages, and near-hits. As a result, safety personnel will become “hazard hunters” and spend time trying to turn around mistakes in a work process after they occur but (hopefully) before they cause major harm.

The A10.34 standard, broken down to a bullet list, is a comprehensive guideline for a quality risk assessment. The sample public protection plan in the appendix is a solid document.

However, asking questions such as, “Is this a potential hazard?” or “Will our work involve a risk of this hazard to the public?” is only one part of conducting a quality risk assessment. The list is not a plan until the questions are asked and answered, and specific actions are developed and incorporated into the work plan to abate the hazard.

Further the plan must include actions and resources to monitor and assess the abatement methods to make sure they are working. The person who asks the questions (posed in A10.34) must be personally aware of all the activities that are planned for the job site and have an overview of the planned sequence of events, or s/he must have access to someone or all of the many people who do know.

In one safety class I took, the instructor asked us to develop a job hazard analysis for a project. As an OSH professional, I could imagine some activities that might be going on and could, therefore, presume some of the likely hazards. However, to perform a credible and comprehensive job, I needed to sit with the project superintendent/manager and ask what steps, tasks and processes s/he will actually be doing and in what order to help discern the kinds of hazards that might be created. Furthermore, the superintendent has to indicate what s/he has already planned to abate, and must agree to the means and methods to minimize or eliminate the hazard, that can be incorporated into action plans.

A safety professional should be the facilitator to develop the risk assessment, and should be the one asking the series of questions to ensure that management is covering all possible hazards. However, operational management must be intimately involved in developing the plan and must agree on the hazards that might be created, and on the operational decisions, investments, schedules and process changes to abate the hazards.

This needs to be achieved before work starts, before each major phase, and/or before each trade begins, at least. This process should be monitored to ensure that it is proceeding according to plan; that the hazards are as expected; and that new hazards or unpredicted hazards are becoming obvious as the work progresses.

For most OSH professionals, this process should be familiar; it is the same process we use for protecting employees. For the purposes of planning and prevention, this risk assessment is a public version of a job hazard analysis—public hazards are addressed and abated rather than occupational hazards.
Blueprints Resources

- Construction Information
- International Resource Guide
- Journal of SH&E Research
- Networking Opportunities
- Professional Safety Journal
- Publication Opportunities
- Volunteer Opportunities

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