



**Este documento es muy importante. Si ud. No habla inglés, busque un traductor o llame al (316) 269-6644.**

U.S. Department of Labor Occupational Safety and Health Administration  
 100 N. Broadway Suite 470  
 Wichita, KS 67202  
 Phone: (316) 269-6644 Fax: (316) 269-6185

June , 2022

Dear \_\_\_\_\_

On \_\_\_\_\_, an OSHA compliance officer met with you or your representative as part of an inspection at \_\_\_\_\_. This letter includes the citations for the violations that were found (see summary below). Please choose one of the three options from the box to the right and complete the associated steps found on the following pages within 15 working days. Please call us if you have any questions about the enclosed citation and/or penalties; we are here to help you choose the best option to resolve your citation as quickly as possible.

Sincerely,

\_\_\_\_\_, Area Director

**Your Citation Summary**

Inspection Number: \_\_\_\_\_

**Total Amount Due:**

**Payment Due Date:** 15 working days after receipt of this letter

You must correct each violation by the date listed in the Citation and Notification of Penalty. Please see the violations and the correction deadline for each violation starting on page 6.

**Total Number of Violations :** 3

**Your First Correction Deadline is:** 06/ /2022

**Step 1 – Choose a Response Option and Act within 15 working days**

Respond now before you lose the ability to discuss potential adjustments to penalty amounts and/or due dates. Please choose one option below and complete the steps on the next page.

**Option #1 – Discuss with OSHA**

I would like to discuss the citation with an OSHA representative. This may lead to changes in the penalty amount, due date or correction deadlines (if appropriate).

**Option #2 – Correct and Pay**


I agree with the citation, penalties, and correction deadlines, and do not contest.

**Option #3 – Contest the Citation**

I do not agree with the citation, penalties, and/or correction deadlines, and would like to contest.

**Questions or Concerns?**


If you have any questions or concerns regarding the citation, penalties, and/or correction deadlines, please call us at (316) 269-6644.


 **iSi Environmental**  
A Consulting & Facility Support Services Company

3

## Occupational Safety and Health Review Commission

- OSHRC is an independent (of both OSHA and Department of Labor) federal agency created by the OSH Act to decide contests of citations or penalties from OSHA inspections.
- 29 CFR 2200
- Cases challenged
  - 2019 - 2,032
  - 2020 - 1,689
  - 2021 - 1,370
  - 2022 - 1,581
  - 2023 - 1,936



 **iSi Environmental**  
A Consulting & Facility Support Services Company

4

## Commission Procedures

- Once receipt of contest and citation is received, Commission's Office of Executive Secretary (i.e. court clerk) assigns docket number, case file, and notifies all parties.
- Two levels of adjudication
  1. Trial – One (1) OSHRC Administrative Law Judge (ALJ)
  2. Appeals – Three (3) member commission after ALJ issues a decision
- Simplified
  - Method to expediate less complex cases:
    - <\$30K, no willful/repeat, small employer
  - Do not involve formal pleadings and require parties to engage in early discussions to narrow the disputed issues.
- Secretary of Labor bears the burden of proving any violations alleged in the contested citation(s).
- Review of a final order of the Commission may be requested in an appropriate US Circuit Court of Appeals.



5

## Violations of Standards

- The Secretary has the burden of establishing the employer violated the cited standards.
- To prove a violation of an OSHA standard, the Secretary must show by a preponderance of the evidence that:
  1. The cited standard applies;
  2. The employer failed to comply with the terms of the cited standard;
  3. Employees had access to the violative condition; and,
  4. The cited employer either knew or could have known with the exercise of reasonable diligence of the violative condition.



6



## 9 Court Cases

### OSHA v. Industry

7

## 1 - Payment for Safety Shoes

In 2010 a Cattle Processing Company is cited by OSHA for \$2,975 for failing to pay for specialty safety shoes due to Union filing a complaint with OSHA against six (6) of its facilities.

### **Complaint:**

“Company requires production employees in this meatpacking plant to wear specialty protective footwear and is NOT providing it free of charge.”



8

## Facts of the Case

- Facility slaughters cattle causing blood, fat, and pieces of meat being on the floors, which causes the floors to be slippery.
- Corporate Policy:
  1. Footwear must be water resistant for food safety purposes. Water resistant would be defined as smooth leather or rubber.
  2. Footwear must cover the ankle (not just part of the ankle).
  3. Tennis shoe style footwear will not be allowed.
  4. Any color, other than white, is acceptable provided it can be properly cleaned as stated above.
  5. Slip resistant soles are required, slick soles, tennis shoe type soles and high heels will NOT be permitted.
- Outside of complaint, company does require steel-toe boots and arc flash boots for particular positions and does pay for them.
- Employees must pay for shoes; however, managers are provided shoes free of charge.



