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# OSHNC Technical Writing

## January 2023

- The Violation Worksheet

Presented by: Lee Peacock, West Compliance Bureau Chief  
Paul Sullivan, Assistant Deputy Commissioner

# Objectives

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- At the end of this presentation, the student will be able to:
  - Properly document the four elements required to issue an OSH citation.
  - Explain the requirements necessary to support a General Duty Clause citation.
  - Recognize and document when a violation meets the criteria for a willful designation.



# Why is training necessary?

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- Files submitted for supervisor review and/or to the citation review committee don't always follow the FOM requirements, with issues such as:
  - Inconsistencies in the hazard and assessed severity and/or the listed injury/illness
  - Lack of detail on the S&H Program credit
  - Incorrectly calculated penalties
  - Inappropriate use of the term “administrative requirement” for the hazard and/or injury



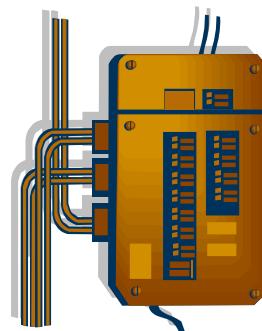
# SAVE/AVD?

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- Anything wrong with this SAVE/AVD?

“29 CFR 1926.403(h): The marking for disconnecting means, or for a service, feeder, or branch circuit were not of sufficient durability to withstand the environment involved:

- a) job site – where circuit breakers were not labeled inside the electrical panel to identify their purpose. “



# Elements Needed for a Citation

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- These elements need to be clearly described by the CSHO in the Violation Worksheet.
  - **Hazard** – an issue identified by the CSHO that may lead to an accident or a hazardous exposure (e.g. noise/air contaminants).
  - **Violation** – of an established OSHA standard or the General Duty Clause.
  - **Employee Exposure** – of that company or another company (e.g. subcontractor).
  - **Employer Knowledge** – of a management representative, preferably the direct supervisor of the exposed employee(s).

# From an ALJ Decision:

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"In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Commissioner to prove each element of the contested citation by the greater weight of the evidence." Rule .0514(a) of the NCOSH Rules of Procedure.

In order to prove that the respondent committed a serious violation of a specific standard, the Commissioner of Labor must prove by a preponderance of the evidence the following elements:

- (1) A hazard existed;
- (2) Employees were exposed;
- (3) The hazard created the possibility of an accident;
- (4) The substantial probable result of an accident would be death or serious physical injury; and,
- (5) The employer knew or should have known (applying the reasonable man test developed by the Court of Appeals in Daniel Construction Co., 2 OSHANC 311, 73 N.C. App. 426 (Ct. of Appeals 1984)) of the condition or conduct that created the hazard.

# The CSHO's Goal:

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**COMMISSIONER OF LABOR FOR THE  
STATE OF NORTH CAROLINA,  
COMPLAINANT,**

As outlined in paragraphs 1-83, above, complainant successfully presented *a prima facie* case on each element necessary to affirm Citation 1, Item 1.

**BASED UPON the foregoing FINDINGS OF FACT and  
CONCLUSIONS OF LAW, IT IS ORDERED ADJUDGED AND  
DECreed that Citation 1, Item 1 alleging a serious violation of 29  
CFR 1926.416(a)(1) is hereby affirmed with a penalty of  
\$6300.00.**

# The CSHO's Goal:

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**COMMISSIONER OF LABOR FOR THE  
STATE OF NORTH CAROLINA,  
COMPLAINANT,**

As outlined in paragraphs 1-83, above, complainant successfully presented *a prima facie* case on each element necessary to affirm Citation 1, Item 1.

Defined as the presentation of sufficient evidence by a **civil claimant** to support the **legal claim**. The burden of persuading a judge always rests with the plaintiff.

# Types of Violations

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- **Physical violations** – these are hazards that are actually observed (or could have been observed) by the CSHO.
  - Machine guarding issues, no fall protection, no protective system on a trench, noise overexposure, failure to *utilize* energy control procedures.
- **Program violations** – ones that are for deficiencies in an employer's safety & health program.
  - Lack of inspections (frequent/regular, trench, scaffold), no written programs, no training, etc.

# If you don't learn anything else....

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1. The documentation on a particular 1b should **only** contain information pertinent to that violation.
  - “Copy and paste” of documentation is **strongly** discouraged.
2. The presence of a **site violation** in itself is **not** sufficient evidence for a **training, re-training, or inspection citation**.
  - The CSHO must prove these violations separately.



# Problems

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- Notice any problems with this narrative?

Coverage Information/Additional Comments

Page 2

Home Depot U.S.A., Inc.

Inspection Number:

5/19/2009

Coverage Information/Additional Comments

In conversation with Mr. Hedrick, CSHO learned they have an extensive safety program for the employees. Their safety program includes management and employee safety discussions, and safety training for all employees. All motorized forklift operators are trained in house and receive annual retraining. Personnel files contain the documentation of training, written test, and the observation report form completed by the instructor and there are 47 employees trained to operate the forklifts. All forklift operators display their operators ID on their chest and it also states what type of fork lift they have been trained to operate. The Employee training includes many different items such as Hazardous materials training, and general safety. The butchers in the meat department are required to use a stainless steel glove when using knives to protect the hand holding the meat during the butchering process. Personal protective equipment is located at every spill center. Mr. Hedrick said they there are many video cameras surveying the inside and outside of the building. Returned lawnmowers and other large items are stored in a fenced area outside the store.

# CSHO's Credibility

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- The presence of incorrect information due to copy/paste errors often compromises a CSHO's credibility.

Coverage Information/Additional Comments

Page 2

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# If you don't learn anything else....

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3. Employer knowledge is knowledge of the hazardous condition.
  - Not knowledge of OSHA regulations or the “requirement.”
  - The “condition” may be the lack of a safety program element (training, inspections) if that is being cited.
  
4. Your hazard must be consistent with the injury/illness. Both of those should be consistent with the assessed severity.



# Any concerns with this hazard?

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a) Hazards-Operation/Condition-Accident: struck by// where employee was operating a Mustang front end loader, serial #15335, and the back-up alarm was inoperable. Mr. Marshal Gooch, foreman for Deloreto Enterprises, LLC was operating the front end loader that was on site to move OSB from the ground level up to the second floor. The front end loader was used throughout the job site to move material. The CSHO determined through employees interviews and personal observation that employees walked and worked throughout the job site. Mr. Gooch stated that he had never had formal training to operate a forklift or front end loader, but had been operating them for several years. It was also noted that the back-up alarm was not working on the machine, and further investigation determined that it had been unplugged. The machine was a rental and Mr. Gooch said it had been delivered the day before. Mr. Gooch stated that he had not inspected the machine before using it. A hazard exist in that if the forklift horn is inoperable employees would be in danger of being struck by the machine.

b) Equipment: front end loader

c) Location (a-c): site

d) Injury/Illness: admin requirement

e) Measurements: N/A

# Evidence to Prove a Citation

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- To prove a citation for a given violative condition, the evidence is summarized in the following sections:
  - **Hazard** – Sections A (Hazard) and B4 (Injury/Illness). The evidence of a how and why this is a *Serious* violation is documented in these sections.
  - **Violation** – Section B1 (Violation). If it is a violation of the General Duty Clause or a willful violation, those elements are addressed in Section B1 *after* the violation evidence has been established. Repeat evidence is also addressed here.
  - **Employee Exposure** – Section B2 (Employee Exposure)
  - **Employer Knowledge** – Section B3 (Employer Knowledge)

# Proving Physical Violations

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- Think about this one before you answer...which of the elements (hazard, violation, exposure, ER knowledge) is the most difficult to prove for physical violations?
- **Physical violations** – these are hazards that are actually observed (or could have been observed) by the CSHO.
  - Machine guarding issues, no fall protection, no protective system on a trench, noise overexposure, failure to *utilize* energy control procedures, etc.

# Proving Program Violations

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- Same question...which of the elements (hazard, violation, exposure, ER knowledge) is the most difficult to prove for program violations?
- **Program violations** – ones that are for deficiencies in an employer's safety & health program.
  - Lack of inspections (frequent/regular, trench, scaffold), no written programs, no training, etc.

# What Will We Cover?

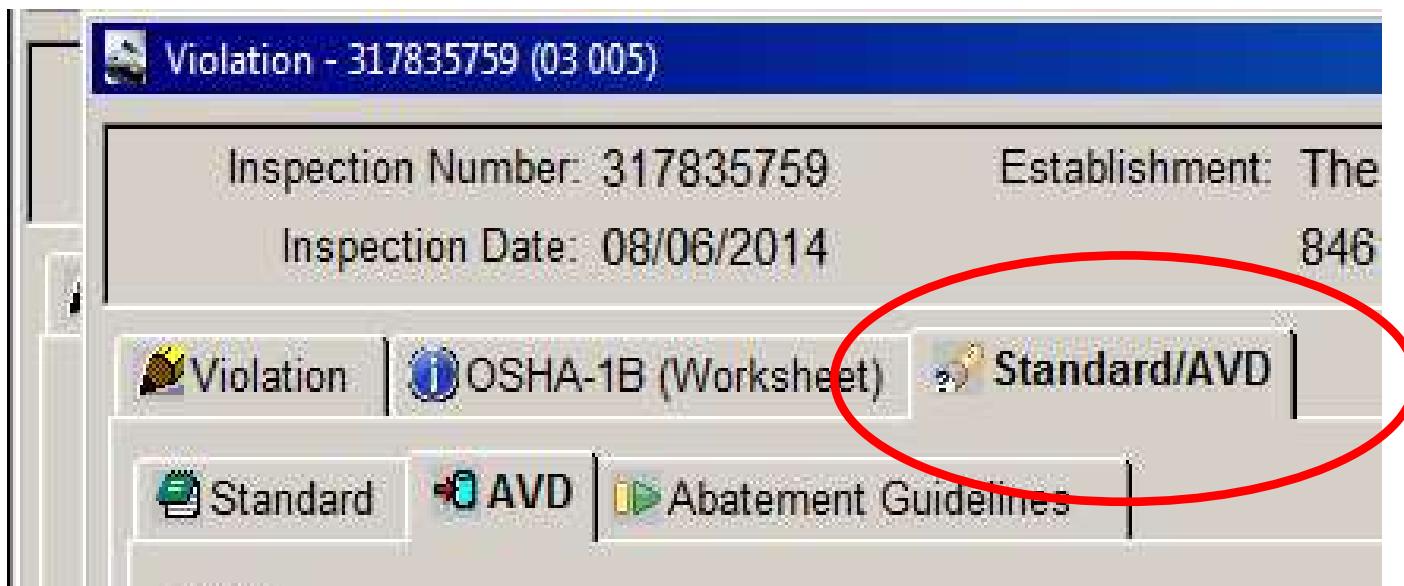
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- SAVEs/AVDs
- Combining and grouping
- The Violation Worksheet
  - Hazard & injury/illness
  - Evidence of a violation
  - Employee exposure
  - Employer knowledge
- General Duty Clause Violations
- Willful Violations
- Repeat Violations

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# OSH Technical Writing

## ● SAVEs



# SAVEs

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## Citation 01 Item 001

Type of Violation: **Repeat Serious**

29 CFR 1926.501(b)(13): Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels was not protected by guardrail systems, safety net system, or personal fall arrest system, nor was the employee provided with an alternative fall protection measure under another provision of paragraph 1926.501 (b):

- a) jobsite, employees were removing shingles from the roof without fall protection and exposed to a fall hazard of up to 35 feet to the ground.



**This section of the 1b or citation is called the SAVE**

# SAVEs

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- **Standard Alleged Violation Elements**

- Re-wording of the standard violated in a past-tense, negative form.
- “Standard” format – “employer shall....”
- “SAVE” format – “employer failed to....”
- Except for past tense, negative language, SAVE must essentially be verbatim with standard. You can’t add language that is not in the standards.



Inspection Number: 317835759

Establishment: The Speedpark, Inc.

Inspection Date: 08/06/2014

8461 Concord Mills Blvd., Concord, NC 28027

Violation

OSHA-1B (Worksheet)

Violation Info

Standard

AVD

Abatement Guidelines

Categories

Saves

Search

**Note that (f)(16) comes before (f)(2)**

Part	Sect	Para	Sub	Item	S1	S2	SAVE Title	Reference	PD
1910	157	f	16				Extinguisher Maintenance	Fed OIS 1	
1910	157	f	16				Extinguisher Maintenance	Fed OIS 2	
1910	157	f	16				Extinguisher Maintenance	Fed OIS 3	
1910	157	f	16				Extinguisher Maintenance	Fed OIS 4	
1910	157	f	2				Extinguisher Maintenance	Fed OIS 1	
1910	157	f	4				Extinguisher Maintenance	Fed OIS 1	
1910	157	f	4				Extinguisher Maintenance	Fed OIS 2	
1910	157	g	1				Employee Training	vFed OIS 1	
1910	157	g	2				Employee Training	vFed OIS 1	

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Standard: 1910 157 g 1 Employee Training vFed OIS 1

Select

29 CFR 1910.157(g)(1): Where the employer provided portable fire extinguishers for employee use in the workplace, the employer did not provide an educational program to familiarize employees with the general principles of fire extinguisher use and the hazards involved with incipient stage fire fighting:

(a) (SPECIFY OPTION CHOSEN) (DESCRIBE CONDITION(S) AND HAZARD(S)) Note: Applies where all employees are expected to fight fires.

Inspection Number: 317835460  
Inspection Date: 08/05/2014

Establishment: Advanced Development Concepts, LLC  
215 W. Trade Street, Dallas, NC 28034

Violation

OSHA-1B (Worksheet)

Standard/AVD

Standard: 1926.652 (a) (1)

Violation Info

Standard

AVD

Abatement Guidelines

## SAVE:

29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with 29 CFR 1926.652(b) or (c):

EDIT

## Description:

a) Oakland Street jobsite - where employees were working in a 5'11"-deep trench with vertical walls without a trench box or other adequate protective system.

EDIT

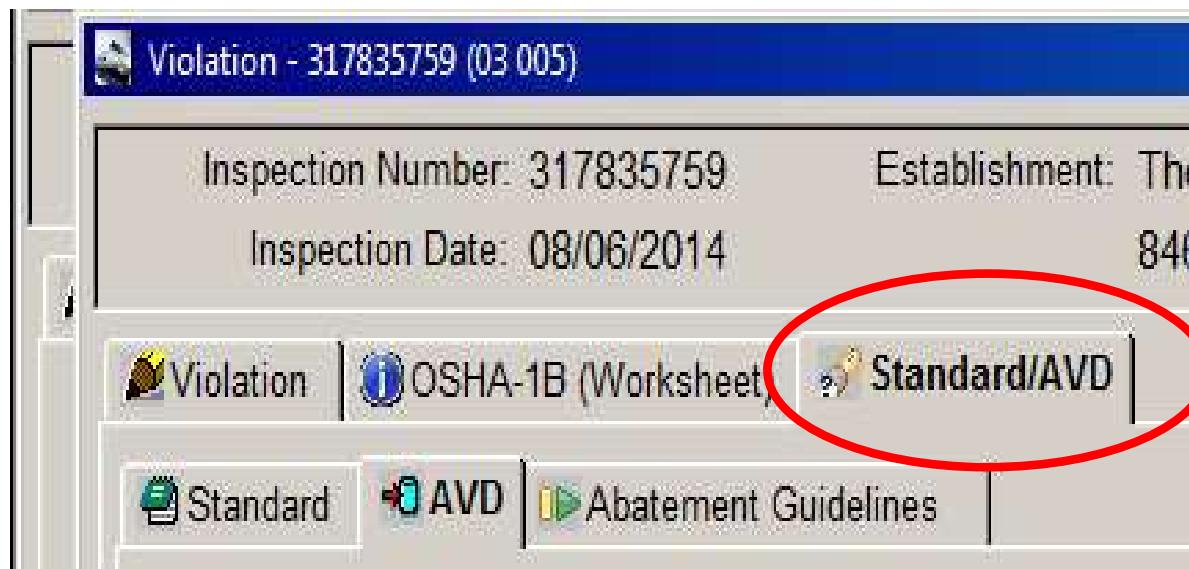
## Abatement Guideline:

ADVANCED DEVELOPMENT CONCEPTS, LLC WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD, WHICH WAS CONTAINED IN OSH INSPECTION #316732726, CITATION 01, ITEM 004, ISSUED ON 11/01/2012, WITH A FINAL ORDER DATE OF 01/28/2013.

EDIT

# OSH Technical Writing

## • AVDs



# Alleged Violation Description

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SAVE:

29 CFR 1910.147(c)(4)(i): Procedures were not developed, documented and utilized for the control of potentially hazardous energy when employees were engaged in the activities covered by this section:

Description:

a) brake press area - where energy control procedures were not utilized to control hazardous energy during die change operations on the hydraulic presses including but not limited to the Cincinnati 90-350 Autoform CNC Forming Center with PC Control 135-ton brake press.



This section of the 1b or citation is  
called the AVD

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# AVD Example

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SAVE:

29 CFR 1926.501(b)(13): Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels was not protected by guardrail systems, safety net system, or personal fall arrest system, nor was the employee provided with an alternative fall protection measure under another provision of paragraph 1926.501 (b):

Description:

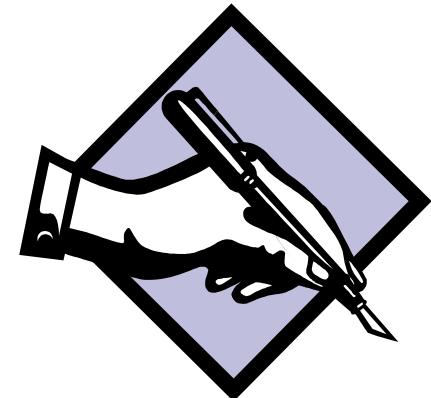
a) Construction site - where five employees were installing sheathing on a roof at a fall height of approximately 28 feet without the use of a fall protection system.

RAYMER CONSTRUCTION LLC WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD, WHICH WAS CONTAINED IN OSH INSPECTION #318193018, CITATION 01, ITEM 003, ISSUED ON 05/14/2020, WITH A FINAL ORDER DATE OF 06/19/2020.

# OSHA 1B – Writing AVDs

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- While the SAVE specifies the standard violated, the **Alleged Violation Description** (AVD) provides specific details of the violation.
  - Should not be too lengthy, but provide enough information for the employer to understand the circumstances surrounding the violation.



# OSHA 1B – AVD Information

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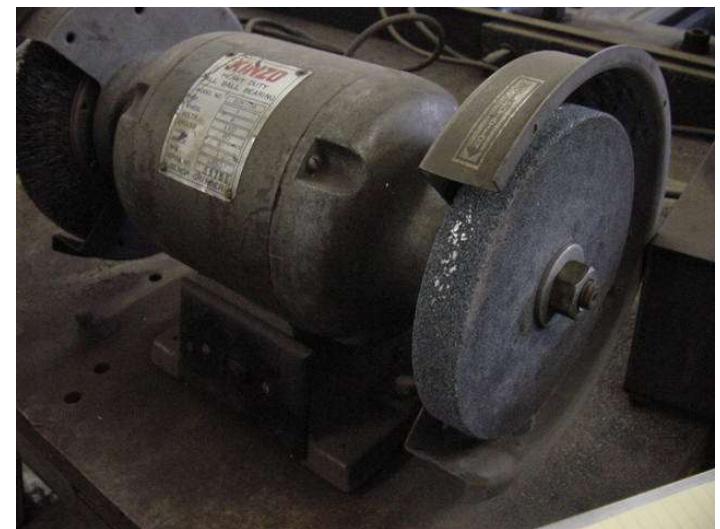
- AVD should (generally) be a continuation of the SAVE and include:
  - Where the violation occurred
  - If an accident or specific event, the date of occurrence
  - A brief description of the violation (for the lathe....)
  - Equipment details (if applicable)
- AVD must be grammatically correct.



