Member interest in the use of the standard continues to grow. Of interest is that recognition and use of the standard in contracts and work agreements also continues to grow. Recently, there was a request for examples of such recognition due to a discussion on whether or not the standard should be included in a contract specification for a large railroad construction project.

In addition, we recently also received a similar request for similar information addressing the construction of a large private sector facility in Texas.

Due to these requests and an increased number of member inquiries, we are providing an update on the standard, its current status, and examples of current recognition.

Introduction and Status: The ANSI/ASSE A10.34 Standard is considered by many users to be the primary document used in the United States, and some areas outside the United States, addressing the protection of the public on or adjacent to construction and demolition sites. It is a bit unique and especially useful, in that it does not specify actual rigid specifications for actions for each and every hazard that may exist, but instead shows the reader how to address each hazard that could exist, and create a pre-plan on how they are going to handle the mitigation or separation of that hazard from the public, (or separate the public from that hazard). It is a good checklist to alert all management personnel of the kinds of things that commonly create public involved accidents and liability for constructors. It actually has a form that condenses the standard into a checklist format.

The initial standard was approved in 2001, was reaffirmed in 2005 and again in 2012. The A10.34 Subgroup is now undergoing a revision and we expect to see a proposed revised standard sometime during Calendar Year 2017. We expect the revision will be somewhat substantive with an expansion of some of the requirements and a clarification
of others. Mr. John Johnson, Vice-President of ESH&S for Black & Veatch is the subgroup chair for the A10.34 Subgroup.

What does the standard cover: This standard provides the recommended elements and activities on construction projects to provide protection for the public. It is intended for use as a guideline to provide protection for the public. The project constructor shall implement this standard as appropriate to the specific size and location of the project and degree of potential hazards to the public. It is noted that a project constructors can assign all the questions and the planning to the subcontractors that may have the primary responsibility and that actually create the hazards. Combining all the various plans, and making sure there are not conflicts is the job of the site operations controlling contractors.

One of the primary questions asked if the standard applies to demolition projects since demolition is not specifically included in the scope statement. The A10 Committee has answered “yes” to this question and noted that the full title does include demolition, the foreword also recognizes demolitions, and the ANSI/ASSE A10.6 Demolition Standard is also specifically referenced. The proposed revision will include more on the issue of demolition and protection of the public from such sites.

ANSI/ASSE A10.34 is written in a recognized A10 Standards Format and addresses a variety of hazards and exposures for the protection of the public and construction and demolition sites. The standard itself is about twenty pages in length, which has proven to be a benefit for end users. The concept of the standard is to provide an overall structure and not try to address every single hazard and exposure on a construction and demolition site. It should be noted when there is a comment in the text of this standard the comment is meant to clarify the intent of the standard, however the language of the comment is not part of the standard.

The standard is organized via these areas:

Section #1: Includes the general introduction, scope, purpose, responsibility statement, and the exceptions. This section is meant to provide an overall structure for the standard and does not get into the specifics of hazard/exposure assessment and remediation

Section #2: This provides the definitions and nomenclature used in the standard. The section itself is not overly detailed as the A10 ASC has traditionally held to the philosophy that the standard’s contents should drive definitions and not vice versa.

Section #3: Section 3 is the heart of the standard and addresses:

Section 3: Guidelines for Public Hazard Control Plans
Section 3.1: Purpose
Section 3.2: Hazards to Consider
Section 3.3: Emergency Action Plan

This section of the standard is the heart of the document and the standard notes: “The purpose of the public hazard control plan is to evaluate and prevent or reduce to a minimum, the hazards identified in Sections 3.2 and 3.3 of this standard. The public hazard control plan shall be reviewed and updated as new hazards are identified or created, when new contractors are engaged or other conditions change.”

Section #4: This section is a checklist for use by safety professionals on construction and demolition sites reviewing public safety issues. The checklist is not meant to be all encompassing, but does provide a solid framework for a safety professional to use when reviewing and assessing such sites.