9

## OSHA Citation

- Work boots are “specialty” boots due to requirements be water resistant and slip resistant.
- Citation:
  - This employer requires employees to use [PPE], specifically specialty protective footwear meeting the employer’s parameters, due to hazards such as slipping and falling on wet floors, as well as animal remnants, such as fat and other protein material, and prolonged water and fluid exposure to the feet, and does not provide the equipment at no cost to employees....
  - These employees are required to provide their own water-resistant boots, having a slip resistant sole, for protective footwear at their own cost.

**1910.132(h)(1)** - Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.



10

## Cattle Processing Company's Argument

- Company is not required to pay for them since they are general boots.
- "Plain language" of the standard and the exemption for "normal work boots."
  - 1910.132(h)(4)
    - *The employer is not required to pay for:*
  - 1910.132(h)(4)(ii)
    - *Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or*
- No boot specifically designed for meatpacking.
- Not "special" boots serving a narrow function, but rather can be used for various functions.



11

## Who Won?

OSHA

Cattle  
Processing  
Company

12

## Winner - Cattle Processing Company

- Witness Expert Used
  - President and founder of company that manufactures footwear
  - Secretary of ANSI committee on slip, trip, and fall prevention
  - Founded National Floor Safety Institute
  - Served on six (6) committees of the ASTM
  - Testified before OSHA on proposed walking-working surfaces rule
- No definition of “slip resistance” in the footwear industry (marketing phrase)
- Opinion of “normal work boot”
  - “Well, a normal work boot is kind of a generic term that kind of includes, if you will, two common denominators. Now, the two aspects of a normal work boot are a slip-resistant sole and a water-resistant upper. That’s what a work boot or work shoe is.”
- Opinion of “specialty shoe”
  - “Very specific characteristics of a shoe that’s specific to a job duty or a job responsibility.”
  - Examples - static dissipative, or puncture resistant, or firemen’s knee boots.



**isi** Environmental  
A Consulting & Facility Support Services Company

13

## 2 – No Safety Glasses



- In 2015 a Chicken Processing Company is cited \$4,590 for failing to require eye protection.
- OSHA initiated an investigation after the company had reported an incident resulting in an eye injury.
  - An employee suffered a laceration to the eyelid while working on the debone line as employee attempted to pick up a chicken that had fallen from the cone.
  - The employee reached down to retrieve the chicken with the knife still in hand.
  - As employee lifted the chicken up, employee struck the eye with the knife tip, cutting eye lid.
  - Hospitalized for treatment of the injury.

**isi** Environmental  
A Consulting & Facility Support Services Company

14

## Facts of the Case

- Employees on debone line do NOT wear eye protection. Prohibited.
- Employees use a trough of warm water that runs down the processing line to warm their hands since the line is in refrigerated area.
- Clothing and PPE worn:
  - Gown over street clothes
  - Cut-resistant gloves and sleeves
  - Hearing protection
  - Hair net (and beard net if needed)
  - Apron
  - Rubber boots
- Employee was reprimanded for not placing knife in holder when “not cutting chicken” per company rule.



15

## OSHA Citation

### Citation:

The employer failed to require eye protection where employees were exposed to hazards from foreign objects such as, but not limited to, knives, chicken bone fragments, chicken fat and fluids coming from chickens being processed.

**1910.133(a)(1)** - The employer shall ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

- Visible chicken skin and fat splatter visible throughout area.
- Experiment showed drops of liquid flying towards the eyes of employees.



16



## Chicken Processing Company's Argument

- Use of safety glasses is infeasible due to glasses fogging in refrigerated area.
- Creates a greater hazard than not wearing them.
- Fogging leads to vision impairment.
- Potential for glass or hard plastic to get into food.
- Use of clear safety glasses poses a food safety hazard.
  - Quality Assurance (QA) Director determined the food safety hazard outweighed the benefit of wearing safety glasses.
  - Would cause violation of food safety standards and regulations.
- Language of standard does not cover hazards associated with knives and company work rules protect against such hazards. No other eye hazards on debone line.



17

## Who Won?

OSHA

Chicken  
Processing  
Company

18

## Winner - OSHA

- Penalty unchanged at \$4,590.
- Company
  - Could not identify conflicting food safety standards or regulations violations.
  - Presented insufficient evidence of the unavailability of safety glasses with defogging capabilities.
  - No explanation why glasses on debone line are more likely to contaminate the food product than glasses worn in other areas.
- Agreed with company knife hazard not applicable as the listed sources of hazards do NOT include a knife.
- Agreed with OSHA that liquid spatter does fall within hazards listed in standard.
- Agreed with company that injury rate is low, but evidence in industry to establish constructive notice.



**isi** Environmental  
A Consulting & Facility Support Services Company

19

## 3 – Powered Industrial Trucks (Forklifts)

In 2022, a Cold Storage Warehouse Company is cited for two (2) violations totaling \$24,240 after company reported an employee severely injured ankle attempting to avoid hitting a bollard while driving a forklift on the loading dock.