# OSHA 1B – AVD Information

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- For site violations, the item in question should be the “subject” of the AVD.
- **Example** - A violation of 1910.215(b)(9) for the lack of a tongue guard on a bench grinder.
  - How are we going to write the AVD?



# Which one is best?

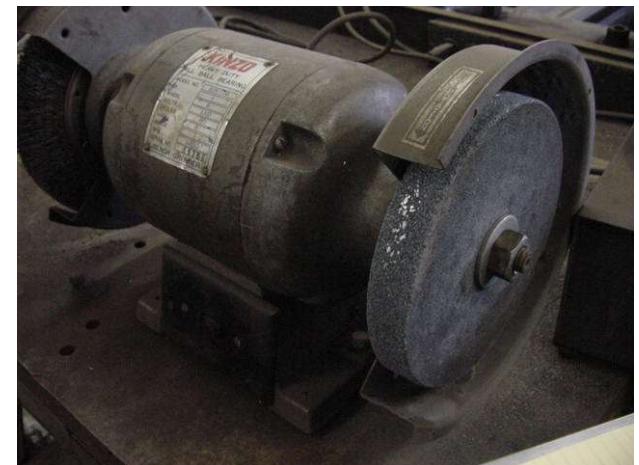
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- 29 CFR 1910.215(b)(9): Guard for abrasive wheel machinery where the operator stands in front of the machine was not constructed so that the peripheral protecting member could be adjusted to the constantly decreasing diameter of the wheel:
  - a) shop area, for the Craftsman 6-inch bench grinder that was not equipped with a tongue guard.
  - b) shop area, where employees utilize a Craftsman 6-inch bench grinder without a tongue guard.
  - c) shop area, the employer did not ensure that the Craftsman 6-inch bench grinder was equipped with a tongue guard.

# AVD Information

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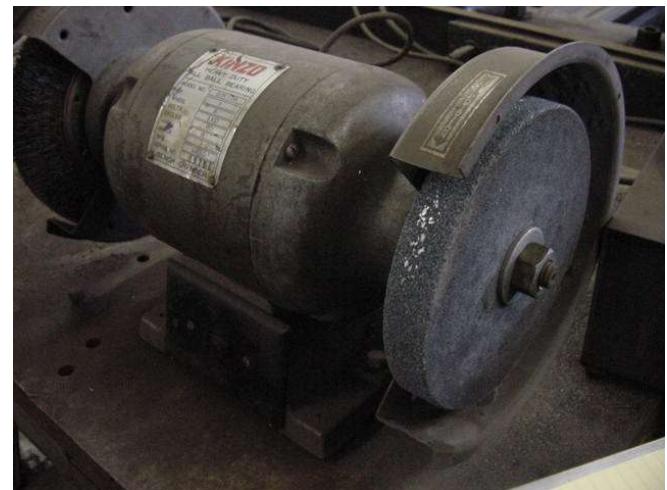
- This is really the best option as the item in violation (the bench grinder) is the **subject** of the AVD.
  - a) Shop area, for the Craftsman 6-inch bench grinder that was not equipped with a tongue guard.



# AVD Information

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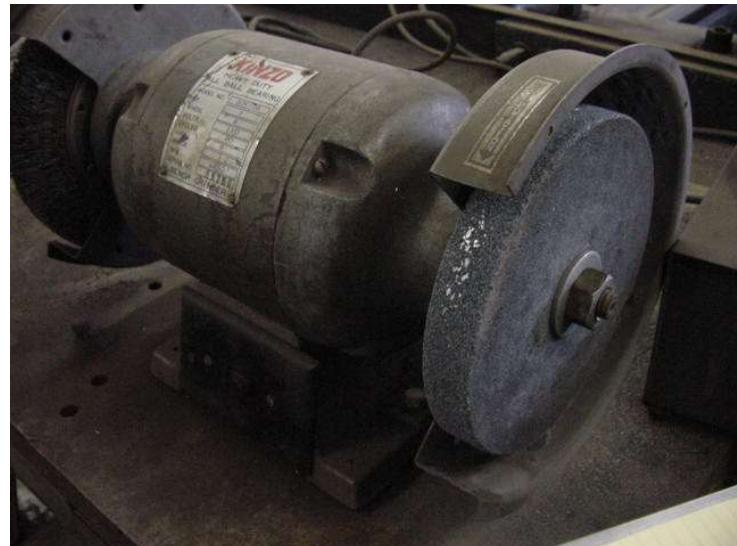
- b) shop area, where employees utilize a Craftsman 6-inch bench grinder without a tongue guard.
  - » This option is OK, but not great, as it places the focus on the employees instead of the bench grinder.
  - » You wouldn't be citing it if you didn't have employee exposure.



# AVD Information

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- CSHOs need to avoid using the “employer did not ensure” language.
  - c) shop area, ~~the employer did not ensure~~ that the Craftsman 6-inch bench grinder was equipped with a tongue guard.



# AVD Information

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Standard Number: 1910.212(a)(1)

Citation #: 01

Item #: 001

29 CFR 1910.212(a)(1): One or more methods of machine guarding was not 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:

a) CNC Vertical Milling area - where door interlocks had been disabled on the M1, M3, and M5 vertical milling machines.

b) CNC Vertical Milling area - where the doors had been removed from the M2 vertical milling machine.

c) CNC Router area - where no machine guarding was provided for the R1, R2, R3, or R4 CNC routers.

**Location**

**Equipment**

**Description of the violation**

# OSHA 1B – AVDs to Avoid

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- One word AVDs

- a) Jobsite



- Statement AVDs

- a) Production department – Skil saw missing guard

- b) Facility – exit blocked

# OSHA 1B – AVD Tidbits

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- **Use directional references**
  - “for the exit door on the east wall, which was blocked...”
- **If the standard has a numerical limit or reference, the AVD must include CSHO measurement.**
  - “for roofers working **13.5 feet** off the ground without fall protection.”
  - “for the bench grinder with the tongue guard set  **$\frac{3}{4}$ ”** from the abrasive wheel.”
  - “in the shop, for the compressed air line used for cleaning with a pressure of **75 psi**.”
  - “no bracing was provided on the **20-foot** masonry wall.”

# Other AVD Tidbits

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- LO/TO violations **must** include one or two specific machines in the AVD.
- Hazard Communication citations must include example chemicals in the AVD (including, but not limited to,...)
- Names should **never** be included in the AVD. Even avoid using job titles, especially singularly identifiable ones (e.g., plant manager).
- Abatement notes should ***only*** be used for General Duty Clause violations. You shouldn't be summarizing the OSHA standard...the employer can look it up.

The AVD and everything else to be printed on the citation (e.g. repeat language, abatement notes for GDC, etc.) should go in this box.

SAVE

29 CFR 1910.305(g)(1)(iv)(B): Flexible cords and cables not specifically permitted otherwise in paragraph 1910.305(g)(1)(ii) of this section were run through holes in walls, ceilings, or floors:

Description:

a) Maintenance Shop, west wall - where an extension cord used to supply power to a battery charger was run through a hole in the exterior wall.

Abatement Guideline:

**Important: this section prints on the citation, but not the violation worksheet. CSHOs often get this confused with Section B5 of the violation worksheet.**



# AVD Information – Program Citations

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- Programmatic AVDs (such as lack of inspections or training) can be a challenge. CSHOs needs to decide what the actual violation is and focus the AVD on that issue.
- In this case, the employer is being cited for not maintaining safety programs. The listed site hazards support, **but do not prove**, this program citation.

## SAVE:

29 CFR 1926.20(b)(1): The employer did not initiate and maintain such programs as may be necessary to comply with this part:

## Description:

a) 804 & 810 West B Street in Kannapolis, NC, where no safety and health programs were maintained to protect employees of a subcontractor and of the employer performing re-roofing activities on the roof of a two-story residential building without the use of fall protection or eye protection while using pneumatic nail guns, and while using a portable extension ladder that was not extended at least three (3) feet above its upper landing.

# AVDs for Accident Citations

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- The first line of the AVD must address the violative condition being cited. Information about the accident should be the *last sentence* of the AVD.

## Citation 01 Item 011

Type of Violation: **Serious**

29 CFR 1910.212(a)(1): One or more methods of machine guarding was not 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:

a) 63 inch calender line, no machine guarding was provided on the 4-roll cooling drum tower to protect employees from the hazard of the ingoing nip which was created as the rubber coated fabric ran over the rolls. On May 27, 2014, an employee was fatally injured when he was caught in the ingoing nip point that was created as the rubber coated fabric ran over the rolls.

# AVDs for Accident Citations

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- Here is an example where a GC is being cited for a program violation (lack of frequent & regular inspections) that is tied to an accident.

## SAVE:

29 CFR 1926.20(b)(2): The employer did not initiate and maintain programs which provided for frequent and regular inspections of the job site, materials and equipment to be made by competent persons designated by the employer:

## Description:

a) jobsite, frequent and regular inspections of the jobsite were not conducted by a competent person in order to recognize and correct hazards, such as, but not limited to: fall protection, aerial lifts, struck by hazards, the use of personal protective equipment, working around heavy equipment and safe work practices.

On or about March 24, 2022, a hydro crane used by a subcontractor employer struck the bracing of a previously set panel which then fell and struck a subcontractor's employee, leading to fatal injuries.

# OSHA 1B – IH AVDs

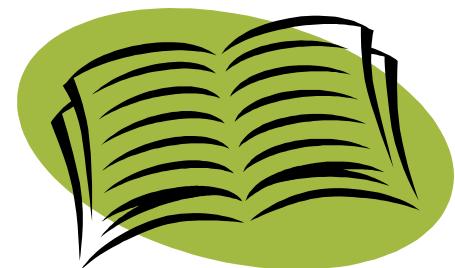
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- AVDs for violations of industrial hygiene Permissible Exposure Limits (PELs) are described in FOM Chapter 15.
  - Overexposure, Engineering Controls, & Respiratory Protection all cited and grouped together.
  - Overexposure SAVE must include the numerical PEL.
  - AVD must include occupation, exposure level, and sampling time.
  - **Engineering control 1B's must include a list of feasible abatements.**

# OSHA 1B – “In the Alternative”

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- If two different standards apply to a particular hazard, one may be cited “in the alternative” to provide a bit more legal flexibility.
  - Second SAVE is located below the original AVD.
  - A second AVD is also necessary.
  - General Duty Clause can only be cited as the “alternative” standard.



# In the Alternative...

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## Citation 01 Item 001

Type of Violation: **Serious**

29 CFR 1926.20(b)(2): The employer did not initiate and maintain programs which provided for frequent and regular inspections of the job site, materials and equipment to be made by competent persons designated by the employer:

a) jobsite - where inspections were not conducted with sufficient frequency or in such a manner to identify hazards associated with the tree removal operation, such as how pushing over one tree may affect the roots of an adjacent tree, particularly after a 2.31 - inch rainfall and in windy conditions. On or about April 16, 2014, an employee suffered a fatal blunt force trauma injury after being struck-by limbs of a red oak tree that uprooted and fell to the ground.

Or, in the alternative:

NCGS 95-129(1): The employer did not furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or were likely to cause death or serious injury or serious physical harm to his employees in that employees were exposed to struck-by hazards during tree felling operations:

a) jobsite - where daily inspections were not conducted to identify hazards associated with the tree removal operation, such as how pushing over one tree may affect the roots of an adjacent tree, particularly after a 2.31 - inch rainfall and in windy conditions. On or about April 16, 2014, an employee suffered a fatal blunt force trauma injury after being struck-by limbs of a red oak tree that uprooted and fell to the ground.

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Abatement Note: Among other methods, acceptable and feasible methods of abatement includes following procedures set forth in the following documents:

# OSHA 1B – Violation Type

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- As we've discussed, all violations are classified as either **Serious** or **Non-Serious**. **Repeat** and/or **Willful** designations are added as warranted:

- Willful Serious
- Willful Non-Serious
- Repeat Serious
- Repeat Non-Serious
- Serious
- Non-Serious

**Citation numbering  
is based on this  
order.**

**N NonSerious**

**RS Repeat Serious**

# OSHA 1B – Citation Numbering

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- Each separate (non-grouped) violation on a particular citation (e.g. repeat serious, non-serious, etc.) is referred to as an item.
  - Without exception, items are ordered based on the standard number, with lower standard numbers first.
  - **Example:** 1910.146 violations would come before 1910.212 violations.
- Each Serious, Repeat, or Willful item must carry a penalty – minimum is \$750.



# Example Numbering

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Cit	Item	Grp	Standard	Type	Issue Date	Abate Date
01	001		1926.501(b)(13)	RS	06/19/2013	06/24/2013
02	001		1926.102(a)(1)	S	06/19/2013	06/24/2013
02	002		1926.1053(b)(4)	S	06/19/2013	06/24/2013
03	001		1926.416(e)(1)	N	06/19/2013	06/24/2013

- Note the order for the two serious items on Citation Two. 29 CFR 1926.102 (eye protection) comes before 29 CFR 1926.1053 (ladders)

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# Combining (of instances) & Grouping (of citations)

# OSHA 1B – Combining Instances

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- Gathering all the instances of violations of a **specific standard** into a single 1B.
  - Single establishment or worksite.
  - Examples:
    - » Several violations of 1910.23(c)(1), **whether serious or NS**, are combined under instances a, b, c.... Severity of the 1B is based on the most serious instance.
    - » Violations of different SAVE options can also be combined in a single 1B.



# Combining Instances

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- Two instances, from different dates, combined into one violation.

## Citation 01 Item 024

Type of Violation: **Serious**

29 CFR 1910.335(a)(1)(i): Employees working in areas where there were potential electrical hazards were not provided with electrical protective equipment that was appropriate for the specific parts of the body that needed to be protected and for the work being performed:

- a) facility, employees not wearing the appropriate personal protective equipment routinely power on and off the 63 Calender motor drive by opening the 480-volt Fincor 3010 electrical panel and flipping the circuit breaker.
- b) facility, employees not wearing the appropriate personal protective equipment routinely power on and off the wind-up for the 63 Calender line by opening the 480-volt Fincor 3000 electrical panel and flipping the circuit breaker.

29 CFR 1910.212(a)(1): One or more methods of machine guarding was not 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:

- a) Facility Milling Machines - where the guard on the back of the Okuma LH 50 CNC Milling Machine was not installed while the machine was in operation.
- b) Facility Milling Machines - where the guard on the end of the Okuma Impact LU-25 Milling Machine was not installed while the machine was in operation.
- c) Facility Milling Machines - where the chip screw auger/conveyor on the back of the table of the Makino MC100 Milling Center was not guarded in a manner to prevent employee contact with the conveyor during operation of the machine.
- d) Facility - where three manual Bridgeport (model 101) milling machines were not equipped with a guard to protect the operator from contact with the point of operation during operation of the milling machines.
- e) Facility - where the manual Harrison (model 390) horizontal lathe was not equipped with a chuck guard to protect the operator from contact with the rotating chuck during operation of the lathe.
- f) Facility Milling Machines - where the guard on the end of Turbo Systems, Enomoto, and Jorgensen chip conveyors throughout the facility were missing or not in a closed position to prevent employee contact with the moving conveyor during operation of the conveyor.
- g) Facility - where two Baldor portable grinders equipped with a 3M Scotch Brite Buffing Wheel were not guarded in a manner to prevent employees from contact with the rotating parts of the grinder during operation of the grinder.
- h) Facility Milling Machines and Saws - where the NTC Vertical Milling Machine, the Okuma MC-4VA, LH-50N, MC-4VAE, MC-60VA, and MC-5VA Milling Machines, and the Makino-MC100 Milling Machine were not guarded in a manner to prevent employees from contact with the moving and rotating

# Citation Grouping

---

- FOM (V): The joining of violations of **two or more specific standards** under an individual citation item during the inspection of a single establishment or worksite.
  - When a source of a hazard is identified which involves interrelated violations of different standards, the violations may be grouped into one item.



# Grouping Order

---

- Violations that are grouped under one citation item are designated by letters a, b, c, and so on.
  - Most serious violation of the grouping should be first (letter “a”).
  - Other violations in the grouping should follow based on standard number (low to high).
  - Never designate a paperwork violation (e.g. written PPE assessment) as the first item of a grouping (unless all items are paperwork-related).

Type of Business	Roofing & Gutters		
Citation Number	01	Item/Group	001a
No. Instances	1	REC	

Inspection Number: 317382810

Establishment: Union Grove Saw &amp; Knife, Inc.

Inspection Date: 11/04/2013

157 Sawtooth Ln, Union Grove, NC 28689

Inspection | 
 Dates | 
 Contacts | 
 Emphasis/Initiatives | 
 OSHA-1AC | 
 OSHA-167I | 
 Health | 
 ...

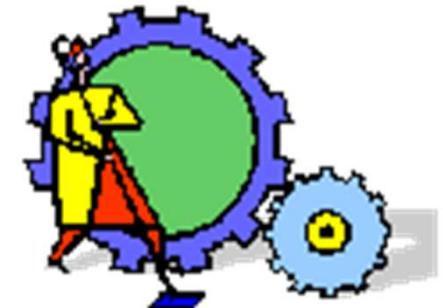
Cit	Item	Grp	Standard	Type	Issue Date	Abate Date	Abate	Contest Date	Final
01	001		1910.95(c)(1)	S	02/05/2014	03/24/2014	X	00/00/0000	
01	002	a	1910.215(a)(4)	S	02/05/2014				
01	002	b	1910.215(b)(9)	S	02/05/2014				
01	003		1910.219(e)(3)(i)	S	02/05/2014	02/10/2014	X	00/00/0000	
01	004	a	1910.1000(a)(2)	S	02/05/2014	02/10/2014	X	00/00/0000	
01	004	b	1910.1000(e)	S	02/05/2014	02/10/2014	X	00/00/0000	
01	004	c	1910.134(a)(1)	S	02/05/2014	02/10/2014	X	00/00/0000	
02	001		1910.37(b)(2)	N	02/05/2014	02/10/2014	X	00/00/0000	
02	002		1910.157(e)(2)	N	02/05/2014	02/10/2014	I	00/00/0000	
02	003		1910.303(b)(2)	N	02/05/2014	02/10/2014	X	00/00/0000	
02	004		1910.305(b)(1)(ii)	N	02/05/2014	02/10/2014	X	00/00/0000	

**Grouped violations**

# OSHA 1B – When to Group

---

- **Abatement related violations**
  - Single method of abatement
  - They must also be condition related
- **Condition related violations**
  - So closely related as to constitute a single violation.
- NS violations grouped to a serious item
- NS violations grouped to increase probability
- Violations of posting and recordkeeping requirements



**Note: the first two bullets comprise the vast majority of grouping instances.**

---

# Abatement-Related Grouping

---

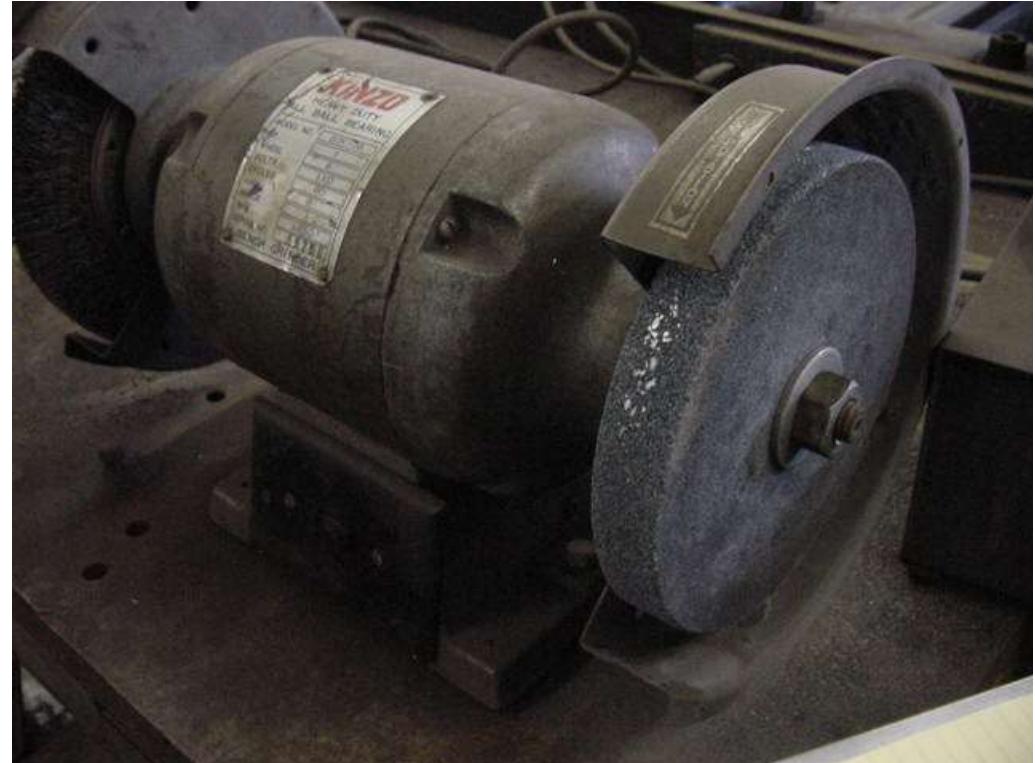
- Citations for unguarded pulley and belt are grouped as they can both be abated w/the same guard.