Examples of Recognition: We continue to get inquiries asking for examples of recent recognition of the standard. Below are some examples we believe could be assistance to you and/or your organization when consider whether or not cite to cite/recognize the ANSI/ASSE A10.34 Standard in a contract, work agreement, specification, etc… We have seen approximately 200/300 instances in the past decade but some examples below should assist:

#1. Government Agency: The example below is from a state governmental agency and gives a solid feel as to how the ANSI/ASSE A10.34 Standard is being 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…”

#2. We thought this example was a good one since it shows how the ANSI/ASSE A10.34 Standard is being used in public training programs. This is from the Los Angeles Unified School District. If you review this presentation you will see how the school district had training based on the ANSI/ASSE A10.34 Standard.

#3. An excellent example from implementation by the 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.)…”

#4. This is from the Judicial Council of California Administrative Office of the Courts Courthouse Construction Program - Project Safety Guidance Manual October 2012. It is also a good example since it 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….“

#5. ASSE does have a PowerPoint Presentation addressing the standard in the ASSE Body of Knowledge.

The Questions and Answers below were originally published by ASSE in “BluePrints”. This is the technical publication for the ASSE Construction Practice Specialty. This Q&A was put together by Barry Cole who was the long-term chair of the A10.34 Subgroup and addressed a webinar put on about the issue. We thought inclusion of the webinar Q&A would go a long way in addressing implementation of the standard:

1. The question has come-up time and again in our firm of whether or not OSHA has any jurisdiction over public hazard exposures. My position has always been “no”, but are there 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 their 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.

In addition, we know of instances where 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 the gist of it is that if the 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 that was in Denver, OSHA was invited to opine to the National Transportation Safety Board as to what they would cite if the accident were a construction accident with workers exposed. OSHA voluntarily participated, and without any investigation, they did opine on what “could have” gone wrong and what “might have” been cited under the 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, we are aware that OSHA has cited building both building Owners and on site Contractors for violations of the asbestos standards, for failing to notify building occupants of asbestos activity/presence/exposure and for failing to provide anchorages, and fall protection anchor points – where the OSHA standard is directed at only Employees, there is some crossover from ANSI standards to both constructors and the public liability aspects.

2. Section 1.3.1 has a statement addressing the enforcing authority.

1.3.1 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 jobsite that is in overall charge of site safety, and the implementation (voluntary) of the A10.34 standard. For the most part it is the person with overall control of the site, or the activity in question. For instance 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’s done correctly. If a project constructor implements the standard on his own to control his jobsite, 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 are implementing or enforcing the standard, the employer of the workers that are doing the work can be the enforcing authority.
So, this quite simply means that anyone who is in charge, can read the standard and determine that portions of the standard don’t apply, and then they can simply disregard (or delete) that item from the standard. That is, they don’t have to consider it, or specify a way to abate it. For instance, a highway cut job, through virgin forested land where there are no buildings or underground structures nearby, they could determine that the entire 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 wind born objects affecting the public might be of no concern either, so 3.2.8 could be omitted.

3. My question deals with subcontractors. We have a whole series of sites with different jobs and many times the only workers on the site might be from the subcontractor. What are your thoughts on this? We have several issues where a subcontractor did not secure the site before leaving.

When you develop the Project Public Protection Plan, and have your subcontractors participate in developing their parts of it, (relevant to their work) and then have them agree to comply with the plan as it is developed, I think that is the best possible way to get their compliance. After it is in effect, it should be part of the plan to address security for afterhours work, and weekend work, where a subcontractor stays over or comes in on his own. Many controlling contractors simply forbid having anyone on site that isn’t accompanied by a member of the controlling contractor’s company.

In another case, you should delegate to the subcontractor the duty of locking up: if they have access, they should have the responsibility to close up, too. They become your agent under the 10.34 standard, if lock up is the G.C.’s duty, but they delegate it to the weekend subcontractor and the weekend subcontractor accepts that duty.

I have one client that doesn’t fence their jobs, so lock up is not their concern, but public liability (and OSHA, too) is one of their concerns. So, their subcontractors are forbidden to work outside the designated hours without giving notice, and further may not work without a member of the G.C.’s staff if there is any elevated work, any trench work, or any work near the public. They enforce this like any other part of the management sphere of responsibility. They use contractual, financial, disciplinary, and other means to assure to the extent possible that the rules are followed. If a subcontractor can’t be relied upon to close up a gate, how can he be relied upon to fill the block with grout every other cell, or weld the beams as directed, or use the proper solder on the pipe joints? How do you manage a contractor that won’t properly shore a trench for his own workers? That would be the same steps I would take to insure he follows through on his agreement to lock up after he leaves for the day – if you are going to allow subcontractors on site without controlling contractor representation.
Communications of your expectations and a firm hand in reinforcing your public protection plan is required, especially when you delegate responsibility like security.