- An untrained forklift operator is able to badge in with another employee's authorization to start the forklift.
- According to company's report to OSHA, employee was making a left turn, stuck out foot, and caught it between a bollard and the forklift.
- Amount of product in the loading dock changes daily and for that reason, there are no designated storage areas or paths for forklifts or pedestrian traffic on the loading dock floor.

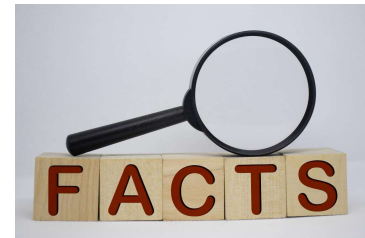


**isi** Environmental  
A Consulting & Facility Support Services Company

20

## Facts of Case

- New forklift operators must:
  - Watch 30-minute training video
  - Attend a class using 76-slide PowerPoint presentation
  - Complete hands-on training and take a proficiency test.
  - Receive two weeks of “shadowing” another forklift operator.
  - Recertification every three years
  - Refresher training annually
- Software is installed on forklifts requiring ID badge indicating certification to operate.
  - Also requires vehicle inspection checklist before starting.
- Speed governors are installed limited forklift speed to 5 mph.
- Operators instructed to give pedestrians the right-of-way.
- Supervisor must complete three behavior-based safety observation per day.
- Company has disciplinary program for serious safety rule violations.



21

## OSHA Citation 1

### Citation:

Company “failed to ensure employees working throughout the building were protected from powered industrial truck traffic by having designated lanes of travel, free from pedestrian traffic.” The Secretary contends the standard requires “safe passage via permanent aiseways or passageways” and that the company’s failure to have “permanent passageway for pedestrians or powered industrial trucks” violated that requirement.

**1910.176(a) - Use of mechanical equipment.** Where mechanical handling equipment is used, sufficient safe clearances shall be allowed for aisles, at loading docks, through doorways and wherever turns or passage must be made. Aisles and passageways shall be kept clear and in good repair, with no obstruction across or in aisles that could create a hazard. Permanent aisles and passageways shall be appropriately marked.



22

## The Arguments

### OSHA:

Company failed to provide “permanent passageway for pedestrians or powered industrial trucks.”

### Cold Storage Warehouse Company:

The 176 Handling Materials standard does not require what OSHA contends; the standard cannot be reasonably read to require the separation of pedestrian and PIV traffic by designed aisles.



23

## OSHA Citation 2

### Citation:

The Secretary alleges company allowed an untrained person to operate a forklift. The alleged violation relates specifically to the use of the forklift by the injured employee. The Standard requires an employer to “ensure that each operator has successfully completed the training required by this paragraph” prior to being permitted to operate a PIV.

**1910.178(I)(1)(ii)** - Training shall consist of a combination of formal instruction (e.g., lecture, discussion, interactive computer learning, video tape, written material), practical training (demonstrations performed by the trainer and practical exercises performed by the trainee), and evaluation of the operator’s performance in the workplace.



24

## OSHA's Argument

- Company failed to ensure employee was trained prior to using forklift.
- Two (unidentified) employees informed compliance officer that two supervisors had observed unauthorized employee using forklifts.



25

## Cold Storage Warehouse Company's Argument

- No actual knowledge
  - OSHA had not established any supervisor was in a position to observe alleged incident.
- No constructive knowledge
  - Written rule prohibiting unauthorized use of forklifts.
  - Controls access to forklifts through employee badges.
  - Supervisors conduct routine safety observations of employees.
  - Three (3) employees terminated due to safety violations of forklifts.





26

**Who Won?**

**OSHA**

**Cold Storage Warehouse Company**

27



**Winner – Cold Warehouse Storage Company**

**Citation 1 – Aisle Marking**

- Does not require the employer to designate or demarcate aisles.
- Standard only requires appropriate markings for aisles but only those reasonably found to be permanent.
- Company has not created separate permanent aisles such that the requirement for markings would apply.
- Plain language of standard does not support citation.

**Citation 2 – Forklift Training**

- OSHA unable to show company had constructive knowledge of violation.
- Company took reasonable steps to monitor compliance.

28

## 4 – Voluntary Use of Hydraulic Press

In 2019, a Yacht Shipyard Company is cited for two (2) violations totaling \$13,260 after an employee is killed due to blunt force injuries from ejected metal bar.

- Employee came into facility voluntarily on a Saturday to work on a personal project making turtle figures out of boat propeller blades.
- Employee used a 70-ton hydraulic press when it ejected a metal bar, striking employee in the abdomen.
- Employee immediately called spouse, taken to hospital, and taken into surgery shortly thereafter.
- Employee died the following day.



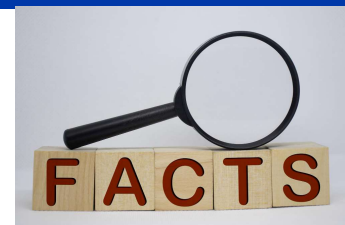
Example of Hydraulic Press



29

## Facts of Case

- Press manufactured in 1940.
- Altered from original design, unknown who and when.
- Personal projects are sometimes done at the facility.
- Two other employees present at facility, but did not witness incident.
- Security camera present.
  - Not within view of incident.
  - No evidence employee used press in video.
- Medical doctor stated the striking object is the cause of death, not pre-existing medical conditions.