# Condition-Related Grouping

---

- Citations for work rest, tongue guard, and spindle end cover may be grouped into one item.



# Citation Grouping

---

- CSHOs commonly try to group for penalty reduction purposes. **This is not a reason to group.**
- In general, the presence of 3+ grouped items should be a **red flag** that you may not be following the FOM guidance.
- If you are not 100% sure that the items grouped meet the FOM criteria, then DON'T GROUP.

# Citation Grouping

---

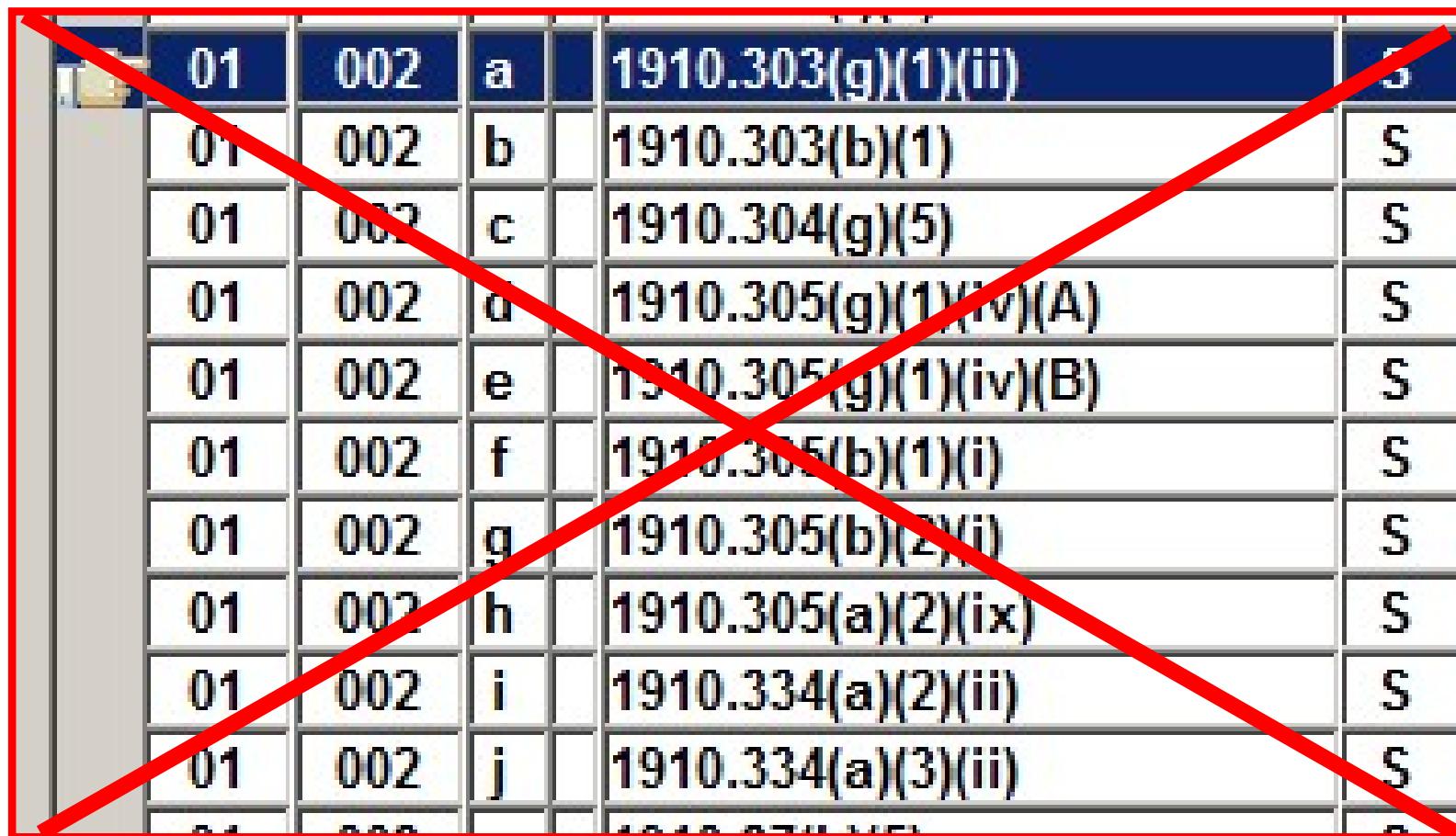
- What's the situation here?

	01	002	a	1910.303(g)(1)(ii)	S
	01	002	b	1910.303(b)(1)	S
	01	002	c	1910.304(g)(5)	S
	01	002	d	1910.305(g)(1)(iv)(A)	S
	01	002	e	1910.305(g)(1)(iv)(B)	S
	01	002	f	1910.305(b)(1)(i)	S
	01	002	g	1910.305(b)(2)(i)	S
	01	002	h	1910.305(a)(2)(ix)	S
	01	002	i	1910.334(a)(2)(ii)	S
	01	002	j	1910.334(a)(3)(ii)	S
				1910.334(a)(3)(ii)	S

# Citation Grouping

---

- This is a train wreck



01	002	a	1910.303(g)(1)(ii)	S
01	002	b	1910.303(b)(1)	S
01	002	c	1910.304(g)(5)	S
01	002	d	1910.305(g)(1)(iv)(A)	S
01	002	e	1910.305(g)(1)(iv)(B)	S
01	002	f	1910.305(b)(1)(i)	S
01	002	g	1910.305(b)(2)(i)	S
01	002	h	1910.305(a)(2)(ix)	S
01	002	i	1910.334(a)(2)(ii)	S
01	002	j	1910.334(a)(3)(ii)	S
01	002		1910.334(a)(3)(ii)	S

# FOM Chapter 15 (Industrial Hygiene)

---

- FOM Chapter 15 specifies that air contaminant overexposures, the lack of engineering controls, and related respirator violations will be grouped together.
- Respirator violations not related to this operation would be cited separately.

01	004	a	1910.1000(a)(2)
01	004	b	1910.1000(e)
01	004	c	1910.134(a)(1)



# Any Problems Here?

Cit	Item	Grp	Standard	Type
01	001		1910.1000(c)	S
01	002	a	1910.134(a)(2)	S
01	002	b	1910.134(c)(1)	S
01	002	c	1910.134(d)(1)(iii)	S
01	003		1910.134(e)(1)	S
01	004	a	1910.134(k)(1)	S
01	004	b	1910.134(k)(3)	S
01	004	c	1910.134(k)(4)	S

**The overexposure violation and all associated respirator violations must be grouped together.**

# When NOT to group.....

---

- Separate inspections of one or more establishments/employers.
  - Only violations discovered in a single inspection of a single establishment or worksite may be grouped.
- **General Duty Clause** violations – may not be grouped together.
  - GDC may be grouped with a related violation of a specific standard.

# When NOT to group.....

---

- **Repeat Violations**

- Consistent with previous inspection
- Newly observed hazards will not be grouped with repeated items.

- **Failure to Abate** will not be grouped, even if grouped in the original inspection.



# How is grouping handled in this situation?

---



# .....or this one?

---



# .....or this one?

---



# Scaffolding Scenario

---

- Violations identified include:
  - No fall protection (guardrails)
  - Working level not fully planked
  - No ladder access
  - Platforms extending <6" or >18" over centerline of support
  - Lack of competent person during scaffold erection
  - No training for employees on scaffolding
- Should these violations be grouped and, if so, how?

---

# Grouping Site & Program Violations

---

- Are these two violations so closely related as to constitute a single violation?
- **Subcontractor Violations**
  - No fall protection
  - No fall protection training

**Why do you think a CSHO would group these two violations?**



# Grouping Site & Program Violations

---

- Are these two violations so closely related as to constitute a single violation?

**NO!**

**The lack of fall protection and no fall protection training must be separate citation items, each with sufficient supporting evidence.**



# More Grouping Scenarios

---

- Are these two violations so closely related as to constitute a single violation?
- **GC Violations**
  - No guardrails on scaffold
  - No frequent/regular inspections



# More Grouping Scenarios

---

- Are these two violations so closely related as to constitute a single violation?

Again...

NO!



# A Good Grouping Example

Inspection Update - 317336725

Inspection Number: 317336725

Establishment: Perma Safety Tub Co.

Inspection Date: 08/15/2013

290 Corona Circle, Mooresville, NC 28117



Cit	Item	Grp	Standard	Type	Issue Date	Due Date	Entered	Entered By	Entered Date	Entered By	Entered Date
01	001	a	1910.1052(c)(1)	S	11/18/2013						
01	001	b	1910.1052(c)(2)	S	11/18/2013						
01	001	c	1910.1052(f)(1)	S	11/18/2013						
01	001	d	1910.1052(g)(3)(i)	S	11/18/2013						
01	001	e	1910.1052(g)(2)	S	11/18/2013						
01	002		1910.1052(d)(2)	S	11/18/2013						
01	003		1910.1052(j)(1)(i)	S	11/18/2013	11/26/2013	X		00/00/0000		
01	004	a	1910.1052(l)(1)	S	11/18/2013	11/26/2013	X		00/00/0000		
01	004	b	1910.1052(k)	S	11/18/2013	11/26/2013	X		00/00/0000		
01	004	c	1910.1200(e)(1)	S	11/18/2013	11/26/2013	X		00/00/0000		
01	004	d	1910.1200(f)(5)(i)	S	11/18/2013	11/26/2013	X		00/00/0000		
01	004	e	1910.1200(h)(1)	S	11/18/2013	11/26/2013	X		00/00/0000		

Items 1a-e: Overexposure to methylene chloride (TWA, STEL), no engineering controls, no respiratory protection

# A Good Grouping Example

Inspection Update - 317336725

Inspection Number: 317336725

Establishment: Perma Safety Tub Co.

Inspection Date: 08/15/2013

290 Corona Circle, Mooresville, NC 28117



Cit	Item	Grp	Standard	Type	Issue Date	Abate Date	Abate	Contest Date	Final
01	001	a	1910.1052(c)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	001	b	1910.1052(c)(2)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	001	c	1910.1052(f)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	001	d	1910.1052(g)(3)(i)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	001	e	1910.1052(g)(2)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	002		1910.1052(d)(2)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	003		1910.1052(j)(1)(i)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	004	a	1910.1052(l)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	004	b	1910.1052(k)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	004	c	1910.1200(e)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	004	d	1910.1200(f)(5)(i)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	004	e	1910.1200(h)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	

# A Good Grouping Example

Inspection Update - 317336725

Inspection Number: 317336725

Establishment: Perma Safety Tub Co.

Inspection Date: 08/15/2013

290 Corona Circle, Mooresville, NC 28117



Cit	Item	Grp	Standard	Type	Issue Date	Abate Date	Abate	Contest Date	Final
01	001	a	1910.1052(c)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	001	b	1910.1052(c)(2)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	001	c	1910.1052(f)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	001	d	1910.1052(g)(3)(i)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	001	e	1910.1052(g)(2)	S	11/18				
01	002		1910.1052(d)(2)	S	11/18				
01	003		1910.1052(j)(1)(i)	S	11/18				
01	004	a	1910.1052(l)(1)	S	11/18				
01	004	b	1910.1052(k)	S	11/18, 2013	11/26/2013	X	00/00/0000	
01	004	c	1910.1200(e)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	004	d	1910.1200(f)(5)(i)	S	11/18/2013	11/26/2013	X	00/00/0000	
01	004	e	1910.1200(h)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	

Item 3: lack of medical surveillance for methylene chloride

# A Good Grouping Example

Inspection Update - 317336725

Inspection Number: 317336725

Establishment: Perma Safety Tub Co.

Inspection Date: 08/15/2013

290 Corona Circle, Mooresville, NC 28117



Cit	Item	Grp	Standard	Type	Issue Date	Abate Date	Abate	Contest Date	Final
01	001	a	1910.1052(c)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	●
01	001	b	1910.1052(c)(2)	S	11/18/2013	11/26/2013	X	00/00/0000	●
01	001	c	1910.1052(f)(1)	S	11/18/2013	11/26/2013	X	00/00/0000	●
01	001	d	1910.1052(g)(3)(i)	S	11/18/2013	11/26/2013	X	00/00/0000	●
01	001	e	1910.1052(g)(2)	S	11/18/2013	11/26/2013	X	00/00/0000	●
01	002		1910.1052(d)(2)	S	11/18/2				
01	003		1910.1052(j)(1)(i)	S	11/18/2				
01	004	a	1910.1052(l)(1)	S	11/18/2				
01	004	b	1910.1052(k)	S	11/18/2				
01	004	c	1910.1200(e)(1)	S	11/18/2				
01	004	d	1910.1200(f)(5)(i)	S	11/18/2				
01	004	e	1910.1200(h)(1)	S	11/18/2				

Items 4a-e: lack of info & training related to methylene chloride, including hazard communication items

# Violation Worksheet

 Violation  OSHA-1B (Worksheet)  Standard/AVD | Standard: 

Hazard Description/Evidence | Instances/Details | Penalty Calculation | 

**A. Hazard-Operation/Condition-Accident: Evidence that supports a HAZARD:** 

**B. Evidence Which Supports Basis for Alleged Violation - See Photo(s)** 

**B1. Evidence which supports a VIOLATION (including GDC/Willful justification):** 

**B2. Evidence of EMPLOYEE EXPOSURE:** 

**B3. Evidence of EMPLOYER KNOWLEDGE:** 

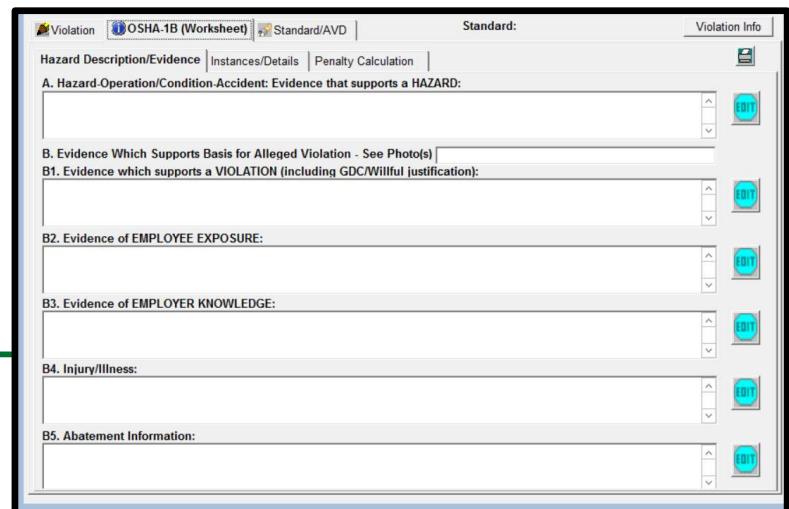
**B4. Injury/Illness:** 

**B5. Abatement Information:** 

# Violation Worksheet

---

- Each section of the Violation Worksheet is designed to capture specific information. There should be **NO DUPLICATION** of information in the different sections (A and B1 through B5).
  - The only exception is that sections A and B1 may include information on who was exposed and how they were exposed. This allows section B2 to be relatively short.



The screenshot shows the OSHA-1B (Worksheet) software interface. At the top, there are tabs for 'Violation', 'OSHA-1B (Worksheet)', 'Standard/AVD', and 'Standard'. Below the tabs, the 'Violation Info' section is visible. The main content area is divided into sections A through B5, each with a text input field and a 'FILE' button to its right. Section A is titled 'A. Hazard-Operation/Condition-Accident: Evidence that supports a HAZARD:'. Section B1 is titled 'B1. Evidence which supports a VIOLATION (including GDC/Willful justification):'. Section B2 is titled 'B2. Evidence of EMPLOYEE EXPOSURE:'. Section B3 is titled 'B3. Evidence of EMPLOYER KNOWLEDGE:'. Section B4 is titled 'B4. Injury/Illness:'. Section B5 is titled 'B5. Abatement Information:'. Each section has a 'FILE' button to its right.

# OSH Technical Writing

---

- The Violation Worksheet – Section A: Documenting the HAZARD and Section B4: Injury/Illness

Hazard Description/Evidence	Instances/Details	Penalty Calculation
A. Hazard-Operation/Condition-Accident: Evidence that supports a HAZARD:		

B4. Injury/Illness:

# Hazard (A) & Injury/Illness (B4)

---

- This incorporates at least two of the case law elements:
  1. A hazard existed
  2. The hazard created the possibility of an accident
- If it's a serious violation, then this section also must address a third element:
  3. The substantial probable result of an accident would be death or serious physical injury.

# Section A – Hazard Description

---

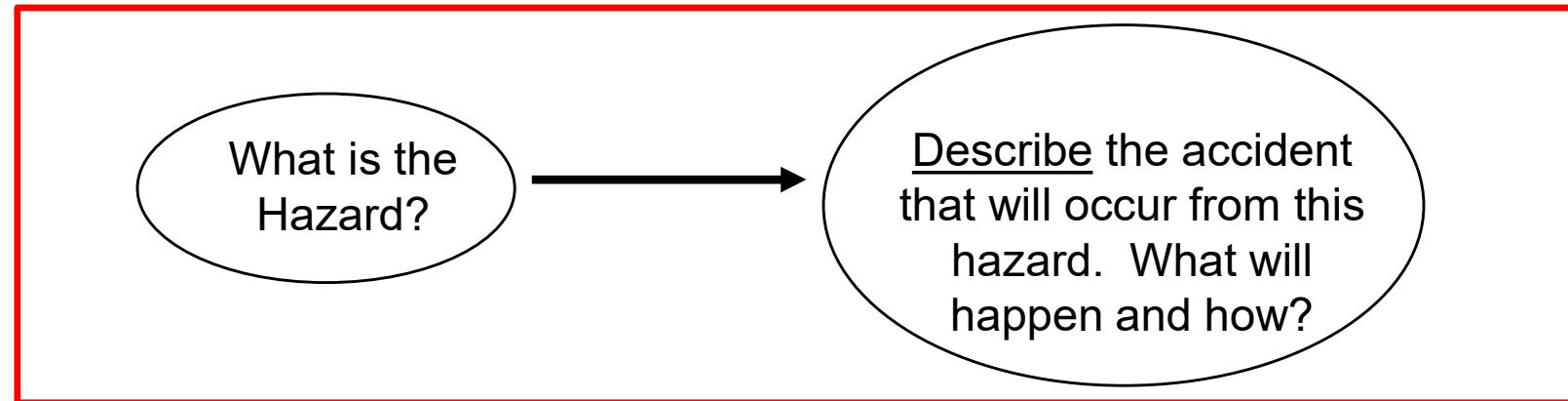
- The CSHO must tie the *hazard* to the specific *violative condition* being cited on that Violation Worksheet.
  - “**struck-by** the overhead protection of an overturning forklift due to not wearing a seatbelt during forklift operations.”
  - “**Exposure to** excessive noise levels **due to** failure to implement engineering and/or administrative controls.”
  - “**Fall from** elevation **due to** not ensuring employees utilized fall protection when working on the roof.”
  - “**Fall from** elevation **due to** not ensuring employees were trained to recognize and control fall hazards when working at elevations higher than six feet.”