4. Barry is apparently going to be presenting on the practical implementation of the standard. But, I have a question about administration of projects and compliance with the standard. What does he suggest should be saved in regards to recordkeeping?

I am accused often of being a pack rat, but I like documentation and I like to see it saved during a job, and through the reasonable period after a job that public liability claims and/or third party injury subrogation claims, are likely to come in. So, I say, at least a year, but three years would be better. I have numerous examples where job progress photos would have been invaluable to defend against a claim, and where records of where buildings adjacent to the job were surveyed and the records proved that cracks, settling, or other claims predated the project. The records should show that you had plans that they were complied with, that they were corrected and improved upon as you progressed, that you promptly corrected mistakes and problems that arose and that you monitored and controlled your exposures. The best records are a living history, and they can show the significant efforts to minimize injury and damage that you undertook during construction. This may be necessary to show you met a standard of care that exceeds what most contractors do, and complied with a progressive standard like 10.34, and this may be a valuable asset during a defense of a claim.

5. Barry is presenting on an excellent topic. I would like to hear more on how a quality preliminary risk assessment is/should be done to address public protection issues. A risk assessment should be the first step for worker related safety. What can you suggest in regard to quality materials or a checklist as 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. (Such as in insurance underwriting). In this case we mean that we want to determine potential hazards, and develop plans and training to make people aware of the hazards and to assure 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 do 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 “riskier” they add money, time, or contingency and they have a rough plan of how the work is going to go. If they didn’t, they’d show up on a project with a crew and ask “What are we going to do here?” Unfortunately, many planners and bidders do not incorporate Safety and Health 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 misses” and/or your safety personnel will spend their days as “hazard hunters” and trying to turn around mistakes in a work process after they happen but (hopefully) before they do any major harm.

I think this standard, broken down to a bullet list is a comprehensive guideline for a quality risk assessment. The sample public protection plan at the Appendix of the 10.34 standard is a good document that does what I am speaking of here. However asking the question (“Is this a potential hazard?” or “Will our work involve a risk of this hazard to the public?”) is only 1/3 (at best) the process of 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 in order 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. It should be obvious that the person that asks the questions (posed by 10.34) has to personally be aware of all the activities that are planned for the jobsite and an overview of the planned sequence of events, or he/she as to have access to someone who does know, or all of the many people who do.

I remember being asked in a safety class, to develop a JHA for a project that was described in brief by the teacher. While I could, as a safety person, imagine some of the things that might be going on, I could therefore presume some of the likely hazards. But, in order to do a credible and comprehensive job, I really needed to sit with the Superintendent/Manager of the operation and ask what steps, tasks, and processes he will actually be doing, and in what order, for me to help him discern the kinds of hazards that might be created. Furthermore, he has to be the one to indicate what he has already planned to abate, and he has to agree to the means and methods to minimize or eliminate the hazard, that he can incorporate into his action plans to get the work completed.

In my mind a safety professional should be the facilitator to develop the risk assessment, and should be the one asking the series of questions – to insure that management is covering all possible hazards, but operational management needs to be intimately involved in the development of the plan and agree on the hazards that might be created, and the operational decisions, investments, schedules and process changes, to abate the hazards.

And, this needs to be done in general before work starts, before each major phase, and/or before each trade begins, at least. And, it should be monitored to see if the process is going according to plan, the hazards are what was expected, and if new hazards or unpredicted hazards are becoming obvious as the work progresses.
This should not be surprising to most safety professionals reading this; we are basically talking about the same process for public protection that we commonly talk about for employee protection. This risk assessment, for the purposes of planning and prevention, is a public version of a JHA only with public hazards addressed and abated rather than occupational hazards.

Conclusion

We are looking for a revised ANSI/ASSE A10.34 Standard sometime during Calendar Year 2017. To order the standard and get more information please visit:


http://www.asse.org/assets/1/7/A10.34TechBrief8-2012.pdf