30

## OSHA Citation 1

### Citation:

Exposing employees to struck-by hazards when operating the hydraulic press, which “was altered from its original design and intended method of use.”

### General Duty Clause

1. A condition or activity in the workplace presented a hazard
2. The employer or its industry recognized the hazard
3. The hazard was likely to cause death or serious physical harm
4. A feasible means existed to eliminate or materially reduce the hazard



31

## OSHA Citation 2



### Citation:

Failing to provide adequate machine guarding on the hydraulic press, exposing employees to amputation, crush-by, and struck-by hazards.

**1910.212(a)(1)** - Types of guarding. One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are - barrier guards, two-hand tripping devices, electronic safety devices, etc.



32



## OSHA's Argument

- Employee was operating hydraulic press that unexpectedly ejected one the metal bars, striking employee in abdomen, resulting in injury and then death.
  - Witness testimony (spouse) that is credible.
  - Medical examiner's report:
    - "A **pipe** broke loose and struck the decedent in the abdomen at work. The decedent was diagnosed with a duodenal hematoma and traumatic aortic occlusion. Surgical intervention was performed, but the decedent continued to decline despite these efforts and was pronounced dead."
  - Security camera footage.



33

## Yacht Shipyard Company's Argument

- Incident is not within the scope of the employee's relations with the Company.
- Security camera video is inconclusive.
- No evidence employee was operating press.
  - Questioned whether employee was even operating press and pre-existing medical conditions caused death.
  - Proposed alternative theory that employee was using a metal pipe to hold the propeller in place as employee hammered it.
    - Relying on testimony from someone who did not testify in court.
    - Relying on medical report using word "pipe" instead of "bar."





34

**Who Won?**

**OSHA**


**Yacht Shipyard Company**

35

**Winner – Yacht Shipyard Company**

- Employee was within scope of their relationship with Company.
  - Authorized to work in the shop.
  - Employees had access to press.
- Press was being used which ejected bar struck employee resulting in death.




**Citation 1 – General Duty Clause**

- Although manufacturer of press identifies struck-by hazards from workpieces creating projectiles, it did not identify any struck-by-hazard resulting from modification of the press.
- ANSI B11.2 standard includes hazards associated with operation, but not from modifying the press.
- OSHA failed to prove the industry recognized a “struck-by-hazard” from modifying the press.
- OSHA acknowledged the modification did not contribute to the incident.

**Citation 2 – Machine Guarding**

- OSHA failed to establish the press’s point of operation posed a hazard such that the company was required to guard it under 212(a)(1).

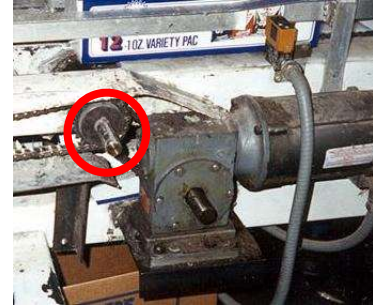


36

## 5 – Machine Guarding on Power Transmission Devices

In 2014, OSHA completed a planned inspection at a chicken processing company resulting in two (2) citations being issued for \$4,050 in total.

- OSHA observed using motorized saws to cut chickens in half where the rotating shafts between the motors and saw blades were unguarded.
- OSHA also observed an unguarded shaft-end protruding from a gear box. The shaft end was not smooth because a “key” which locks the shaft to the gearbox protruded from the surface of the shaft.



**isi** Environmental  
A Consulting & Facility Support Services Company

37

## Facts of Case

### Citation 1 – Shaft Not Guarded

- Shafts are five (5) inches long.
- Rotated at 1,750 rpm.
- Motor is one (1) horsepower.
- No emergency stop on saw.
- Two set screws slightly stuck out from the shafts.
- “Teeth marks” were present from the application of a wrench when the screws were turned.
- 1/4” to 3/8” space between the arbor and the blade.
  - Not large enough for a finger to get caught, but large enough to snag clothing.
- Operators wear four (4) layers of gloves, including Kevlar gloves, covered by wire mesh when operating the saws.
  - Takes several seconds for saw to cut through gloves using considerable pressure.

### Citation 2 – Shaft End Not Smooth

- Rotated between 14-40 rpm.
- Small work area and no barrier between employee and shaft end.



**isi** Environmental  
A Consulting & Facility Support Services Company

38

## OSHA Citation 1

### Citation:

- Company failed to guard all exposed parts of the horizontal shafts attaching the motor to the blade on both saw hand cutters.

**1910.219(c)(2)(i)** - All exposed parts of horizontal shafting seven (7) feet or less from floor or working platform, excepting runways used exclusively for oiling, or running adjustments, shall be protected by a stationary casing enclosing shafting completely or by a trough enclosing sides and top or sides and bottom of shafting as location requires.