# Section A – Hazard Description

---

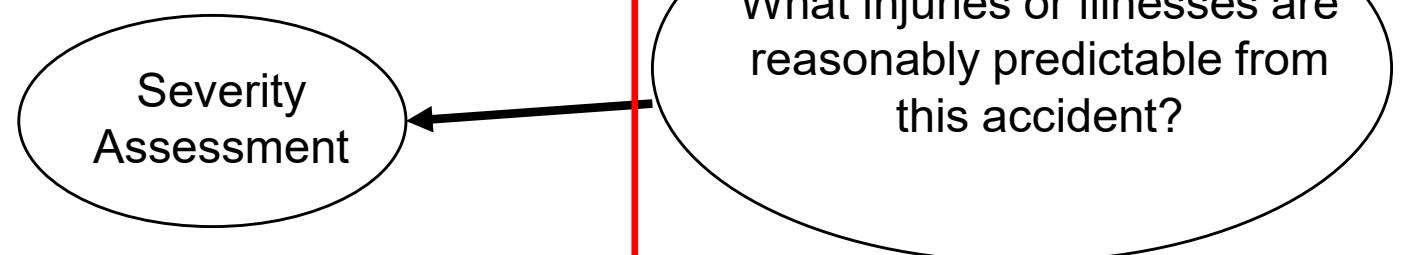
- Note these are two *separate* violative conditions – one due to the lack of fall protection and the other the lack of training:
  - “**Fall from** elevation **due to** not ensuring employees utilized fall protection when working on the roof.”
  - “**Fall from** elevation **due to** not training employees to recognize and control fall hazards when working at elevations higher than six feet.”
- Again, while the hazard is the same, these are different violations and would be two citation items...each with its own penalty.

# Hazard (A) & Injury/Illness (B4)



The hazard description should tell a story for each violation. All that information should be in Section A.

Section A of the Worksheet



Section B4

# OSHA 1B – Violation Type

Serious

---

- From NCGS 95-127

- A "serious violation" shall be deemed to exist in a place of employment if there is a **substantial probability** that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use at such place of employment, unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.



# Hazard (A) & Injury/Illness (B4)

---

- While the CSHO must ultimately assess the severity to be either High, Medium, Low, or Nonserious, the first step is determining whether it is **Serious** or **Non-Serious**.
- For a serious violation, the potential for “death” is easy to understand, but what is considered “serious physical harm?”

# Serious Physical Harm (FOM IV)

---

1. Impairment of the body in which part of the body is made functionally useless or is **substantially reduced** in efficiency. Such impairment may be permanent or temporary, chronic or acute.  
**Injuries involving such impairment would usually require treatment by a medical doctor.**
  - Amputation
  - Concussion
  - Crushing
  - Fracture, simple or compound
  - Burn or scald, other than first degree
  - Cut or laceration involving significant bleeding and/or requiring suturing

# Serious Physical Harm (FOM IV)

---

2. Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body. The illness may be acute or chronic in nature. Examples of illnesses that constitute serious physical harm include:
  - Cancer
  - Poisoning
  - Lung disease, such as asbestosis and silicosis
  - Hearing loss
  - Central nervous system impairment

# Hazard (A) & Injury/Illness (B4)

---

- Per FOM Chapter VI, a severity assessment will be assigned to a hazard according to the **most serious** injury or illness which could **reasonably be predicted** to result from an employee's exposure:
  - The severity (Serious or NS) **must be consistent with the hazard and injuries listed in Sections A and B4 of the 1B.**



# Serious Violations

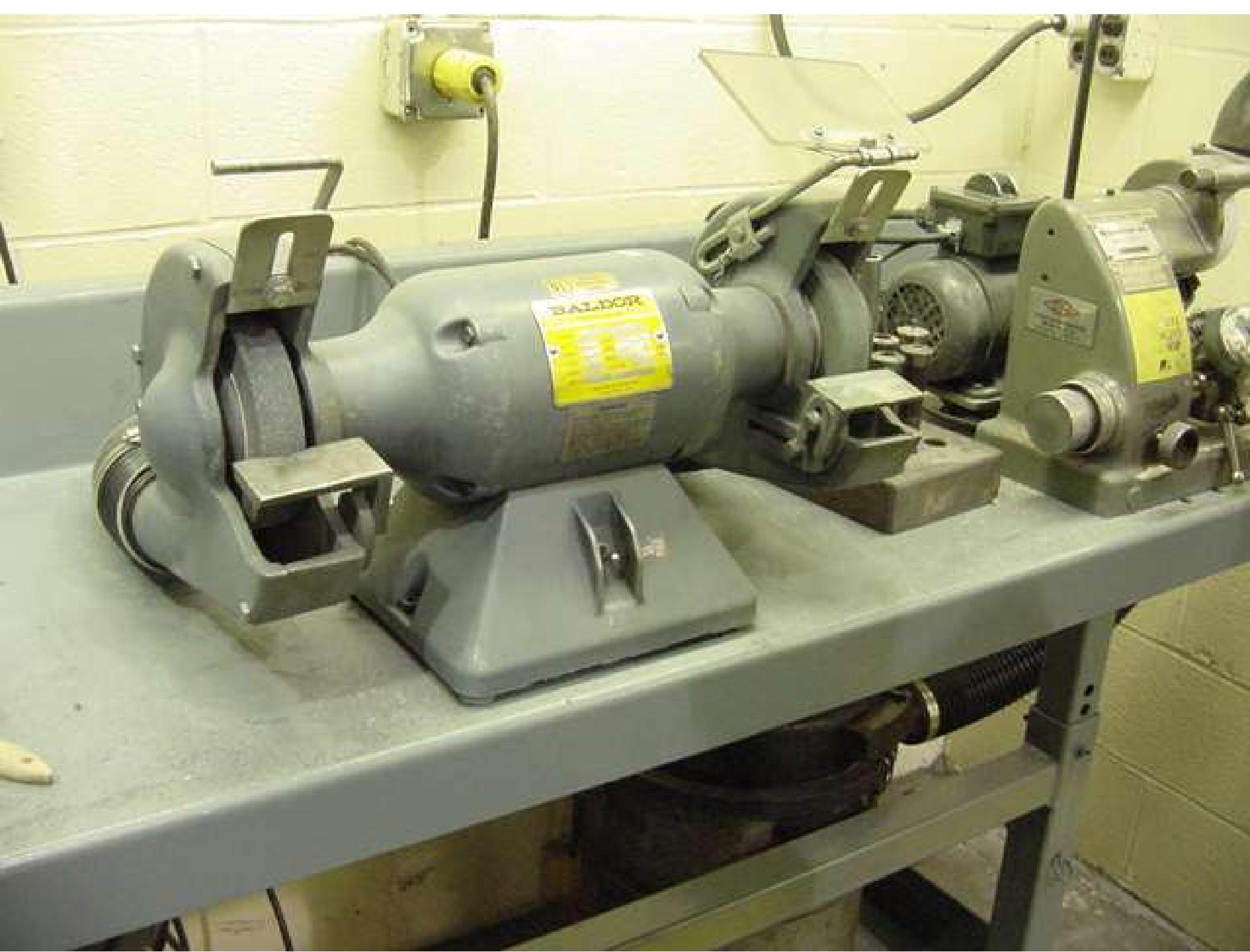
---

- There must be a *substantial probability* of death or serious physical harm from a hazardous condition...not just a *possibility*.
- For each of the following photos, what is the hazard/accident, the violative condition, and the injury/illness...and would the citation be Serious or Non-serious?













# Section A – Hazard Description

---

- Some Hazard Description sections will be very short, perhaps only one sentence.

Fall from an elevation of 10 feet to concrete due to not installing a standard railing on the side of an open-sided floor/platform.

# Section A – Hazard Description

---

- However, does the following one-line statement adequately describe the hazardous condition?

## A. Instance Description: Hazards-Operation/Condition-Accident

Caught-between hazards hazards due to failure to ensure guards cover rotating belts and pulleys.

- What specifically will be caught?
- Where exactly on the belt/pulley will it be caught?
- What will likely happen after it is caught?

# Section A – Hazard Description

---

- This section may need to be much longer to adequately describe the hazardous condition.

Struck-by/caught-in moving machinery or equipment following an unexpected start-up due to not developing and documenting energy control procedures. Maintenance employees enter robotic cage #4 several times each week to perform servicing work on the robot. The equipment is not locked out during the maintenance activities. If someone accidentally pushes the “start” button while a maintenance employee is in the cage, they could be struck-by the moving robot, causing serious injury or death.

# Section A – Hazard Identification

---

Struck-by/caught-in moving machinery or equipment following an unexpected start-up due to not developing and documenting energy control procedures. Maintenance employees enter robotic cage #4 several times each week to perform servicing work on the robot. The equipment is not locked out during the maintenance activities. If someone accidentally pushes the “start” button while a maintenance employee is in the cage, they could be struck-by the moving robot, causing serious injury or death.

What portion of the employee's body would be in the machine?

Specifically, what would happen if the machine becomes energized while work is being done?

# Section A – Hazard Description

---



- Information to be included in the hazard description also includes:
  - Equipment involved in the hazard, including trade name, equipment type, serial number, etc.
  - Measurements taken during the inspection. Examples include: tape measures, air sampling equipment, photographs, personal observations, employee interviews.

# Section A – Hazard Description

---

- The Hazard/Accident listed in Section A must be consistent with the assessed severity of the violation (Serious vs. NS) and the injury/illness (in Section B4)
  - Certain hazards, such as struck-by, caught-in or between, and fall from elevation, all are inherently serious.
  - Same thing applies to certain standards (1910.212, 1910.147, 1926.652, etc.)
  - CSHO must provide ample justification if these are cited as Non-serious violations.



# Section A – Hazard Description

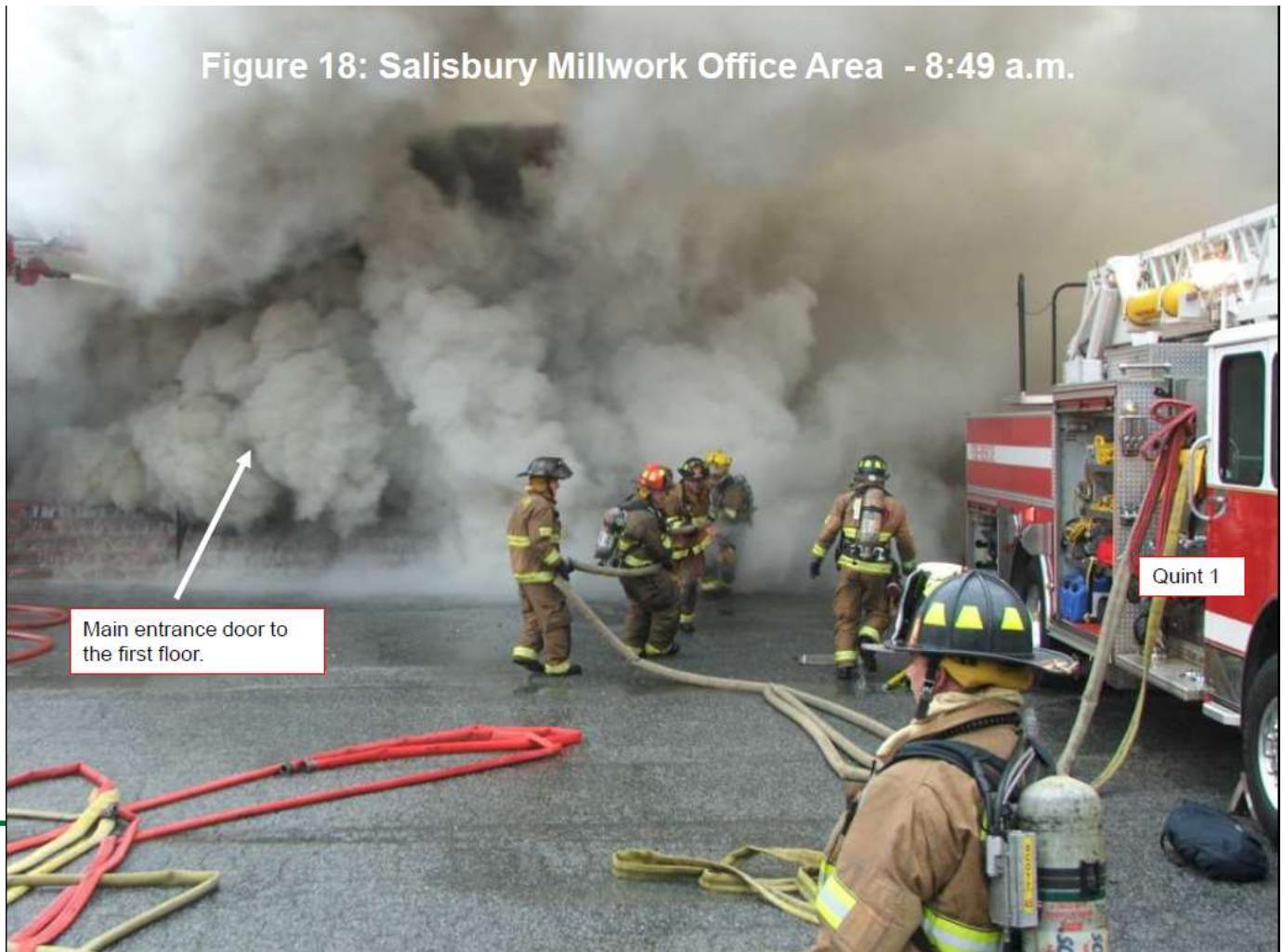
---

- CSHOs may use “Recordkeeping Requirement” in Section A and/or B4, **but only in very limited situations.**
  - Certification/paperwork violations
    - » Posting of OSHA 300 logs
    - » Forklift training certification
    - » Fat/Cat notification
  - **Not to be used for written program violations.**
    - » HazCom, BBP, LO/TO procedures or audits, etc.

# Attachments, Photos, & Figures

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- Develop, include and reference **attachments, photos, and/or figures** to help support the hazard.



# Section B4 – Injury/Illness

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- From FOM Chapter VI, Appendix VI-A

## ***APPENDIX VI-A: Guidelines for Rating Severity and Probability Factors***

### **Severity:**

The CSHO must first determine the incident the violated standard is designed to prevent. Then, using all the variables involved with the observed hazard, the CSHO must determine the most serious of all likely injuries or illnesses that might result.

High: Death, permanent disability, cancer, chronic illness.

Medium: Injury or illness requiring hospitalization, temporary disability, or anything that prevents the employee from doing their normal job.

Low: Injury or illness requiring medical treatment, but not requiring hospitalization.

# What is our hazard here? What would you list as an injury?

---



**SEVERITY QUOTIENTS FOR FALLS APPLY TO GENERAL INDUSTRY AND CONSTRUCTION INDUSTRY**

**THE FOLLOWING SCENARIO SHOULD BE CLASSIFIED AS NON-SERIOUS**

FALL DISTANCE	CONDITIONS
<b>Equal to 4 feet but less than 8 feet</b>	Fall Area is: 1. Soft surface 2. No items or equipment that could cause injury would be struck

**THE FOLLOWING SCENARIOS SHOULD BE CLASSIFIED AS SERIOUS**

FALL DISTANCE	<b>HIGH SEVERITY</b>	<b>MEDIUM SEVERITY</b>	<b>LOW SEVERITY</b>
<b>Equal to 4 feet but less than 8 feet</b>	Either of the following conditions exists: 1. Fall would be into or upon dangerous equipment (ie. augers, mixers, protruding rebar) 2. Fall would be into vats/pits, etc. wherein dangerous chemicals, molten, etc. are found.	N/A	If standard is applicable and employee(s) are working above a hard surface and/or above items or equipment that can be struck, then evaluate for potential serious violation. If determined to be serious classify as <b>LOW</b> severity.
<b>Equal to 8 feet but less than 10 feet</b>	Either of the following conditions exists: 1. Fall would be into or upon dangerous equipment (ie. augers, mixers, protruding rebar) 2. Fall would be into vats/pits, etc. wherein dangerous chemicals, molten, etc. are found.	Fall to hard solid surface.	Fall to normal (grass covered) earth, soft earth or sand
<b>Equal to 10 feet but less than 15 feet</b>	Either of the following conditions exists: 1. Fall would be into or upon dangerous equipment (ie. augers, mixers) 2. Fall would be into vats/pits, etc. wherein dangerous chemicals, molten, etc. are found. 3. Fall would be upon items, which could impale, severely lacerate, etc. 4. Hard solid surface	Fall to normal earth (grass covered), soft earth, sand	Discuss with Supervisor on case-by-case basis.
<b>More than or equal to 15 feet</b>	ALWAYS HIGH SEVERITY		

# Fall Severity – Practical Notes

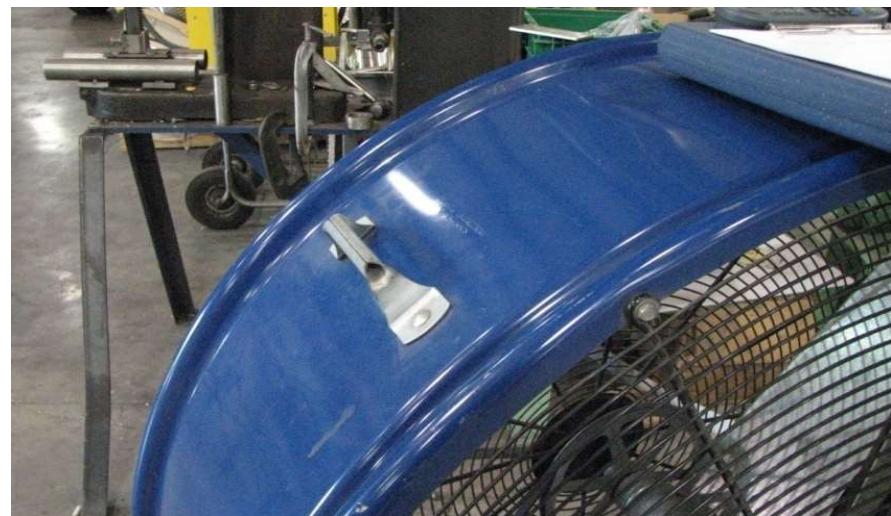
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- CSHOs need to use the maximum fall distance when determining the severity. If employees are re-roofing near the edge of the 15' peak, don't use the 10' eave for the fall distance.
- The severity is based on a typical, feet-first fall. If you believe the fall scenario involves backing into a parapet and falling head-first to the ground, all fall distances would be “high” serious.

# Exposure to Electrical Current

---

- What is your hazard and severity assessment for this condition?



# (Old) Severity Classifications

SEVERITY CLASSIFICATIONS FOR SELECTED ELECTRICAL SITUATIONS							
SITUATIONS (Y=YES N=NO)						SEVERITY RATING (Y=YES N=NO)	
SYSTEM VOLTAGE OVER 50 VOLTS <sup>1</sup>	APPROVED GFCI USED ON CIRCUIT <sup>2</sup>	GRIPPING CONDITION BY EXPOSED EMPLOYEE <sup>3</sup>	CONDUCTIVE SURFACE OR OTHER PATH TO GROUND <sup>4</sup>	EXPOSED LIVE PARTS (BARE WIRE) WITHIN REACH <sup>5</sup>	8 FT. OR MORE FROM WORKING SURFACE <sup>6</sup>	HIGH <sup>7</sup>	NONSERIOUS <sup>8</sup>
Y	N	Y	Y	Y	N	Y	
Y	N	N	Y	Y	N	Y	
Y	N	Y	Y	N	N	Y	
Y	N	Y	N	Y	N	Y	
Y	N	N	N	Y	N		Y
Y	N	N	Y	N	N		Y
Y	Y	Y	Y	Y	N		Y
Y	Y	N	Y	Y	N		Y
Y	Y	N	Y	Y	N		Y
Y	Y	Y	N	Y	N		Y

## NOTES:

- Reference 1910.302(g)(2), "Except as required or permitted elsewhere in this subpart, live parts of electric equipment **operating** at 50 volts or more shall be guarded against accidental contact . . ." The important factor here is that the system or equipment is **operating** at 50 volts or more, so the CSHO is not required to measure any voltages at or over 50 volts to issue a citation. The system or equipment voltage will assumed to be the potential voltage to which the employee can be exposed (e.g. 120 VAC, 240 VAC). For any system or equipment that is operating at less than 50 volts (e.g. control circuits), the CSHO would be required to provide documentation to show the hazard to the employee, since these situations would normally not be cited.

