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WHAT'S HAPPENING

Wastewater Treatment Plant Explosion Investigation - \$126,000 Penalty

On April 22, 2013, the Construction Safety and Health Division (CSHD) conducted a fatality investigation into an explosion that occurred at a wastewater treatment facility. This was a complex multi-employer case involving both CSHD and the General Industry Safety and Health Division (GISHD). An employee from a rigging and demolition company and an employee from a mechanical contractor were working on the floating lid of an active sewage digester tank when an explosion occurred. Both employees were supposed to be removing the guide rails on the exterior concrete tank walls. The employee from the rigging and demolition company started removing the fastener on the hub located in the center of the lid with a cutting torch. There was an accumulation of methane gas under the lid that was ignited by the sparks and slag. The lid and both employees were propelled eight feet into the air and received serious injuries. The mechanical contractor employee passed away later from his injuries.

A total of four contractors and the village where the waste water treatment plant was located were investigated as a result of the accident. It was determined that they either had employees who were exposed to, or were in a position to, control or correct the serious hazards. The hazards were related to confined space, fire and explosions, a lack of procedures, and deficiencies in the companies' safety and health management systems.

New Hearing Decision

An Administrative Law Judge (ALJ) recently issued a decision on multiple citations issued to an employer by the General Industry Safety and Health Division. The citations were the result of a joint safety and health inspection conducted in the fall of 2010.

During the inspection, a MIOSHA safety inspector observed multiple instances of violations of the MIOSHA safety standards for machine guarding, personal protective equipment, fire exits, fire extinguishers, slings, abrasive wheels, overhead and gantry cranes, powered industrial trucks, metalworking machinery, woodworking machinery, electrical system design safety, electrical safety-related work practices, lockout/tagout, recordkeeping, and general provisions. In addition, a MIOSHA health inspector identified several violations of the MIOSHA health standards related to respiratory protection, medical services and first aid, abrasive blasting, hazard communication, lead, and chromium. The inspection resulted in the issuance of both Serious and Other-Than-Serious citations totaling \$42,500 in proposed penalties.

At the hearing, the employer contended its participation in one of MIOSHA's Consultation Education and Training (CET) programs shielded it from inspections and citations. The employer also claimed the penalties imposed were arbitrary, discriminatory, and excessive.

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New Hearing Decision - continued

The employer asserted that it had a signed contract to work with a consultant from the MIOSHA CET Division which it believed exempted it from MIOSHA inspections. Through testimony from CET Safety and Health Program Manager, the judge learned that the employer completed work with the CET consultant in May of 2008. After review of correspondence between CET and the employer regarding the prior consultative agreement and the federal regulation which governs the CET program, 29 CFR 1908.7, the judge concluded that there was no evidence to support the employer was exempt from MIOSHA inspections after May 2008. Therefore, the judge ruled the inspection and citations were proper.

To oppose the penalties, the employer introduced records of citations issued by MIOSHA to other employers within the same industry or geographical area related to violations of the same rules. The judge concluded that in many of the cases used for comparison, the records did not provide sufficient information to establish the underlying conditions within the two workplaces were similar. In several other instances, the judge determined the underlying facts and conditions were not similar between the two workplaces, thus justifying the assessment of different penalties.

The employer also contended several of the penalty adjustment factors were not properly calculated. The employer challenged the assessment of negative points in the "Miscellaneous" section of the Good Faith Reduction worksheet. While the judge agreed the miscellaneous assessment was duplicative of the assessment given for the other good faith categories, he noted that removal of the negative points would not have entitled the employer to any percentage reduction.

The employer also challenged the size adjustment calculation. First, the employer asserted the number of total employees used to calculate the size adjustment was incorrect. In rejecting this position, the judge noted the information relied upon for the calculation was provided to MIOSHA by the employer during the inspection. In addition, the employer did not produce any records supporting it had fewer employees. Next the employer claimed only those employees exposed to the hazard should be included in the size calculation, not all employees. The judge pointed out that the number of employees exposed to the hazard was factored into the severity and probability analysis for each violation. The judge ruled the size adjustment calculation was consistent with the procedures outlined in the MIOSHA Field Operations Manual.

The judge affirmed all citations and penalties as originally issued. The judge's decision will be filed with the Board of Health and Safety Compliance and Appeals on November 8, 2013. Both the employer and MIOSHA have an opportunity to file exceptions to the ALJ's decision with the board.

MEDIA

October 9, 2013 – [DTE Energy Company, Building Trades, Contractors and MIOSHA Sign Partnership to Protect Workers](#)

October 9, 2013 – [MIOSHA Program Recognized for Exemplary Workplace Practices; MIOSHA Awarded the Prestigious Alfred P. Sloan Award for Sixth Year in a Row](#)

October 23 – [MIOSHA Announces \\$865,000 for Worker Protection Grants; Nineteen Statewide Grants Will Provide Training Activities to Help Protect Michigan Workers Employed In High-Hazard Work Environments](#)

All of the MIOSHA Press Releases can be viewed from our [website](#).

AGENCY INSTRUCTIONS/MEMOS ISSUED

September 9, 2013 – [Inspection and Citation Policy for Accident Prevention Programs](#)

September 9, 2013 – [Inspection and Citation Policy for First Aid Training](#)

October 22, 2013 – [Reinspection Assignments](#)

VARIANCES

Variations from MIOSHA standards must be made available to the public in accordance with Part 12, Variations (R408.22201 to 408.22251). MIOSHA variations are published on the MIOSHA News website: www.michigan.gov/mioshavariances.

QUICK LINKS

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