39

## OSHA Citation 2

### Citation:

- A shaft end protruding from a gear box was not smooth, causing an employee's apron to be torn several times a week.

**1910.219(c)(4)(i)** - Projecting shaft ends shall present a smooth edge and end and shall not project more than one-half the diameter of the shaft unless guarded by nonrotating caps or safety sleeves.



40

## OSHA's Argument

### Citation 1 – Shaft Not Guarded

- Observed employee's hand came within four (4) inches of rotating shaft.

### Citation 2 – Shaft End Not Smooth

- Key protruded 3/8" from surface of the shaft.
- Standard only exempts shafts with a smooth edge and end.
- Key on the end is projected and thus not smooth.



41

## Chicken Processing Company's Argument

### Citation 1 - No Guarding of Shaft

- Cited standard does not apply as arbor and shaft are two distinct components
  - Rotating arbor – a sleeve which slides over the motor shaft (power transmission apparatus) of the cut-up saw motor and is connected to the shaft by two set screws.
  - Arbor's purpose is to secure the saw blade to the power transmission apparatus.
  - Arbor itself is not a power transmission apparatus.
  - OSHA should have used 1910.212 for general machine guarding, which the arbor does not present a hazard anyway.
- Not reasonably predictable that the operator would contact the shaft. No injuries and no complaints. Thus, no hazard.
  - 50 years
  - 5.2 billion cuts
  - 750 million chicken
- Corporate Safety and Health Manager believes employees are not exposed to a hazard.
- Employees wear aprons designed to break away.
- Employees prohibited from wearing loose clothing.

### Citation 2 – Shaft End

- Estimated protrusion was just a bump, no thicker than a piece of paper.



42

**Who Won?**

**OSHA**

**Chicken Processing Company**




43

**Winner – OSHA**



**Citation 1 – Shaft Not Guarded**

- The arbor is a vital and integral part of the power transmission apparatus and must be considered part of it. Rotates at same speed as the shaft and presents the same hazard. Both function and hazard are virtually indistinguishable.
- Specific accident rate is not required to establish a violation. Purpose of the OSH Act is to prevent the first accident.
- OSHA “bears no burden of proving that failure to comply with a specific standard creates a hazard.” OSHA need only show violation of the standard.
- No evidence that access to the shaft was impeded or obstructed. Article of clothing could be snagged.

**Citation 2 – Shaft End Not Smooth**

- Using Merriam-Webster dictionary, the shaft end did not meet definition of “smooth.”
- Moved penalty from “Serious” to “Other-than-Serious”

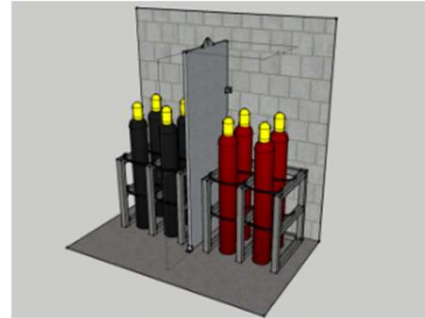
Overall penalty reduced to \$1,500.

44

## 6 - Fire-Wall for Oxygen and Acetylene Cylinders

In 2011, a Construction Company was fabricating holding tanks for a wastewater system. An OSHA inspector showed up under an emphasis program for federal construction. OSHA issued one (1) citation with a penalty of \$2,380 for failing to separate oxygen and acetylene cylinders by a fire-wall with an appropriate fire rating.



**isi** Environmental  
A Consulting & Facility Support Services Company

45

## OSHA's Citation

### Citation:

- Employees were exposed to fire and explosion hazards when oxygen and acetylene cylinders were not separated by a fire-wall with a ½ hour rating.

### **1926.350(a)(10) or 1910.253(b)(4)(iii)**

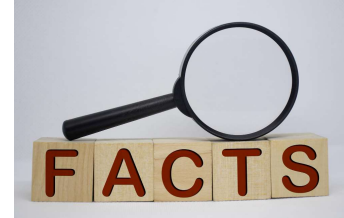
- Oxygen cylinders in storage shall be separated from fuel-gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet (6.1 m) or by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour.

**isi** Environmental  
A Consulting & Facility Support Services Company

46

## Case Facts

- Storage rack was made by company and contained:
  - 2 acetylene cylinders
  - 4 propane cylinders
  - 2 oxygen cylinders
- Valves on oxygen and acetylene cylinders had been removed and protective caps were in place.
- Cylinders were secured to the storage rack's vertical surface.
- Cylinders had not been used for one week and were not to be used onsite.
- Cylinders were separated on the rack by a non-combustible barrier which was 5 feet in height and ¼ inch thick. One-inch gap between the barrier and the frame.
- Company had not tested the barrier to determine its fire resistance rating.
  - Fire resistance rating of the barrier is not known.
- Closest work activity was 30 feet away and located 5 feet from access road.