# Severity Classifications

---

Hazard/Condition	Resulting Injury	Standard(s) Violated	Other Than Serious	Serious	
<p>The path to ground was not permanent, continuous, and effective.</p> <p>Exposed noncurrent – carrying metal parts not grounded.</p>	<p>Electrical shock, burns or electrocution</p>	<p>1910.304(g)(5)</p> <p>No violation if double insulated or no metal parts.</p>	<p>X (working GFCI)</p>	<p>X (Gripping condition exposed metal )</p>	 Photo: NCDOL - OSH

# Severity Classifications

Hazard/Condition	Resulting Injury	Standard(s) Violated	Other Than Serious	Serious	
Flexible cords not used in continuous length without splice or tap.  Damage to outer insulation of flexible cord and insulation of conductors – exposed live parts.	Electrical shock, burns or electrocution	1910.305(g)(2)(ii)  1910.334(a)(2)(i) and .334(a)(2)(ii)	X  (working GFCI, visual inspection, worn outer but not inner insulation)	X  (Live bare wire)	 Photo: NCDOL - OSH
Extension cord improperly repaired – original properties of insulation not restored.  Exposed conductors under electrical tape.	Electrical shock, burns or electrocution	1910.334(a)(2)(ii) (Remove from service.)	X  (working GFCI)	X  (Live bare wire)  <i>Note: Employer take apart tape.</i>	 Photo: NCDOL - OSH

# Electrical Severity - Summary

---

- The potential for an electrocution following exposure to electrical current is based on a number of variables. It's the totality of the evidence and not the presence or absence of one factor.
- The following conditions support a **Serious** violation (i.e., potential for electrocution and death).
  - Voltage >50 volts, conductive surface/path to ground, no GFCI, gripping condition, bare wires, lack of electrical PPE, etc.

# Electrical Severity – Summary

---

The electrical severity policy (High Serious or NS) only applies to **electric shock hazards (exposure to current)**.

It does not apply to electrical hazards that may cause a fire, an arc flash/arc blast, or contact with a 7200-volt power line.

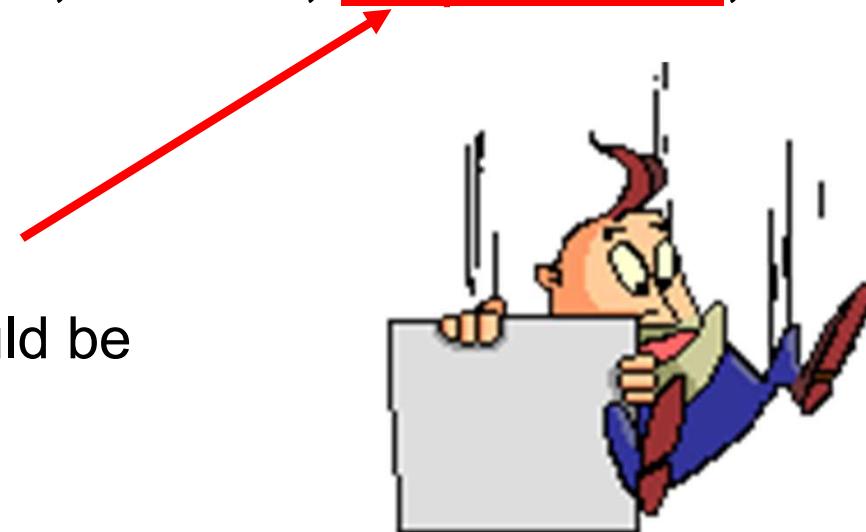


# High Severity

---

- **High Severity**: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.
  - Death, electrocution, permanent hearing loss, third degree burns, blindness, cancer, amputations, HIV infection, Hepatitis B

All amputations involve a permanent disability should be **High Severity**.



# Most Serious Injury

---

- Keep in mind that the ***most serious injury reasonably predictable*** and what ***actually happened*** during the accident may be different.

Personal protective equipment such as non-conductive head protection, eye and face protection to protect against flying debris and arc flash, flame resistant clothing, rubber insulated gloves and dielectric foot protection are required to be worn by employees working in areas where there is a potential for exposure to electrical hazards (NFPA 70E, article 130.7 Personal and other Protective Equipment).

From the arc flash, Mr. Biggers received 2nd degree burns on his left and right hands and forearms and singed hair on his face. Mr. Biggers was wearing only safety glasses and his issued short sleeve shirt and trousers which were 65% poly, 30% cotton.

During discussions with the employer, CSHO learned the only PPE provided to maintenance employees working at the Coddle Creek Water Plant were safety glasses, hard hats and issued clothing that consisted of a short sleeve shirt and long trousers, both made of 65% polyester and 35% cotton.

B) Equipment: GE, Limitamp, motor control center, 4160 volts AC.

C) Location: Jobsite, Pump Building.

D) Injury/Illness: 2nd and 3rd degree thermal burns, electrocution, death.

E) Measurements: Observations, employee interviews



OSH Division  
Internal Training

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January 2023

# Medium Severity

---

- **Medium Severity:** Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited disability – **or anything that prevents the employee from doing their job.**
  - Severe lacerations (involving a disability), avulsions, compound or multiple bone fractures, corneal/retinal injuries.
  - A hazard where the injury would result in lost or restricted work time (a DART case) would be Medium severity.



# Low Severity

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- **Low Severity:** Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.
  - Injuries that involve an urgent care or emergency room visit (w/o admission).
  - Lacerations (requiring sutures), second degree burns, dislocations, foreign objects in the eye, simple fractures, severe sprains/strains

# CSHO's Understanding

---

- It is imperative that the CSHO understands the stated hazard and the resultant injury/illness. In this case, 1<sup>st</sup> degree burns alone is **NS**, whereas 2<sup>nd</sup> degree burns would be **Low or Medium**.

A) Hazards – Operation/Condition – Accident:

- a) Hazards – Operation/Condition – Accident: Flash fire/LP gas release due to the LP tanks not being properly stored to prevent physical damage or tampering by unauthorized persons. CSHO observed 45 33-gal LP containers stored at an entrance/exit to the warehouse approximately five feet from the bay doors. 30 of these cylinders were full. According to Patrick Mecimore, Plant Engineer, the containers are replacement fuel tanks for the forklifts used at the facility. Mr. Mecimore indicated that the forklifts are used throughout the facility. Due to the tanks location, the forklift would have to travel by the tank storage area while taking material outside. This could result in an increase potential that the forklift could strike the unprotected tanks causing a gas release and possibly resulting in a flash fire.

B) Equipment: LP containers not stored in a location to prevent physical damage or tampering

C) Location: forklift entrance/exit to the warehouse.

D) Injury/Illness: Smoke inhalation, 1<sup>st</sup> & 2<sup>nd</sup> degree burns.

E) Measurements: CSHO Observations, Photo, Employer/Employee interviews.

# Non-Serious

---

- **Non-serious violations.** Although such violations reflect conditions that have a direct and immediate relationship to the safety and health of employees, the resulting injury or illness would probably not cause death or serious physical harm.
  - Abrasions, contusions, minor sprains/strains, first degree burns, eye irritation, skin irritation, respiratory irritation, minor lacerations, temporary threshold shifts, minor smoke inhalation.



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# OSH Technical Writing

- **Section B1 – Documenting Evidence to Support the VIOLATION**

## Headings for the OSHA 1B Worksheet

- A. Hazard-Operation/Condition-Accident: Evidence that supports a HAZARD:
- B1. Evidence Which supports a VIOLATION (including GDC/Willful justification):
- B2. Evidence of EMPLOYEE EXPOSURE: ↗
- B3. Evidence of EMPLOYER KNOWLEDGE:
- B4. Injury/Illness:
- B5. Abatement Information:

# Section B1 – Evidence of a Violation

---

B. Evidence Which Supports Basis for Alleged Violation - See Photo(s)

B1. Evidence which supports a VIOLATION (including GDC/Willful justification):



- This section includes all your evidence that the employer violated the requirements of the standard being cited.
- Even with General Duty Clause and Willful violations, the CSHO must prove the violation before addressing the GDC and Willful elements.

# Section B1 – Evidence of a Violation

---

- So, what do we put in this section?
- It's often assumed by CSHOs that the selected standard being cited applies to the given hazardous condition – with little or no discussion. But does it?
- In this section, the CSHO will describe how and why this hazard violated this standard.
  - Will likely involve discussing the Scope and Application of the standard and/or letters of interpretation.

# Steps for Section B1 (Violation)

---

1. Section B1 normally starts with a short paragraph summarizing the requirements of the standard being cited.

B1. Evidence which supports a VIOLATION (including GDC/Willful justification):

The standard requires that each employee who is engaged in residential construction activities six feet or more above lower levels shall be protected from falling by guardrail systems, safety net systems or personal fall arrest systems, or an alternative fall protection measure under another provision of paragraph 1926.501(b).

- Having that summary provides a good reminder to the CSHO of what is being cited on *this* Violation Worksheet. The evidence presented for the “lack of fall protection” violation is different from the “lack of fall protection *training*” violation.

# Steps for Section B1 (Violation)

---

2. The CSHO must show that the cited standard applies to *this* alleged violative condition. Here are some examples:
  - A violation of 1910.213(i)(1) for not guarding a bandsaw blade, but is the saw being used for woodworking or cutting pork chops?
  - A machine guarding violation under 1910.212(a)(3)(ii), but is the area being guarded truly a “point of operation?”
  - A violation under 1910.28(b)(1)(i) for not providing guardrails or other fall protection after an employee climbed onto 6’ tall piece of equipment to unjam the feed chute. However, is that equipment considered a “walking-working” surface?

# Steps for Section B1 (Violation)

---

3. Once we've determined the alleged violative condition falls under the scope & application of the cited standard, that's when we describe our evidence of the violation.
  - For a physical violations (e.g., machine guarding, lack of fall protection, lack of a protective system on a trench), the evidence often starts with a photo.
  - For program violations (e.g., lack of training, no frequent/regular inspections), the evidence comes almost exclusively from employee and employer interviews. The CSHO must

# Group Activity

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- For this exercise, you'll be working in groups to decide what evidence is needed to prove a violation.
  - Please review the scenario for your group (and the all-groups scenario)
  - Determine one or two standards you believe they violated (including the specific CFR number and why you selected those standards)
  - Decide what information you need to prove a violation of each one and how you will obtain that evidence.

# Section B1 (Violation) – Group #1

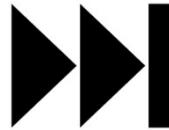
---

- You respond to a complaint about housekeeping employees at a hotel having to clean-up blood in one of the rooms after a guest received a serious laceration during a fight. The complaint alleges the lack of hepatitis B virus (HBV) vaccinations and bloodborne pathogens training.
- During the inspection, you find the employer has no exposure control plan, they don't offer HBV vaccinations, and they have not conducted bloodborne pathogens training.
- What violations do you have and what evidence is needed in Section B1 to support those violations?



# Section B1 (Violation) – Group #2

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- A small construction company is hired by a building owner to do some repair work on the roof. The roof is flat, 40 feet in width, and has an 18-inch-high parapet around the perimeter on all four sides. All three employees were observed sitting on or leaning over the parapet on the front side of the building without any fall protection. They were applying a wood nailer on the parapet. 
- What violations do you have and what evidence is needed in Section B1 to support those violations?

# Section B1 (Violation) – Group #3

---

- The maintenance guy at a townhome complex is tasked with cleaning out the crawlspace under one of the buildings. He access the space through a small hatch and has to crawl on his hands & knees throughout due to the low clearance.
- What violations do you have and what evidence is needed in Section B1 to support those violations?



# Section B1 (Violation) – Group #4

---

- Employees of a construction company are seen installing a French drain in a trench that is 42 inches deep and 24 inches wide with vertical walls and water accumulating in the bottom.
- After looking at the following photos, what violations do you have and what evidence is needed in Section B1 to support those violations?

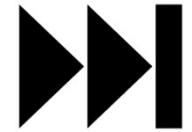
# Section B1 (Violation) – Group #4

---



# Section B1 (Violation) – Group #4

---



# Section B1 (Violation) – All Groups

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- At a facility that manufactures plastic bags, an employee operates a large printing press that applies ink to the bags. Occasionally, the machine will become jammed. The employee presses the “stop” button (electricity is the only energy source), removes a guard that is protecting a nip point, clears the jam, puts the guard back on, and then re-starts the machine. These jams occur on average two or three times each week. 
- What violations do you have and what evidence is needed in Section B1 to support those violations?

---

# OSH Technical Writing

## ● Section B2 – Documenting Evidence of Employee Exposure

Headings for the OSHA 1B Worksheet

- A. Hazard-Operation/Condition-Accident: Evidence that supports a HAZARD:
- B1. Evidence Which supports a VIOLATION (including GDC/Willful justification):
- B2. Evidence of EMPLOYEE EXPOSURE: 
- B3. Evidence of EMPLOYER KNOWLEDGE:
- B4. Injury/Illness:
- B5. Abatement Information:

# OSHA 1B – Employee Exposure

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- A hazard identified during an inspection must have at least one exposed employee to be cited.
- The employee(s) will be identified in the exposure block and the evidence of their exposure will be summarized in section B2 of the worksheet.



# Section B2 – Exposure Evidence

---

- Section B2 of the violation worksheet is where the CSHO documents how/when/where/why employees are exposed.
- Some of the employee exposure evidence may already be documented in the Hazard (A) or Violation (B1) sections. If that's the case, the evidence doesn't need to be repeated.

## B2. Evidence of EMPLOYEE EXPOSURE:

Mr. Sampson, Mr. Culver, Mr. Walker, and Mr. Thompson conduct servicing and/or maintenance on the four re-reeler machines at the facility that do not have documented or utilized energy control procedures.

# Employee Exposure

---

- For each hazard:
  - Identify the exposed occupations (aka homogenous exposure groups)
  - Determine the # of employees in each exposed occupation.
  - List (at least) one exposed employee for each occupation, with name/address/phone #.

# Employee Exposure

---

- Total # of employees exposed to this hazard (on all shifts)

Violation OSHA-1B (Worksheet) Standard/AVD

2. Citation	01	3. Item	001	4. Group	<input type="checkbox"/>
5A. Citation Type (Federal)	Serious				
5B. Citation Type (State)	Serious				
6. Egregious					
9. Potential Number Exposed	4				
12. Number Instances	1				
13. REC					
15. Proposed Penalty(\$)	13,051.80				
16. Issuance Date	12/15/2022				

# Employee Exposure

At least one entry for each **occupation** exposed

Identify an exposed employee for this occupation

Contact info for possible subpoenas

Employee Exposure

Occupation:	Lead Wire Cutter
Employer:	HWC Wire & Cable Company
Number Employees:	4
Total Duration:	> 6 Months
Frequency:	2-6/wk
Employee Name:	Arnold Thomas
Address:	2238 Marbetta Ln
City:	Charlotte
State:	NC
Phone:	704 684 7397
<input type="button" value="Copy"/>	

# Duration of Exposure

---

- CSHO should enter estimated amount of time the hazard has existed. This data typically comes from employer/employee interviews.
- It's better to enter **actual hazard duration** (e.g. 2  $\frac{1}{2}$  years) instead of entering “> 6 months.”

Employee Exposure

Occupation:	Selector		
Employer:	ADUSA Distribution, LLC		
Number Employees:	85		
Total Duration:	2 years		
Frequency:	2 hrs/day		
Employee Name:	Christina Tyson		
Address:	PO Box 8032		
City:	Fayetteville		
State:	NC	Zip:	28311
Phone:	910 257 6505		
<input type="button" value="Copy"/>			

# Employee Exposure

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- We must have employee exposure in order to prove a citation.
- What happens when the employer says the *only* reason for employee exposure was because the employee committed misconduct?
  - An employee reaches into a machine to check the status of a part, contacts the blade that is still moving, and suffers an amputation. The employer contends the employee violated the posted policy to “keep hands away from point of operation.”



# Employee Exposure

---

- Case law from *Commissioner of Labor vs. Flatiron-Lane, A Joint Venture*:
  - The issue at hand was exposure to a fall hazard on a construction site due to the lack of guardrails, but the concept applies to employee exposure for all hazards.

The Act provides that guarding is required where employee exposure to a fall from a height over 6' is “possible.” This includes the possibility of occasional, casual, or even inadvertent exposure. Budd-Piper Roofing, 216 NCOSHD at 327 The access test is predicated on the recognition that “[s]ome carelessness and negligence is anticipated and expected.” Id.

# Employee Exposure

---

- Exposure includes the possibility of “occasional, casual, or even inadvertent exposure...and that some carelessness and negligence is anticipated and expected.”
- So, when the employer says, “why in the world would he stick his hand into the point of operation of the machine,” your response should be...

# Employee Exposure

---

- ...because he could. That's why the OSHA standards require guarding that *prevents* operators or other employees from accessing the danger zone...since inadvertent exposure and employee carelessness must be expected.
  - 1910.212(a)(3)(ii): The point of operation of machines whose operation exposes an employee to injury, shall be guarded. The guarding device shall be in conformity with any appropriate standards therefor, or, in the absence of applicable specific standards, **shall be so designed and constructed as to prevent the operator from having any part of his body in the danger zone during the operating cycle.**

---

# OSH Technical Writing

## ● Section B3 – Documenting Evidence of Employer Knowledge

Headings for the OSHA 1B Worksheet

- A. Hazard-Operation/Condition-Accident: Evidence that supports a HAZARD:
- B1. Evidence Which supports a VIOLATION (including GDC/Willful justification):
- B2. Evidence of EMPLOYEE EXPOSURE:
- B3. Evidence of EMPLOYER KNOWLEDGE: 
- B4. Injury/Illness:
- B5. Abatement Information:

# Employer Knowledge

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- From NCGS 95-127
  - A "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use at such place of employment, **unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.**

# Knowledge of the Conditions

---

- We must show knowledge of the presence of the violative condition, practice, means, methods, operations, or processes that are being cited.
- We do **NOT** need to show knowledge of the OSHA standards in general or that the hazardous condition was a violation of the standards.
  - Knowledge of the standard must, however, be established for **Willful** violations.



# Section B3 – Employer Knowledge

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- “Unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.”
  - “Actual” Knowledge
  - “Constructive” Knowledge
- **Diligence** - the attention and care legally expected or required of a person.
- Just the presence of a violative condition is not sufficient to establish employer knowledge.

# Documenting Knowledge

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- What exactly is the violative condition?
  - Is it a **site violation** (e.g. lack of machine guarding, improper bracing on scaffold, no trench box)?  
*Or*
  - A **program violation** (e.g. no training, no competent person inspections, etc.)?
- This must be established separately for each violation (1b).
  - CSHOs should not write one employer knowledge statement and then “cut and paste” to other violations – such as four trenching violations (protective system, spoil pile, inspections, and training).



# Actual Knowledge

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- An employer's representative **actually knew** of the hazardous condition which constituted the violation.
  - Knowledge of the violative condition may be “imputed” to the employer through its supervisor.
- It doesn't need to be shown that the employer understood or acknowledged that the conditions were actually hazardous.