**isi** Environmental  
A Consulting & Facility Support Services Company

47

## Construction Company's Argument

- In order to meet its burden, OSHA must show the barrier failed to meet the fire resistance rating of the standard.
- Should be vacated because OSHA did not test the barrier for a fire resistance rating.
  - Burden is on OSHA to prove.

**isi** Environmental  
A Consulting & Facility Support Services Company

48



## OSHA's Argument

OSHA does not need to test the material because interpretative guidance from OSHA on 6-30-2006 states that a ½ inch thick solid steel barrier would not provide at least ½ hour fire resistance.

- In fact, a solid mild steel plate barrier, ½-inch thick, would fail to meet the fire-resistance rating for ½-hour (dated July 15, 1982). To obtain a ½-hour fire-resistance rating criteria, the most common materials used are plaster (cement, lime, and perlite) fillers, and mineral wool fillers. For example, a fire barrier (solid partition) would be comprised of metal lath on ¾-inch steel channels, combined with a 2-inch thick cement plaster. Solid mild steel plate barriers combined with plaster fillers such as concrete provide a higher protection factor that meet or exceed the ½-hour fire-resistance rating, because concrete has low thermal conductivity and capacity properties.
- Based on the above information, solid mild steel plate barriers, ½-inch thick, used alone would not meet OSHA's ½-hour requirements. However, a combination of materials used in conjunction with solid mild steel plate barriers would achieve the ½-hour fire-resistance rating criteria. Therefore, any material used that meets or exceeds the ½-hour fire-resistance rating would be in compliance and acceptable for 29 CFR 1910.253(b)(4)(iii).



49

## Who Won?

OSHA



Construction  
Company



50

## Winner - OSHA

- Court agreed the barrier is insufficient and OSHA has met its burden to prove the violation.
- Review Commission agreed that a serious penalty is appropriate.
  - 30% reduction for size of company (<50 employees)
  - 15% reduction for good faith for safety and health program in place.
  - No prior history of violation of standard.
  - Employees not working in immediate vicinity of the hazard.
- Final penalty of \$1,500 is assessed.



51

## 7 – Fire Extinguishers Not in HazCom Program

In 2014, a General Contractor for construction projects at a US Army Installation was given two (2) citations during a planned OSHA inspection for not maintaining a SDS for an ABC portable fire extinguisher and not including it within its list of hazardous chemicals within its Hazard Communication program. OSHA proposed no penalty (\$0) for the violations.



52

## Facts of Case



- Completing renovation of medical facility.
- 12-13 employees were onsite.
- Estimated 8-10 fire extinguishers onsite.
- One of citation is 10-lbs ABC fire extinguisher.
- SDS shows it contains calcium carbonite which is hazardous.
  - Ammonium sulfate and ammonium phosphate also listed, but non-hazardous.
- Pressurized at 140-180 psi.
- Employees were trained on how to use extinguishers.



53

## OSHA Citation 1



**Class A**  
Common flammable materials such as liquids, paper and wood.



**Class B**  
Combustible liquids such as motor oil, kerosene, oil paint.



**Class C**  
Electric current and devices.



**Class D**  
Flammable metal.



**Class K**  
Kitchen flammables, such as grease or oil used in a frying pan or deep fryer.

### Citation:

- Company failed to list the Ansul Sentry ABC fire extinguisher on its list of hazardous chemicals at the worksite.

**1910.1200(e)(1)(i)** - A list of the hazardous chemicals known to be present using a product identifier that is referenced on the appropriate safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas).



54

## OSHA Citation 2



### Citation:

- Company failed to have an SDS for the Ansul Sentry ABC fire extinguishers available for employees.

**1910.1200(g)(8)** - The employer shall maintain in the workplace copies of the required safety data sheets for each hazardous chemical and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s). (Electronic access and other alternatives to maintaining paper copies of the safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options.)



55

## OSHA's Argument

- Anything exceeding 40 psi is a physical hazard under HazCom.
- Contents could come in contact with employee's skin or be inhaled when used.
- Typical residential fire extinguishers are 1 to 2.5 pounds.
- Number of fire extinguishers onsite exceeds number typically found in a home.
- Potential for fire breaking out is greater than in a home.



56

## General Contractor's Argument

- Not included in HazCom, because policy is to evacuate and only use to aide in evacuating.
- Type of firefighting employees would engage in is similar to a homeowner.
- 10-lbs extinguishers are available to general public and contain same chemicals.
- Emergency Action Plan and Fire Protection Policy both emphasis evacuation over firefighting.
- Employees do not recharge extinguishers, only complete visual inspections.
- Has a "hot work" program to prevent fires with permitting system.
- No fire emergencies had occurred at work site.
- Fire extinguisher fall within exception 1910.1200(b)(6)(ix) for "consumer products."
  - Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act and Federal Hazardous Substances Act respectively, where the employer can show that it is used in the workplace for the purpose intended by the chemical manufacturer or importer of the product, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers when used for the purpose intended.



57

## Who Won?

OSHA



General Contractor



58

## Winner – General Contractor Company

- Fire extinguishers fall within the definition of both a hazardous substance and a consumer product.
- The fire extinguisher used for its intended purpose.
- Duration and exposure likely to be experienced by employees on the worksite is comparable to that of the normal consumer.
- Also listed under Federal Hazardous Substances Act, which is sufficient to meet first element of the exception.

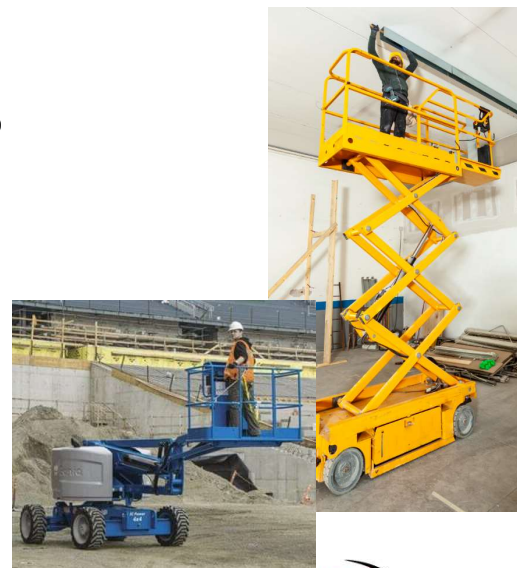


**isi** Environmental  
A Consulting & Facility Support Services Company

59

## 8 – Aerial Lift Hits Scissor Lift

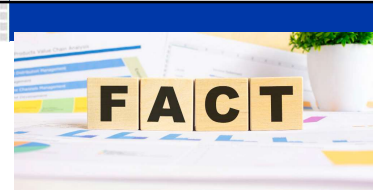
- In 2019, an Electrical Subcontractor is cited for two (2) violations totaling \$24,290 after an employee is killed and two coworkers were hospitalized with severe injuries sustained from falls from a scissor lift in a Food Manufacturer's warehouse.
  - One employee in aerial lift inadvertently backed into scissor lift with three employees while engaged in electric wiring pulling activities.
  - The force from the aerial lift caused the scissor lift to fall over sideways to the ground from a height of 35 feet from its nearly fully extended position.
  - All four (4) employees worked for the same company.



**isi** Environmental  
A Consulting & Facility Support Services Company

60

## Facts of Case



- Aerial lift had a working flashing strobe light and audible back up alarm.
- Concave mirror on ceiling of the warehouse above this area.
- Company completes job safety analyses (JSAs) prior to work.
- Food Manufacturing Company positioned pallets into place to prevent warehouse forklifts from striking aerial and scissor lift.
- Scissor lift manual has a maximum:
  - Weight capacity of 700 lbs, and,
  - Occupancy rating of “2” people.
- Foreman, who had supervisory responsibilities, directed employees to work in scissor lift with a total of three (3) occupants.
- General contractor had rules which were followed including:
  - “When working from an elevation, the work area must be properly barricaded and/or utilize spotters to prevent other personnel or traffic from entering the area.”
- Total distance between aerial lift and scissor lift was four (4) feet prior to incident.
- A spotter was used between both lifts to help ensure wires did not get tangled and another spotter was positioned at electrical panel operating a “wire tugger.”
- The four (4) employees in the lifts were working together for six minutes prior to accident.



61

## OSHA Citation 1

### Citation:

- In the loading and unloading area, employees working from a Genie scissor lift were exposed to struck-by hazard from moving equipment.
- Among other methods, some feasible methods of abatement for this violation include but are not limited to:
  - (a) Ensure all operators who utilize aerial lifts when other moving equipment and vehicles are present follow precautions such as but not limited to flags, roped off areas, flashing lights, and barricades as outlined in ANSI/SAIAA 92.6-2006 (R2014);
  - (b) Ensure all operators who utilize aerial lifts always keep their attention in the direction of travel in accordance with Association of Equipment Manufacturers, Safety Manual for Operating and Maintenance Personnel (Aerial Platform).

### General Duty Clause

1. A condition or activity in the workplace presented a hazard
2. The employer or its industry recognized the hazard
3. The hazard was likely to cause death or serious physical harm
4. A feasible means existed to eliminate or materially reduce the hazard



62

## OSHA Citation 2

### Citation:

- Scaffold and/or scaffold components were loaded in excess of their maximum intended loads or rated capacities, whichever was less:
  - a) On or about October 4, 2019, in the loading and unloading Area, employees working and operating a Genie scissor lift in excess of its maximal occupancy were exposed to scaffold collapse and tip over hazards.

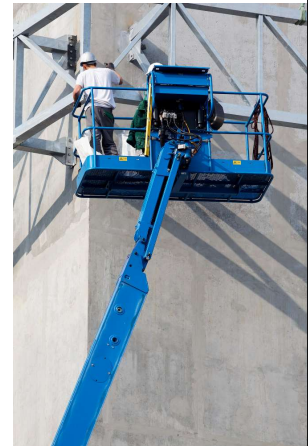
**1926.451(f)(1)** - Scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities, whichever is less.