# Actual Knowledge

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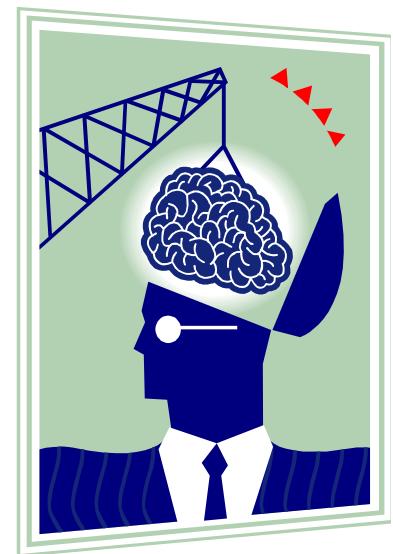
- Actual knowledge is often documented via **interviews** with a foreman, supervisor or other management official.
  - “Were you aware the wood lathe was missing a guard?”
  - “Does the company have a lockout/tagout training program?”
  - “Are daily inspections being done on the trench to identify safety hazards?”



# Constructive Knowledge

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- The employer **could have known** of the hazardous condition if he had taken all reasonable steps within his power to identify hazards to which his workers were exposed.



# Constructive Knowledge

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- While constructive knowledge typically includes the language “with reasonable diligence,” the CSHO must **document** how and why a reasonable person could have identified the hazardous condition.
  - For site violations, you’ll need to use interviews to put the employer “at the scene of the crime.”
  - Like with actual knowledge, constructive knowledge can be imputed to the employer through a manager, supervisor, or foreman.

# Construction Violations

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- When citing for physical violations on a construction site (e.g., lack of fall protection, ladder not extending 3' past upper landing, etc.), what kind of knowledge will you typically have for the exposing employer (the subcontractor doing the work) – actual or constructive?
- How about for the higher-level contractors, such as the GC or builder, being cited as a controlling employer under the multi-employer citation policy – actual or constructive?

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# Constructive Knowledge – Lennar

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In this case, Lennar was the controlling employer of the worksite and the employees exposed were the employees of second-tier subcontractors. During their inspection, Compliance Officers identified seven violations, involving employees from three different subcontractors, at three different home sites. The violations included failures to use fall protection and the improper use of ladders. All were visible from the public right of way. It is undisputed that a Lennar supervisor, Construction Manager John Riggins, was on the jobsite while the violations were occurring. Mr. Riggins was photographed walking down the street fronting the three homesites within minutes of the moment the violations were observed and photographed by the Compliance Officers.

# Constructive Knowledge – Lennar

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Mr. Riggins may or may not have seen the violations. But given his presence at the workplace, his proximity to the hazards, and the number of open and obvious violations at issue, in the exercise of reasonable diligence, he plainly should have. That is all that is required to hold Lennar accountable under the multi-employer doctrine.

For the reason stated herein, the Review Commission hereby **ORDERS** that the Hearing Examiner's November 9, 2020, Order in this case be, and hereby is, **AFFIRMED** to the extent that it is not inconsistent with this opinion. Respondent abated the violations during the inspection and is now ordered to pay the accessed penalty of \$33,350.00 within 30 days of the filing date of this Order.

# Constructive Knowledge – Meritage

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10. During the period of time Mr. Zaugg was engaged in activities involving Scholastic Drive, he walked by the house at 15314 where the man was installing siding on the front of the house. In the picture identified as Complainant's Exhibit Number 4, Mr. Zaugg is shown facing toward that house in a position where he either saw or could have seen the man at work without any fall protection. Part of Mr. Zaugg's duties as Site Superintendent involved safety on the job site in Parkside.

11. There was contradictory testimony as to whether Mr. Zaugg spoke to the man on the roof. He claims he did not speak to the man or see him working. Even though Complainant's Exhibit Number 4 was not taken from an angle directly behind Mr. Zaugg, it is difficult from looking at that exhibit to believe that Mr. Zaugg could not see the man and that he was working without fall protection.

# Constructive Knowledge – Meritage

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## CONCLUSIONS OF LAW

1. The forgoing Findings of Fact are incorporated as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. The respondent is subject to the provisions of the Act.
3. The respondent violated the provisions of 29 CFR 1926.501(b)(13) and such violation was a serious violation of the standard.

Based on the forgoing Findings of Fact and Conclusion of Law, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The respondent has violated the provisions of 29 CFR 1926.501(b)(13), which violation is a serious violation of the standard, with a penalty of \$2,800.00.

# Poor Knowledge Statements

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- “With reasonable diligence the employer should/could have known.”
- “Employer was aware of OSHA regulations.”
- “Employer was on-site during the inspection and observed the violation.”
- “Other machines in the area were properly guarded.”
- “With reasonable diligence, the employer could have known that eye protection was required.”

# Supervisory Misconduct

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- The courts have ruled that knowledge generally can not be imputed to an employer through a supervisor when that supervisor is the only person exposed and commits unforeseeable misconduct (*Cole & Yates* decisions).
- . . in this case we address only the situation in which it is the supervisor himself who engages in unsafe conduct and who does so contrary to policies of the employer. Thus, a supervisor's knowledge of his own **rogue** conduct cannot be imputed to the employer; and consequently the element of employer knowledge must be established, not vicariously through the violator's knowledge, but by either the employer's actual knowledge, or by its constructive knowledge based on the fact that the employer could under the circumstances of the case, **foresee** the unsafe conduct of the supervisor (*Yates*).

# Employer Knowledge – Fatality Case

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- **Employer Knowledge:** Mr. Merrington was a supervisory employee and had actual knowledge of the hazardous condition, as he directed Mr. Fraire to lift him on the forks of the powered industrial truck to the top of the rack. The knowledge of Mr. Merrington, the victim in this case, can be imputed to the employer since **his conduct was not unplanned, transient, idiosyncratic, or unpredictable**. While the company has a written policy that states “never lift employees on forks or pallets,” interviews with Mr. Fraire and Mr. Lude confirmed that it occurred regularly, perhaps every month or so, if problems arose with stock in the racks. In fact, it was a regular enough occurrence that Mr. Fraire asked Mr. Merrington if he should get a pallet to lift him up, as they had done previously.

Additionally, while safety inspections of the building were being done to check things like fire extinguishers and emergency exits, Mr. Lindsey confirmed that he was not looking for unsafe behaviors (e.g. riding the forks) during the inspections. Also, in the last three years, except for a single forklift accident and the driving of over-the-road vehicles, there is no record of any employee being disciplined for a safety-related violation at the facility. All the evidence supports that the policy of “never lift employees on forks or pallets” was simply words on paper and not an implemented and enforced rule at the facility. Based on the statements from Mr. Fraire and Mr. Lude and the lack of any disciplinary actions for safety violations, it is clear that Mr. Merrington’s actions on the date of the accident were **not unforeseeable** – and hence his knowledge of the conditions can be imputed to the employer.

# Employer Defenses

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- Any formal affirmative defenses?
  - Isolated employee misconduct?
  - Abatement creates a greater hazard?
  - No feasible abatement?



# Isolated Employee Misconduct

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- The most common affirmative defense
- The employer has the burden of proof.
- Elements:

The elements of the affirmative defense of "isolated incident of employee misconduct" are as follows:

- (1) the employer has work rules designated to prevent the violation;
- (2) the employer has adequately communicated those rules to employees;
- (3) the employer has taken steps to discover violations; and,
- (4) the employer has effectively enforced the rules when violations have been discovered.

# OSH Technical Writing

## ● Penalty Calculations

Rationale For Penalty Calculation		
14a. Severity (H/M/L/N)	Low	
14b. Probability (G/L)	Greater	
14c. Gravity	04	
14e. Number of Times Repeated		O1A Values
14f. Size	50	50
14g. Good Faith	10	10
14h. History	0	0
Penalty Calculation		
Gravity Based Penalty	Penalty Multiplier	S, GF, & H
3000.00	1	60

# New language for NCGS 95-138(a)(1)

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(a1) The Commissioner shall adjust minimum and maximum civil penalties in this section in accordance with the requirements set forth in the United States Consumer Price Index for All Urban Consumers published by the United States Department of Labor as necessary to comply with federal law. The Commissioner shall have a period of 60 calendar days from the date a final rule is published in the Federal Register to publish the civil penalties in the North Carolina Register under 13 NCAC 07A .0301 or any related or subsequent regulations setting penalty standards in compliance with Part 1903 of Title 29 of the Code of Federal Regulations, and on its website.

- Federal OSHA sets new maximum and minimum penalties each year based on the CPI.
- They are published in the Federal Register under 29 CFR 1903.15(d).
- The penalties are then incorporated by reference into the NC Administrative Code.

# New Penalties under 1903.15(d)

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## 1903.15(d)

*Adjusted civil monetary penalties.* The adjusted civil penalties for penalties proposed after January 15, 2022 are as follows:

### 1903.15(d)(1)

*Willful violation.* The penalty per willful violation under section 17(a) of the Act, 29 U.S.C. 666(a), shall not be less than \$10,360 and shall not exceed \$145,027.

### 1903.15(d)(2)

*Repeated violation.* The penalty per repeated violation under section 17(a) of the Act, 29 U.S.C. 666(a), shall not exceed \$145,027.

### 1903.15(d)(3)

*Serious violation.* The penalty for a serious violation under section 17(b) of the Act, 29 U.S.C. 666(b), shall not exceed \$14,502.

### 1903.15(d)(4)

*Other-than-serious violation.* The penalty for an other-than-serious violation under section 17(c) of the Act, 29 U.S.C. 666(c), shall not exceed \$14,502.

### 1903.15(d)(5)

*Failure to correct violation.* The penalty for a failure to correct a violation under section 17(d) of the Act, 29 U.S.C. 666(d), shall not exceed \$14,502 per day.

### 1903.15(d)(6)

*Posting requirement violation.* The penalty for a posting requirement violation under section 17(j) of the Act, 29 U.S.C. 666(j), shall not exceed \$14,502.

# And they are changing again...

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1903.15(d)*Adjusted civil monetary penalties.* The adjusted civil penalties for penalties proposed after January 15, 2023 are as follows:

1903.15(d)(1)*Willful violation.* The penalty per willful violation under section 17(a) of the Act, 29 U.S.C. 666(a), shall not be less than \$11,162 and shall not exceed **\$156,259**.

1903.15(d)(2)*Repeated violation.* The penalty per repeated violation under section 17(a) of the Act, 29 U.S.C. 666(a), shall not exceed \$156,259.

1903.15(d)(3)*Serious violation.* The penalty for a serious violation under section 17(b) of the Act, 29 U.S.C. 666(b), shall not exceed \$15,625.

1903.15(d)(4)*Other-than-serious violation.* The penalty for an other-than-serious violation under section 17(c) of the Act, 29 U.S.C. 666(c), shall not exceed \$15,625.

1903.15(d)(5)*Failure to correct violation.* The penalty for a failure to correct a violation under section 17(d) of the Act, 29 U.S.C. 666(d), shall not exceed \$15,625 per day.

1903.15(d)(6)*Posting requirement violation.* The penalty for a posting requirement violation under section 17(i) of the Act, 29 U.S.C. 666(i), shall not exceed \$15,625.

# NC Administrative Code

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## SECTION .0300 - PROCEDURES

### 13 NCAC 07A .0301 INCORPORATION BY REFERENCE

(a) Subject to the exceptions provided in Paragraph (h) of this Rule, the provisions of Title 29 of the Code of Federal Regulations referenced below are incorporated by reference throughout this Chapter, including subsequent amendments and editions thereof. Copies of these standards are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Printing Publishing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at <http://bookstore.gpo.gov>. The cost is sixty-seven dollars (\$67.00) for Title 29, Parts 1900-1910:

- (1) 29 CFR 1903 – Inspections, Citations, and Proposed Penalties;
- (2) 29 CFR 1904 – Recording and Reporting Occupational Injuries and Illnesses;
- (3) 29 CFR 1905.10(b) – Variances and Other Relief under Section 6(b)(6)(A);
- (4) 29 CFR 1905.11(b) – Variances and Other Relief under Section 6(b)(6)(A); and
- (5) 29 CFR 1908 – Consultation Agreements.

# Effective October 1, 2022...

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- Changes to FOM Chapter VI went into effect.

B. Civil Penalties.

1. Statutory Authority. NCGS §95-138 provides the commissioner with the authority to propose civil penalties for violations of the act. Per NCGS§95-138(a1), the minimum and maximum civil penalties will be adjusted annually. This will be done in accordance with the requirements set forth in the United States Consumer Price Index for All Urban Consumers published by the United States Department of Labor, as necessary to comply with federal law. The OSH Division shall have a period of 60 calendar days from the date a final rule is published in the Federal Register to publish the civil penalties in the North Carolina Register under 13 NCAC 07A .0301 or any related or subsequent regulations setting penalty standards in compliance with Part 1903 of Title 29 of the Code of Federal Regulations.
  - a. A violation determined to be serious in nature will be assessed a penalty of up to \$14,5027,000, except that a penalty of up to \$2914,000 will be assessed for each serious violation that involves injury to an employee under 18 years of age
  - b. A non-serious violation may be assessed a penalty of up to \$14,5027,000.
  - c. In the case of willful or repeat violations, a civil penalty of up to \$145,02770,000 may be proposed.
  - d. For other specific violations of the act, civil penalties of up to \$14,5027,000 may be proposed.

- And it will change again effective July 1, 2023

# New Gravity-Based Penalties

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Severity	Probability	Current GBP	New GBP
High	Greater	\$7000	<b>\$14,502</b>
High	Lesser	\$5000	<b>\$10,000</b>
Medium	Greater	\$5000	<b>\$10,000</b>
Medium	Lesser	\$3000	<b>\$6,500</b>
Low	Greater	\$3000	<b>\$6,500</b>
Low	Lesser	\$1500	<b>\$3,000</b>
Non-serious	Greater	\$1500	<b>\$3,000</b>
Non-serious	Lesser	\$0	<b>\$0</b>

# New Gravity-Based Penalties

---

Severity	Probability	Current GBP	New GBP
High	Greater	\$7000	<b>\$15,625</b>
High	Lesser	\$5000	<b>\$10,000</b>
Medium	Greater	\$5000	<b>\$10,000</b>
Medium	Lesser	\$3000	<b>\$6,500</b>
Low	Greater	\$3000	<b>\$6,500</b>
Low	Lesser	\$1500	<b>\$3,000</b>
Non-serious	Greater	\$1500	<b>\$3,000</b>
Non-serious	Lesser	\$0	<b>\$0</b>

# Penalty Credit Factors

Rationale For Penalty Calculation		O1A Values		Total / <input type="checkbox"/>	
14a. Severity (H/M/L/N)	High				
14b. Probability (G/L)	Greater				
14c. Gravity	10				
14e. Number of Times Repeated					
14f. Size	70		70		
14g. Good Faith	0		10		<18 <input type="checkbox"/>
14h. History	0		0		
Penalty Calculation					
Gravity Based Penalty	Penalty Multiplier	S, GF, & H Credits (%)			
14502.00	10	70%			

# Adjustment Factors

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- Remember the penalty adjustment exceptions:
  - Repeat and proximate cause (of a fatality or serious injury) violations – only the **size** credit is applied (for those violations only).
  - High Severity/Greater Probability – only the credits for **size** and **history** are applied (for those violations only).
  - Willful & FTA violations – only the **size** credit is applied for all violations found during the same inspection.

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# OSH Technical Writing

- The Probability Assessment

# OSHA 1B – Probability Assessment

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- One of the most frequent CSHO errors on the case file.
  - Tendency is to underestimate probability, often in an attempt to keep penalties low.
- Probability assessment takes into account the following variables:
  - Number of employees exposed
  - Proximity of the employee to the hazard
  - Frequency of exposure to the hazard
  - Any contributing or mitigating factors



# From FOM Chapter VI – Appendix VI-A

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- Probability that an accident or incident will occur is evaluated on several factors:
  - The number of employees involved
  - Their proximity to the hazard and other conditions that may contribute to or mitigate the hazard.
- The importance of each factor in determining the degree of probability that injury would occur may vary with each violation.
  - For example, although only one employee may be in an unshored trench there is a high probability of injury since 100% of all trenches collapse given time.

# From FOM Chapter VI – Appendix VI-A

---

- CSHOs are required to use this calculation to assess probability.

Rating:	1	2	3	4	5	6	7	8
# of Employees:	1	2	3	4	5	6	7	8 or more
Frequency:	< 1/wk	1/wk	2-6/wk	< 2h/dy	2-3h/dy	4-5h/dy	6-7h/dy	8+h/dy
Proximity:	6+ ft	5-6 ft	4-5 ft	3-4 ft	2-3 ft	1-2 ft	< 1 ft	point of danger
Other Factors:	1							8

Add the rating for each factor used, divide the sum by the number of factors used, and round the result to the nearest tenth.  
(e.g. 5+4+5=14; 14/3=4.67; rounded to 4.7)

Lesser: 1.0 – 4.5

Greater: 4.6 – 8.0

# Probability - Mitigating Factors

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- Mitigating factors are things that **reduce** the probability of an accident occurring, including:
  - Effective training
  - Comprehensive S&H program
  - Administrative controls that provide some protection
  - PPE, Medical surveillance
- These factors must be specifically documented by the CSHO for ***each 1b*** where they apply.

# Probability - Contributing Factors

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- Contributing factors are things that increase the probability that an accident will occur, including:
  - Poor lighting, high noise levels
  - Extreme temperatures
  - Adverse weather conditions
  - Lack of overall S&H training and/programs
- As before, these factors must be specifically documented by the CSHO for **each 1b** where they apply.

# Contributing Factor

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- Keep in mind, if an accident occurred that was related to this violative condition, it's very difficult to say the probability of an accident is "lesser."

Probability Rating	
Employees (1-8):	1
Frequency (1-8):	4
Proximity (1-8):	8
Other Factors:	8 Class C soil, no protective measures
Total / # Factors:	5.3      Greater (4.6 - 8.0)

<18

# Photos and Videos

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- These are critical to proving a violation. Take as many photos and (especially) videos as you can.
- The CD/DVD is the official location of photos & videos for your case file. The file name/number of a specific photo on the CD/DVD (e.g., **IMG\_0246**) is the one that should be referenced in the narrative and violation worksheets.
- The photos uploaded to OE are NOT part of the case file. They are for review purposes only (supervisor, BC, AG's Office, DO). The number you give them is irrelevant. Only upload those photos that provide some value to the reviewer...with no duplicates. You shouldn't need more than 10-12 max.

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# OSH Technical Writing

- Witness Statements

# Witness Statements

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- Witness statements often make or break your case.
  - In general, >50% of written witness statements taken by CSHOs are **completely useless**.
- When are they taken?
- Who writes them?
- What information should they provide?
- What do you do with the duplicate copy?

NORTH CAROLINA DEPARTMENT OF LABOR  
Division of Occupational Safety and Health

WITNESS STATEMENT

I understand that this statement will be held in confidence until such time as this inspection and its findings may be heard in a court proceeding, at which time it may be produced upon demand of opposing counsel. Additionally, this statement may be made available to other agencies if it will assist them in the performance of their statutory functions. Upon the closing of this case, this statement will be subject to disclosure only in accordance with applicable statute(s) and agency policy.

Date: 3-27-07 Time: 12<sup>50</sup> Interview Place: CGS office

Name: Chris Howell Phone: 704-596-3600

Address: 142 Milroy Ln

City: Mooresville NC 28115

Social Security Number: N/A Birthdate: 9-24-59

Employed by: Carolina Steel + Stone

Company Address: 9925 Metromont Industrial Blvd.

Occupation: Traffic Mgr. Time in occupation: 8 yrs

Employed from: 9-99 To: Present

I hereby depose and say: I Chris Howell am Traffic Manager for Carolina Steel + Stone. I am responsible for Crane and equipment moves. I have 17 employees that I am directly responsible for

About 700-750 am 3-27 I began delegating duties for my truck drivers + Crane Operators. Among these were transferring some crane parts + counterweights and loading some braces. This particular counterweight was thin and upright and I tried to always make sure that it was secure to the trucker or the crane. I had just been appointed and we were moving it to a trucker designated for this counterweight.

Company Address: \_\_\_\_\_

Occupation: Concrete Finisher/Truck Operator time in occupation: 20 Years

Employed from: 1985 To: \_\_\_\_\_

I hereby depose and say: ON 12/21/06 AT 8:15AM I ARRIVED AT THE JOBSITE, I PARKED MY TRUCK, GOT OUT AND PROCEEDED TO ADJUST THE FRONT & REAR BRAKES. I ADJUSTED THE ~~RIGHT~~ LEFT REAR BRAKE & MOVED OVER & STARTED ADJUSTING THE RIGHT REAR BRAKE. WHILE ADJUSTING THE RIGHT REAR BRAKE I HEARD A POP & THE TRUCK STARTED ROLLING OFF. THE TRUCK RIGHT REAR WHEEL ROLLED OVER MY RIGHT KNEE & FOOT. AFTER THE TRUCK ROLLED OVER MY LEG, I GOT UP & CHASED THE TRUCK DOWN, OPENED THE DOOR, CLIMBED IN & HIT THE BRAKE. BRAKES DID NOT WORK SO I STEERED THE TRUCK INTO THE CONCRETE LIGHT POLE BASE SO AS NOT TO HIT THE CARS IN THE PARKING LOT. AFTER THE TRUCK HIT THE POLE, I GOT OUT OF THE TRUCK & REALIZED MY LEG WAS HURT & I CALLED MY BOSS & TOLD HIM I WAS HURT.

Page 1 of 2 pages

(Initial) T.B.

White: Case file  
Canary: Witness

OSHA - 19 p. 1  
IV.16.1920  
Printed 7/80; 6/81, 2.5M;  
6/87, 2.5M; 8/93, 15M

with James and helped them hook up pipe about 1:30pm to 2:00pm then I took Jim's place running the 320. We put about 20 feet of pipe in 2 joints at a time I dig down to grade the step out of the box to make sure my grad is good then back in the box I lower the pipe down the step out of the box stick pipe together get back in the box I spin around have half dump stone in to my bucket with the 420 backhoe dump stone on the pipe. What for the men in the hole ease the pipe to grade then when they get back in the box I put approximately 1 $\frac{1}{2}$  to 2 foot dirt back on the pipe reach my bucket out to the top front edge of the box slide the box forward. then start digging for the next piece I got down to grade I turned sideways to the here to the right so the Cab is ~~over~~ side ways to the front they stepped out of the

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# OSH Technical Writing

- General Duty Clause Violations
  - Documented in Section B1

B. Evidence Which Supports Basis for Alleged Violation - See Photo(s)

B1. Evidence which supports a VIOLATION (including GDC/Willful justification):

# When is GDC used?

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Use of the General Duty Clause. The general duty provisions will be used only where there is no standard that applies to the particular hazard involved, as outlined in 29 CFR 1910.5(f).

- a. The general duty clause may be applied in situations where a recognized hazard is created in whole or in part by conditions not covered by a standard. Ergonomic hazards are not covered by any standard and are cited as general duty. Wood and metal ladders are covered by 29 CFR 1910.25 and 1910.26, while misuse of fiberglass ladders must be cited general duty.

**Basically – it is used when you have a hazardous condition, but no OSHA standard to cite.**

# Why is this being cited GDC?

---

## Citation 1 Item 1 Type of Violation: Serious

North Carolina General Statute 95-129(1) of the Occupational Safety and Health Act of North Carolina: 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 exposed to a burn hazard:

- a) kitchen - where employees were exposed to thermal burns while removing bread from the Bakers Pride bread oven.

Among other methods, one applicable and feasible method to correct this hazard is to ensure the current corporate policy (requiring employees to slide out the oven rack and use tongs to retrieve the bread) is utilized by employees and enforced by management.

Date By Which Violation Must be Abated:	05/03/2012
Proposed Penalty:	\$ 2100.00

# Section B1 for GDC Violations

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- All General Duty Clause violations shall address the four requirements:
  - Employees of the employer being cited were exposed.
  - **The hazard was recognized.**
  - The hazard was likely to cause death or serious physical harm.
  - There was a useful and feasible method to correct the hazard.

# The Hazard Was Recognized.....

---

- **Industry Recognition (most common)**
  - Manufacturer's warnings (placards, operator's manual)
  - ANSI/ASME/NFPA – if the industry participated on the committee
- **Employer Recognition**
  - Company memos, rules, and procedures.
  - Employee complaints to supervisory personnel
  - **Signs**
- **Common-Sense Recognition**
  - Used only in flagrant cases

# OSHA 1B – General Duty

---

- Specific hazard information should be added to the SAVE and not the AVD.
  - CSHO will have one general duty 1B for each hazard identified.
  - It is possible to have more than one general duty 1B for a piece of equipment (e.g. cranes) – as long as each is a different hazard.
  - Use separate instances on a single GDC 1B – as long they are related to the same situation and hazard.

# GDC SAVES

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- All GDC SAVEs should end with the language “in that employees were exposed to **(fill in the blank)** hazards”.

## AVD/Variable Information:

North Carolina General Statute 95-129(1) of the Occupational Safety and Health Act of North Carolina: 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 exposed to struck-by/caught-in between hazards:

- a) processing building, on April 18, 2009, an employee performing blow-down was observed working in a personnel basket attached to the forks of a Yale forklift. The personnel basket was not provided with overhead protection and the forklift was moving with the basket raised in proximity to overhead obstructions such as screw conveyors and metal conduit. The employee in the basket was observed ducking underneath a run of conduit as the forklift was being driven, exposing him to a struck-by or caught-in between hazard.

One feasible method of abatement is to follow the manufacturer's operating procedures regarding the lifting personnel and "Do not travel with people in the platform."

# Feasible Abatement

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## AVD/Variable Information:

North Carolina General Statute 95-129(1) of the Occupational Safety and Health Act of North Carolina: 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 exposed to being struck-by a skid steer loader:

- a) jobsite, on 3/12/09, employees were assigned to work in close proximity to the Caterpillar Multi-Terrain Loader while grading the site and inadequate steps were taken to protect employees from the struck-by hazard.

Among other methods, two applicable and feasible methods to correct this hazard are to isolate the area where the multi terrain loader is operating, preventing employees from entering the area, or the employer could establish a limited access zone limiting only authorized employees to be inside the area where the loader is operating and establish a non-approach boundary to keep employees away from the loader.



- A feasible method of abatement needs to be listed.

# General Duty Evaluation

---

General Duty evaluation:

1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed.

Employees Shawn Carr, Cameron Wood, Joel Culbreath and Jeff Lanier (Safety Director) were working around the area where Philip Keesler was operating the multi terrain loader. The employees were shoveling soil into depressions while the loader was leveling out the soil and creating the grade. The employees would routinely work less than five feet from the loader while it was in motion.

2. The hazard was causing or likely to cause death or serious physical harm.

Employee Joel Culbreath was struck-by and run over by the multi terrain loader while he was working in close proximity to the loader. His injuries included multiple fractures to both legs.

DHHS (NIOSH) Publication No. 98-117 "Preventing Injuries and Death from skid-Steer Loaders" lists a WARNING that states: "Workers who operate or work near skid-steer loaders may be crushed or caught by the machine or its parts".

# Recognized & Feasible

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## 3. The hazard was recognized in the industry.

DHHS (NIOSH) Publication No. 98-117 "Preventing Injuries and Death from Skid-Steer Loaders" lists a WARNING that states: "Workers who operate or work near skid-steer loaders may be crushed or caught by the machine or its parts".

The Caterpillar Safety and Operating Tips CD-ROM for skid-steer and multi terrain loaders states for operators to check for by-standers prior to operating the loader.

United States Department of Labor, Safety and Health Information Bulletin SHIB 01-12-2009 recommended safety practices which states "Always keep bystanders a safe distance away from the work area".

## 4. There was a feasible and useful method to correct the Hazard.

The employer could isolate the area where the multi terrain loader is operating, preventing employees from entering the area, or the employer could establish a limited access zone limiting only authorized employees to be inside the area where the loader is operating and establish a non-approach boundary to keep employees away from the loader.

# Some GDC Notes....

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- GDC citations work best for *site* violations. It is very difficult to cite GDC for programmatic issues like written procedures or training.
  - In construction, consider 1926.21(b)(2) for general training.
- 29 CFR 1910.132(a) is basically a GDC violation for PPE. As a result, it needs to be documented as such.

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# OSH Technical Writing

- Willful Violations – Documented in Section B1

B. Evidence Which Supports Basis for Alleged Violation - See Photo(s)

B1. Evidence which supports a VIOLATION (including GDC/Willful justification):

# Section B1 for Willful Violations

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- Should contain (itemized) documentation of the four-part test for a finding of willfulness:
  - Employer knowledge of the violative condition.
  - Employer knowledge of the standard.
  - A subsequent violation of the standard.
  - Violation committed voluntarily or with intentional disregard of the standard or with demonstrated plain indifference to the OSH Act.

le	<b>Rdr, Inc.</b>	
	<b>SW Serious Willful</b>	Citation
	<b>3</b>	No. Ii
<b>1926.0652( a)( 1)</b>		

# FOM Chapter IV

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- A willful violation exists under the Act where the evidence shows either an **intentional violation of the Act** or plain indifference to its requirements - not necessarily with knowledge of the standard itself.

# FOM Chapter IV

---

- A willful violation exists under the Act where the evidence shows either an intentional violation of the Act or **plain indifference to its requirements** - not necessarily with knowledge of the standard itself.

# FOM Chapter IV Examples

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- i. The employer committed an intentional and knowing violation if:
  - A. An employer representative was aware of the requirements of the Act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements.
  - B. An employer representative was not aware of the requirements of the Act or standards, but was aware of a comparable legal requirement (e.g., state or local law) and was also aware of a condition or practice in violation of that requirement.

# FOM Chapter IV Examples

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# Case Example #1

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- Complaint received from an employee at a large (unionized) manufacturing facility.

		Complaint Number	205417769
Establishment Name	Freightliner Custom Trucks		
Site Address	1175 Statesville Blvd., Cleveland, NC 27013-8114		
Site Phone	(704) 278-6300	Site FAX	
Mailing Address	1175 Statesville Blvd., Cleveland, NC 27013-8114		
Mail Phone	(704) 278-6300	Mail FAX	
Management Official	Dale Robbins		
Type of Business	Fabricating service		
Primary SIC	3999	Primary NAICS	339999
<b>HAZARD DESCRIPTION/LOCATION.</b> Describe briefly the hazard(s) which you believe exist. Include the approximate number of employees exposed to or threatened by each hazard. Specify the particular building or worksite where the alleged violation exists.			
<b>DESCRIPTION:</b>  On 8/21/06, an employee used a crane to lift a rear-end differential on a "home-made" hook. The employee was injured when the hook broke apart.			
<b>LOCATION:</b>  At facility			

# Case Example #1

---

Type	ID	Value
N	20	TAKEN BY B.WALLS. COMPLAINANT STATED AFTER THE
N	20	INCIDENT THE EMPLOYER HAS ATTEMPTED TO REMOVE AND
N	20	REPLACE ALL "HOME-MADE" HOOKS IN THE FACILITY.
N	20	COMPLAINANT STATED EMPLOYEES HAVE BEEN USING THE
N	20	HOOKS FOR 2 WEEKS. COMPLAINANT STATED THE BUILDING
N	20	IS ACROSS THE STREET FROM THE "MAIN PLANT".

# Photo 1

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# Photo 2

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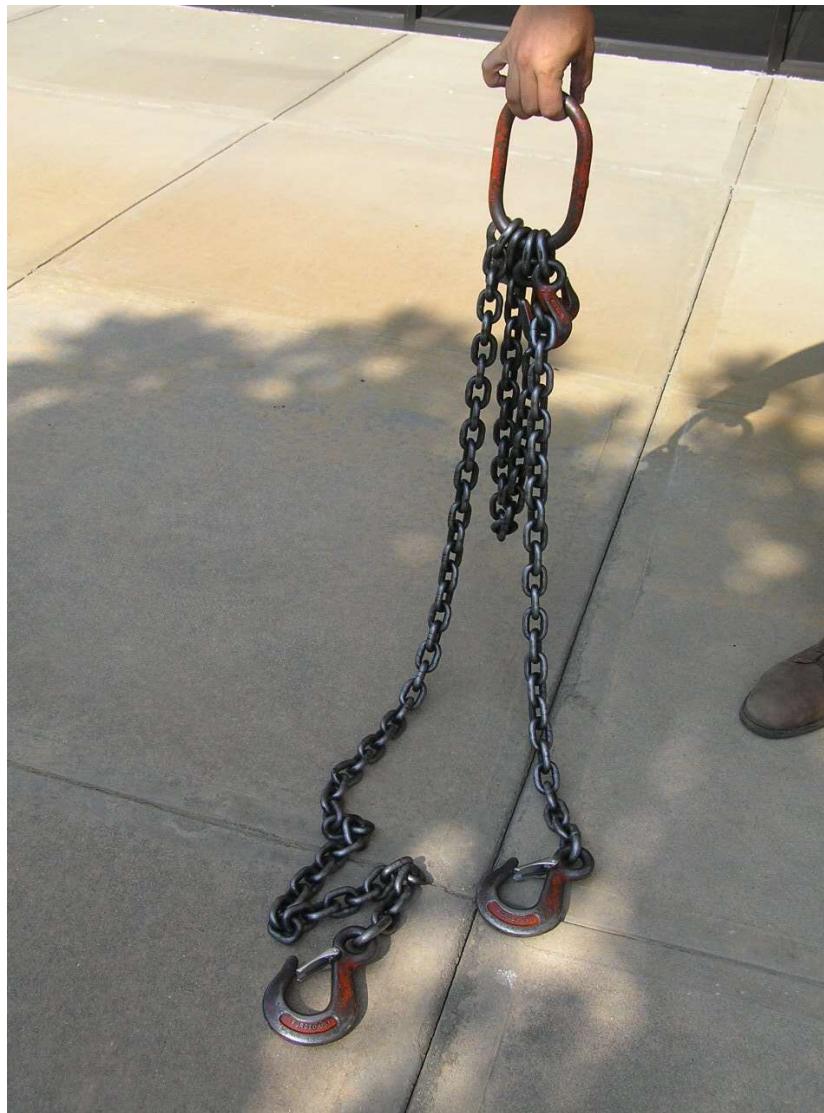
# Photo 3

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# Photo 4

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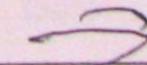
# Photo 5

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# Statement

Employed from: \_\_\_\_\_ To: \_\_\_\_\_

I hereby depose and say: Approx. 2 1/2 weeks ago I was told to do rearend diff. Brian Saine was then asked to make hooks to remove the reavends. After the hooks were made Terry Freeze and I began the work. On the second truck the hooks began to straighten out. I then went to Robert Younce & Mike Self and told them about the hooks; I was told to keep on working with the same hooks. Brian Saine then told Robert Younce the hook he was making were not safe. Brian Saine was told to make more hooks. Approx. 2 weeks later when I was removing the Inner Axle diff, ~~the hook broke~~ The hook made that I was using broke, the hook came flying up & hit me in the mouth. 

# Statement

On January 1, 2000, Mod Center was to install rear-end gears for about 100 US Express Trucks.

Of course, we did not have the right equipment to pull and install the gears, each truck had two set of gears: the front gear, which is an (A) gear, and the tandem gear, which is a (B) gear. The front gear weighed a little over 500 lbs and I'm not sure about how much the tandem gear weighs.

So Brian, Shane, and Mike made some hooks that were made of steel u-bolts. The hooks measured  $\frac{1}{2}$  inch in diameter and were made of soft metal. Ideally the u-bolts were designed for holding truck beds in place. After the hooks were made, Robert Younce, a member of upper management, came to our area where Todd and I were working and approved the hooks. He said to use them because we had to start installing the gears because the trucks had to be shipped to the customers. Their words "The trucks have to move out!" Alvin Sides, our shop safety person, came and saw what we were going to use. He told Robert that the hooks have not been strength tested, and they were not safe so don't use them. Upper management over-rode Alvin's decision and we started using the hooks.

We carefully started using the hooks and making sure no-one got under the gear while the crane lifted them up for installation and

# Statement

---

Employed from: \_\_\_\_\_ To: \_\_\_\_\_

I hereby depose and say: I was asked to fabricate 8 sets of [redacted] hooks to remove and replace rear ends with, After weeks of use one hook broke and injured an employee.

I fabricated these hooks at my place of employment, PDI, and used scrap metal that was left over from another job. My group leader asked me to fabricate these hooks so we could get moving on the rear end replacements. We didn't have the proper load tested hooks to do the job with and that's why I was asked to make them.



OSH Division  
Internal Training

For Public Official's Use Only  
January 2023

# Description

---

Instance Description – Describe the following:

Hazards – Operation/Condition – Accident: Employees were exposed to struck by injuries because the employees were using makeshift hooks to fasten the rear-end differentials to the safety latch hooks of 2-branch alloy steel chain slings. They were lifting the rear-end differentials out of the deck plates of heavy duty commercial trucks, exposing the employees to struck by injuries. On August 21, 2006, employee, Todd Rupard, was injured when he was struck by a makeshift hook that broke and hit him in the face and mouth. Mr. Rupard incurred multiple dental bone and teeth fractures.

During the inspection, CSHO observed the makeshift hooks (see reference photos P8250001-4) which the employees had been using for approximately two weeks. The makeshift hooks were made from scrap  $\frac{1}{2}$ " diameter steel rods and u-bolts. Employees, Mike Jones and Brian Saine, made the hooks at the request of their Group Leader, Robert Younce.

According to interviews with employees, they attached two makeshift hooks to the safety latch hooks of a two-branch alloy steel chain. They removed two of the top bolts from the universal yokes of the rear-end differential and inserted the makeshift hooks into the bolt holes to lift the rear-end differential out of the truck deck plate (see pictorial explanation included herein). During the hoist,

# Employer Knowledge

---

## 1. Employer knowledge of the violative condition:

Mike Self, Operation Supervisor, was aware that the employees were using makeshift hooks to lift rear-end differentials out of heavy duty commercial trucks. Mr. Self had a work order for approximately 104 trucks that would require modifications on the rear-end trucks. He was aware that special order hooks would be required and the company did not have them. Mr. Treadway told CSHO that he and Mr. Self went into Mr. Reynolds' office and found the request for special hooks to fit the bolt holes of the universal yokes of rear-end differentials. Mr. Self knew that the employees had to make hooks to fit the universal yokes of the rear-end differentials. He knew that the makeshift hooks were not load rated and were not safe, because Mr. Sides and Mr. Treadway immediately told him about their safety concerns. He told Mr. Treadway that they would have to use the makeshift hooks, because they needed to get the trucks moved.

# Employer Knowledge

---

## Employer knowledge of the standard:

Mr. Self told CSHO that he did not know that hooks were suppose to be load rated. However, Mr. Self has worked for Freightliner for 17 years. He signed the form for daily inspections of the crane, which included chain slings, which required that he verify that a rated lifting capacity tag was attached. With reasonable diligence, Mr. Self could have known that a makeshift hook that is not load rated cannot be attached to an alloy steel chain sling, which is required to have a rated lifting capacity identification

# Subsequent Violation

---

### 3. A subsequent violation of the standard:

The makeshift hooks were used for a two-week period after Mr. Rupard and Mr. Freeze had a near-miss incident on the second truck that they were working on in which the makeshift hooks straightened out and the rear-differential slid to the floor. They told Mr. Self and Mr. Younce what had happened and that the hooks were not safe. Mr. Self told them to continue using the hooks. Mr. Self wanted to get the trucks finished. Mr. Younce told Mr. Jones and Mr. Saine to make some more hooks. For two weeks the company continued to use the hooks, until on August 21, 2006 when the accident occurred. After the accident, Mr. Self and Mr. Younce told the employees to get rid of the hooks.