63

## OSHA's Argument

- Aerial lift operator did not keep attention in the direction of travel.
- Did not follow all provisions in ANSI A 92.6-2006.
  - Missing flags and roped off areas listed in citation.
- Proximity of work is too close for aerial lift, scissor lift, and forklift operations.



64



## Electrical Subcontractor Company's Argument

- OSHA can not use General Duty Clause because OSHA already has specific regulations on the operation of boom and scissor lifts.
- Had already implemented abatement measures including natural barricades (pallets), employee spotters, flashing strobe lights, audible backup alarms, and a concave mirror in area.
- Employees completed a "Safe Work Plan" before work which included an assessment of equipment traffic.
- Employee operating aerial lift was trained to look in direction of travel and disciplined after incident.
  - Review of video shows aerial lift operator knew where scissor lift was and interacted with employees just before impact.



65

## Who Won?

OSHA

Electrical  
Subcontractor

66

## Winners – Both

### Citation 1: General Duty Clause – Electrical Subcontractor

- The specific scaffolding regulations does not address the struck-by hazard in citation, so the general duty clause still holds up.
- Company implemented many abatement measures (not required to implement ALL abatement measures).
- OSHA did not prove additional abatement measures would materially reduce the hazard.



### Citation 2: Scaffolding - OSHA

- Court agrees that Company violated standard when three (3) employees were working from the scissor lift with a two (2) person occupancy limitation from manufacturer.

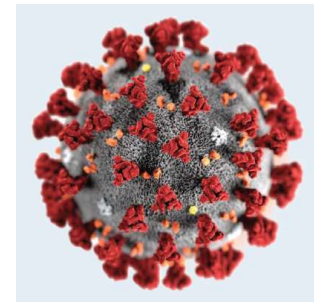


67

## 9 - COVID-19

In September 2020, a Retail Store Owner with one employee who repairs cell phones was given one (1) citation for \$2,926 under the General Duty Clause for failing to protect employees from the virus.

- County Health Department sent referral to OSHA after being notified that store owner was refusing admittance to the store to customers wear face coverings or masks unless they removed them.



(Source: CDC / Alissa Eckert & Dan Higgins)



68

## OSHA Citation

### Citation:

- The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that employees were working in close proximity to each other and customers, potentially exposing them to the hazard of SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the cause of the COVID-19 disease.
- On or about September 10, 2020, and continuing thereafter, the employer did not develop and implement timely and effective measures to mitigate the spread of SARS-CoV-2, the virus that causes Coronavirus Disease 2019 (COVID-19). The employee working at [Respondent's store] works in close proximity to the owner and customers during the COVID-19 pandemic.

### General Duty Clause

1. A condition or activity in the workplace presented a hazard
2. The employer or its industry recognized the hazard
3. The hazard was likely to cause death or serious physical harm
4. A feasible means existed to eliminate or materially reduce the hazard



69

## Facts of Case

- Owner and employee were not available for interview day of inspection.
- Inspector noticed employee and customers without masks within two (2) feet of each other.
- OSHA came back following day and waited three (3) hours to interview owner.
  - Once available, owner stated he had not yet met with his legal counsel and would need to meet later.
- After waiting two weeks, OSHA attempted several times to contact through phone calls, but owner kept hanging up.
- OSHA issued subpoenas to owner and employee.
- During interview:
  - Owner believed COVID-19 to be a hoax (response, not virus itself).
  - No extra cleaning protocols, physical partitions, distancing, or occupancy limits.
  - Owner purchased surgical masks and respirators in case Bill Gates were to release a second virus.
- Employee received no safety training on COVID-19.
- Owner did not testify and presented no witnesses.



70

## OSHA's Argument

I think everyone knows.



71

## Retail Store Owner's Argument

- OSHA broke multiple established State and Federal laws by issuing citation.
- Requiring customers and employees to wear face coverings violates the American with Disabilities Act.
- OSHA is legally obligated to respect religious rights defined by the Civil Rights Act that do not allow covering of the face, including owner's religion.
- Owner was not aware of the severity of pandemic because no legal requirement to watch television or read the newspaper.





72

**Who Won?**

**OSHA**

**Retail Store Owner**






73

**Winner – OSHA**

- Owner unable to specify which State and Federal Laws were violated.
- Failed to cite which provisions of the American with Disabilities Act were violated.
- Owner did not identify which religion or section of the Civil Rights Act OSHA was violating.
- Owner posted on store door printed copies of new stories, internet memes, and tweets related to COVID-19.

Owner was not credited with good faith for any penalty reduction.

74

## Thank you!

Curtis Leiker, CSP  
cleiker@isienvironmental.com  
(316) 264-7050  
Linkedin.com/in/curtisleiker/

EHS Compliance Blog:  
iSiEnvironmental.com/Blog



75

## ★ Feedback Survey ★



Your feedback is important to me!

76