# Intentional Disregard

---

4. The violation being committed voluntarily or with intentional disregard of the standard or with plain indifference to the Act:

Mr. Self disregarded the safety concerns of Mr. Sides, Mr. Treadway, Mr. Rupard and Mr. Freeze, who confronted him regarding the use makeshift hooks. In Mr. Freeze's statement, he stated that after he and Mr. Rupard reported the near-miss incident involving the makeshift hooks, Mike Self told them to continue to use the hooks because the trucks had to be moved. Mr. Saine was told to make more hooks. In Mr. Saine's statement, he said that about four or five hooks broke and he repaired them as needed. Mr. Saine also stated that Mr. Sides told him not to use or make any more hooks, but acting under Mr. Self's direction, Mr. Younce told him to make the hooks. Mr. Younce told his group of employees to use the makeshift hooks to get the job done. The employees were required by Mr. Self to use the makeshift shifts, and continued to use them for two weeks until Mr. Rupard's accident. Only after the accident occurred in which an employee was seriously hurt did Mr. Self tell the employees to stop using the makeshift hooks and get rid of them.

# Employer Knowledge

---

D) Injury/Illness: Compound or multiple bone fractures, concussion, contusions

E) Measurements: CSHO Observations, Photos, Employer/Employee interviews

21. Photo Number	Location on Video
P8250001, 2, 3, 4, 7, 10, 12, 13, 14, 19; P9180001, 2, 6	N/A

23. Employer Knowledge: Actual Knowledge: Mike Self, the Operations Supervisor, has worked for Freightliner for 17 years and signed the forms that noted the daily inspections on the alloy steel chain slings with regard to rated lifting capacity identification tags affixed. Mr. Self acknowledged to CSHO that he knew that the employees were using the makeshift hooks for lifting the rear-end differentials. Mr. Self told the employees to continue using the makeshift hooks even after Alvin Sides, the UAW Union Employee Safety Representative, Mike Treadway, Group Leader, Mike Todd, and Terry Freeze advised him that the makeshift hooks were not load rated, were not safe, and should not be used.

# Standard

---

## AVD/Variable Information:

29 CFR 1910.184(e)(2)(ii): Makeshift link(s) or fastener(s) formed from bolts, or other such attachment(s) were used to connect links or fastenings on alloy steel chain sling(s):

- a) Production Area, for the employees, who were using makeshift hooks to fasten the alloy steel chain slings to the rear-end differentials for hoisting from the heavy duty commercial trucks, exposing the employees to struck-by injuries. On August 21, 2006, an employee was injured when he was struck-by a makeshift hook that had broken off of the rear-end differential while lifting it out of the truck deck plate.

Or in the alternative:

29 CFR 1910.184(e)(2)(i): Hooks, rings, oblong links, pear shaped links, welded or mechanical coupling links or other attachments did not have a rated capacity at least equal to that of the alloy steel chain with which they were used or the sling was used in excess of the rated capacity of the weakest component.

- a) Production Area, for the employees, who were using makeshift hooks to fasten the alloy steel chain slings to the rear-end differentials for hoisting from the heavy duty commercial trucks, exposing the employees to struck-by injuries. On August 21, 2006, an employee was injured when he was struck-by a makeshift hook that had broken off of the rear-end differential while lifting it out of the truck deck plate.

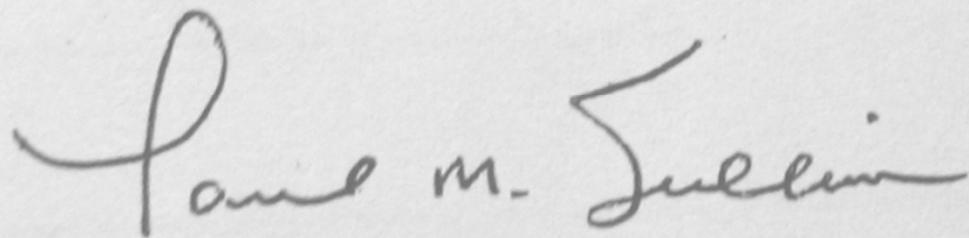
# Abated

---

Must be Abated:

Immediately Abated

\$ 50000.00

A handwritten signature in black ink that reads "Paul M. Sullivan". The signature is fluid and cursive, with "Paul" and "M." on the first line and "Sullivan" on the second line.

---

District Supervisor  
for the Director

# Training/Re-Training Citations

---

- The presence of a site violation (e.g. no fall protection) does not automatically mean that employees have not been trained.
  - The CSHO must establish **via employer and employee interviews** and records review that training was not conducted or was deficient.
  - In order to cite failure to conduct re-training, the CSHO must describe **how/when the employer became aware** that employee training was deficient. Observation of the violation during the inspection is **not** sufficient.



# Competent Person Inspection Violations

---

- The same thing applies for competent person inspection citations – more than a site violation is needed to say inspections of a trench or slings was not done.
- CSHO must specifically establish which **one** of the following is the issue:
  - Inspections were not conducted, or
  - Inspections were conducted, but were not done by a competent person.



# Abatement Info – Section B5

---

- CSHO specifies abatement period after discussion with the employer.
  - Should range from 0 to 30 days
  - Specify whether “work” or “calendar” days.
  - 0 days is standard for ALL site violations, 15 or 30 days for program violations.
- Multi-step abatements may be used for engineering controls.
  - A set abatement period with one or more extensions may be better.

# Abatement Info – Section B5

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- CSHO is responsible for ensuring abatement periods are appropriate and that they are completed in a timely manner.
  - A 30 “working” day abatement period amounts to 1 ½ months. Is this excessive for the violation?
  - If a serious accident occurs during the abatement period, are you prepared to defend the # of days selected?
  - What happens if an accident occurs after the abatement period has passed?

Inspection Number: 317835759  
Inspection Date: 08/06/2014Establishment: The Speedpark, Inc.  
8461 Concord Mills Blvd., Concord, NC 28027

Violation

OSHA-1B (Worksheet)

Standard/AVD

Standard: 1910.1200 (e) (1)

Violation Info

2. Citation **01** 3. Item **003** 4. Group **a**5A. Citation Type (Federal) **Repeat**5B. Citation Type (State) **Repeat Non Serio**

6. Egregious

9. Potential Number Exposed **1**12. Number Instances **1**

13. REC

15. Proposed Penalty(\$) **100.00**16. Issuance Date **00/00/0000**11. Standard **1910 1200 e 1**17. Abatement Completed **Corrected Before Citation Issuance**18. Abatement Period **Workdays**19. Abatement Doc Required **No**20. Final Abatement Date **00/00/0000**21. Track? 22. Date Verified **08/18/2014**29. Last Day to Contest **00/00/0000**99. Grouped/Final Order 

25. Substance Codes

Substance



Add

Delete

## Event Processing

Event Date	Event Type	Event Action	Citation Type	Penalty	Abate Date	Final Order
00/00/0000	Z	A	RN	100.00	00/00/0000	

Add

Delete

Inspection Number: 317835759

Establishment: The Speedpark, Inc.

Inspection Date: 08/06/2014

8461 Concord Mills Blvd., Concord, NC 28027

Violation

OSHA-1B (Worksheet)

Standard/AVD

Standard:

Violation Info

Hazard Description/Evidence

Instances/Details

Penalty Calculation



A. Hazard-Operation/Condition-Accident: Evidence that supports a HAZARD:



EDIT

B. Evidence Which Supports Basis for Alleged Violation - See Photo(s)



B1. Evidence which supports a VIOLATION (including GDC/Willful justification):

EDIT

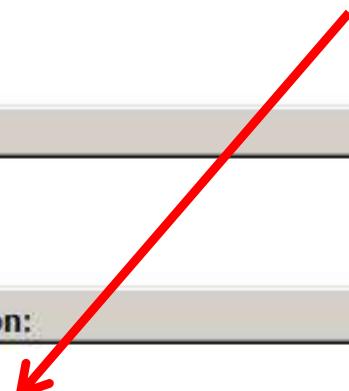
B2. Evidence of EMPLOYEE

B3. Evidence of EMPLOYEE

B4. Injury/Illness:

B5. Abatement Information:

Abatement information (e.g. feasible abatement options, corrections observed during inspection, etc.) goes in section B5 of the OSHA 1B Worksheet....



Inspection Number: 317835759

Establishment: The Speedpark, Inc.

Inspection Date: 08/06/2014

8461 Concord Mills Blvd., Concord, NC 28027

Violation

OSHA-1B (Worksheet)

Standard/AVD

Standard:

Violation Info

Standard

AVD

Abatement Guidelines

SAVE:

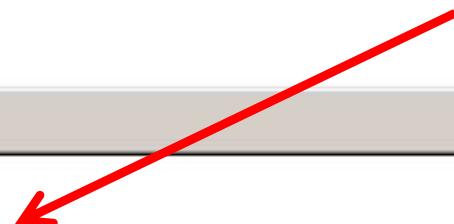
EDIT

Description:

.....NOT in the Abatement Guideline section  
on the Standard/AVD tab.

EDIT

Abatement Guideline:



EDIT

# Abatement Code

---

- Abatement Code is listed on the OSHA Extranet.

ction Detail -- OSHA View

Violation Items								
Standard	Issuance	Abate	AC Curr\$	Init\$	Fta\$	Contest	Last	Act
	07/26/2000	11/30/2000	X	250	500	100		P-Petition
C01	07/26/2000	09/30/2000	X	250	500	0		I-Inform
D02	07/26/2000	09/30/2000	X	0	0	0		I-Inform
F	07/26/2000	09/30/2000	X	200	500	0		I-Inform
H	07/26/2000	08/28/2000	X	0	0	0		
K01	07/26/2000	09/30/2000	X	0	0	0		I-Inform
A01	07/26/2000	11/30/2000	X	500	1000	0		P-Petition
E02 IIB2	07/26/2000	08/19/2000	X	250	500	0		I-Inform
F05 V	07/26/2000	11/30/2000	X	250	500	300		P-Petition

# Abatement Code

						Informal Settlement
	07/26/2000	11/30/2000	X	250	500	300
	07/26/2000	08/19/2000	X	250	500	100
	07/26/2000	08/19/2000	X	0	0	0
▷	07/26/2000	10/31/2000	X	500	1000	0
	07/26/2000	10/31/2000	X	0	0	0
	07/26/2000	03/05/2001	X	0	0	0
	07/26/2000	08/19/2000	X	0	0	0
	07/26/2000	03/05/2001	X	0	0	1100
	07/26/2000	08/19/2000	X	0	0	0
	07/26/2000	10/31/2000	X	250	500	0
	07/26/2000	07/31/2000	I	100	150	0
	07/26/2000	08/05/2000	X	250	500	0
	07/26/2000	07/31/2000	I	0	0	0
	07/26/2000	07/31/2000	I	0	0	0
	07/26/2000	07/31/2000	I	0	0	0
	07/26/2000	09/30/2000	X	250	500	0
	07/26/2000	08/05/2000	X	0	0	0
	07/26/2000	08/28/2000	X	0	0	0
	07/26/2000	08/28/2000	X	0	0	100
	07/26/2000	07/31/2000	I	0	0	0

# Abatement Verification Citations

---

- 1903.19(c) – Within 10 days after the abatement date, the employer must certify to OSHA that each cited violation has been abated, except as provided in paragraph 2 of this section.
  - Can be cited without formal follow-up activities.
  - Telephone call after 13 calendar days (past abatement date), dunning letter after 20 days, single NS citation after 27 days.
  - \$1000 GBP (not to exceed original penalty).



# OSHA 1B – Repeat Violations

---

- When a substantially similar violation was cited at any of the employer's North Carolina establishments.
  - Based on final order date of previous violation.
  - Did the initial citation provide sufficient notice???
  - FOM repeat language must be included in the AVD.
  - Copy of previous 1Bs to be included in attachments.
- Must have a “first repeat” final order before a “second repeat” can be issued.

Repeat language is entered into the Abatement Guideline field on the OE “Standard/AVD” tab.

Standard AVD Abatement Guidelines

SAVE:

29 CFR 1910.157(e)(2): Portable fire extinguishers were not visually inspected monthly:

EDIT

Description:

a) Maintenance Shop - where portable fire extinguishers had not been inspected since March 2014.

EDIT

Abatement Guideline:

THE SPEEDPARK WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD, WHICH WAS CONTAINED IN OSH INSPECTION #317382968, CITATION 02, ITEM 002(A), ISSUED ON 12/02/2013, WITH A FINAL ORDER DATE OF 2/24/2014.

EDIT

# When is Final Order?

---

- Some dates given by 29 CFR 1903.19(b)(4)
  - For an uncontested citation item – the fifteenth working day after the employer's receipt of the citation.
  - For a contested citation item – the 30<sup>th</sup> day after the date on which the judge's decision has been filed with the Review Commission.
- Cases with an informal conference are not addressed by 1903.19, but would be the date on which the Informal Settlement Agreement is signed.



# OSHA 2B – Failure to Abate

---

- FTA citations are simply a notice of additional penalty due to the failure to abate a violation.
  - FTA penalties are associated with the original inspection (not the follow-up inspection).
  - AVD information and Gravity-Based Penalty are based on conditions as identified **during the follow-up inspection.**
  - 2B documentation should contain same information as on the 1B, plus any abatement steps that were taken.
    - » May give partial abatement credit.



# Thank You For Attending!

---

## Final Questions?

**Contact your Supervisor, Bureau Chief, or...**

**Lee Peacock – lee.peacock@labor.nc.gov, 704-665-4341**

**Paul Sullivan – paul.sullivan@labor.nc.gov, 704-998-8959**

# Group #1 Scenario – Answer

---

- The applicable standards would be:
  - 1910.1030(c)(1) for no BBP Exposure Control Plan.
  - 1910.1030(f)(1)(i) for no HBV vaccinations
  - 1910.1030(g)(2)(i) for no BBP training
- However, before doing that, we need to show the BBP standard even applies in this situation...starting with the Scope and Application & definitions:
  - 1910.1030(a) Scope and Application. This section applies to all **occupational exposure** to blood or other potentially infectious materials as defined by paragraph (b) of this section.
  - *Occupational Exposure* means **reasonably anticipated** skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

# Group #1 Scenario – Answer

---

- We must describe our evidence that the standard being cited applies to this situation and then explain how/why the employer violated it.
  - Do employees have *occupational exposure* to blood or OPIM? How do we know? Is their exposure *reasonably anticipated*? What is our evidence to support that?
  - Have they developed an exposure control plan and implemented the other elements (HBV vaccinations, PPE, training, etc.)? How do we know? What did the employer and employees say during interviews?



# Group #2 Scenario – Answer

---

- The recommended standard here is 29 CFR 1926.501(b)(10).
- **1926.501(b)(10) "Roofing work on Low-slope roofs."**  
Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see Appendix A to subpart M of this part), the use of a safety monitoring system alone [i.e. without the warning line system] is permitted.

# Group #2 Scenario – Answer

---

- We must describe our evidence that the standard being cited applies to this situation and then explain how/why the employer violated it.
  - Is the roof low-sloped? How do we know? Did you measure it?
  - Is the work being done considered *roofing work*? Again, how do we know? What does the definition in the standard say? What exactly were they doing up there?
  - What was the fall distance? Did it exceed the 6' requirement of the standard?

# Group #2 Scenario – Answer

---

- *Roofing work* means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.<sup>2</sup>
- If we decide that this NOT roofing work, what should we do? Is there another standard that applies?

# Group #2 Scenario – Answer

---

- As previously noted, at this point you've *only* documented that this standard applies to the observed situation. Now you must outline your evidence the employer actually violated the standard.
  - What type of fall protection is required by the standard? What was observed being done during the inspection?
  - Keep in mind, this standard allows for the use of a safety monitor alone for roof widths below 50 feet. Did the employer have a safety monitor? What do the photos show? Is everyone working? Did the employer and employees even mention using a monitor?

# Group #2 Scenario – Answer

---

- Employees were conducting roofing work per the definitions under 1926.501 in that the parapet nailer being installed by the employees is used to hold down the vapor barrier. As a result, 1926.501(b)(10) applies. Since the roof is less than 50 feet in width, the use of a safety monitor alone is allowed. However, all three employees on the roof were observed by the CSHO to be working on the parapet (see photo 3) and none were serving as a safety monitor.

# Group #3 Scenario – Answer

---

- **1910.146(c)(1)**: The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces.
- **1910.146(a)Scope and application**. This section contains requirements for practices and procedures to protect employees in general industry from the hazards of entry into permit-required confined spaces. This section does not apply to agriculture, to construction, or to shipyard employment (parts 1928, 1926, and 1915 of this chapter, respectively).

# Group #3 Scenario – Answer

---

- Is it a **Confined Space**?
- "Confined space" means a space that:
  - (1) Is large enough and so configured that an employee can bodily enter and perform assigned work; and
  - (2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry.); and
  - (3) Is not designed for continuous employee occupancy.

# Group #3 Scenario – Answer

---

- Is it a **permit-required** confined space?
- "Permit-required confined space (permit space)" means a confined space that has one or more of the following characteristics:
  - (1) Contains or has a potential to contain a hazardous atmosphere (oxygen deficiency, acute exposure PEL, flammable vapor  $>10\%$  of LEL);
  - (2) Contains a material that has the potential for engulfing an entrant;
  - (3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or
  - (4) Contains any other recognized serious safety or health hazard.

# Group #4 Scenario – Answer

---

- 1926.652(a)(1): Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section except when:
  - Excavations are less than 5 feet (1.52m) in depth **and examination of the ground by a competent person provides no indication of a potential cave-in.**
- If the employer hasn't met the criteria for the exception, then it doesn't apply...and the employer must utilize a protective system (e.g., sloping or a trench box.)

# Scenario #4 – Evidence of a Violation

---

- We must show this standard applies AND their actions violated the standard.
  - The standard does not apply if excavations are less than five feet in depth AND “examination of the ground by a competent person provides no indication of a potential cave-in.”
  - In this case, the trench is only 42 inches deep, but there are fissures in the vertical walls and water accumulated at the bottom. Both provide indication of a cave-in risk.

# Scenario #4 – Evidence of a Violation

---

- Now that we've established that the standard applies, our job is to show there was no trench box, sloping, or other protective system. Given the photos, that shouldn't be too difficult.



# Full Group Scenario

---

- *Energy control procedure.*
- 1910.147(c)(4)(i): Procedures shall be developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

# Full Group – Evidence of a Violation

---

- We must describe our evidence that the standard being cited applies in this situation and then explain how/why the employer violated it.
  - Are the employees conducting servicing and/or maintenance activities? What exactly are they doing and why does it fall under the scope of 1910.147? Use the examples listed in the definitions (e.g., cleaning, unjamming, adjusting, etc.)
  - Are those activities during normal production? If so, why does the standard still apply?
  - Is the machine cord and plug? Could that exemption apply?
  - Could the employer claim the minor servicing exemption? Are they using **alternative measures** which provide effective protection? You need to explain how/why it does NOT apply.

# Full Group – Evidence of a Violation

---

- Clearing of jams on the printing press is considered servicing and maintenance per the definition in 1910.147. This activity occurs **during normal production operations** but is covered by the standard since the employee is required to remove a guard.
- Note: The clearing of the jams on the printing press does not fall under the minor servicing exception under paragraph (a)(2)(ii) since it occurs only two to three times per week and is therefore not routine and repetitive. Additionally, even *if* considered minor servicing, the company has not implemented alternative measures that provide effective protection, so they do not qualify for the exception.

# Full Group – Evidence of a Violation

---

- Once you've documented all that, you've *only* really shown that this standard applies to this observed situation. Now you must outline your evidence the employer actually violated the standard.
  - How do you know they didn't develop, document, or utilize energy control procedures? Were they even required to be documented or did they meet the exceptions for documentation?
  - How do you know they didn't conduct authorized or affected employee training? What did the employer and employees say about training during interviews?