

December 1, 2021

Work area not listed as confined space: Employee pays with his life

Killed while repairing a rock hopper

“I’m so happy it’s not raining today!” said Mitchell the Supervisor. “We are overdue for some sunshine.”

“Copy that,” replied maintenance technician Joe Jones. “Working outdoors is always better when it’s dry.”

“This project is running along smoothly,” said Mitchell. “Working with the Army Corps is pretty interesting. Their lead engineer is pretty smart.”

Mitchell and Joe’s company were working as a contractor on a construction site along with the U.S. Army Corps of Engineers for a weeks-long project.

“By the way, I’m looking for something

to fix,” said Joe. “For once, my PM schedule is light.”

“Let me check up on a few things and I’ll get back to you on that this morning,” said Mitchell.

Heavy equipment needs maintenance

Joe busied himself sweeping walkways caked with mud from the prior day’s rain when a call came in from Mitchell.

“The Corp’s complaining that the rock hopper is acting funny,” said Joe. “Can you take a look-see?”

“Acting funny?” Joe laughed. “Can they

(Please see Work area ... on Page 2)

Sharpen Your Judgment

Will OSHA’s most-hated rule sink firm in court?

“General duty clause?” Supervisor Edward asked while reading over a document.

“It’s a controversial kind of fine,” explained Safety Director Chris Taylor. “It means even if there’s no OSHA standard for a particular incident, we still have a duty to protect workers against hazards. And they can still fine us.”

“Sounds like a money grab to me,” Edward said. “I mean, we did everything by-the-book.”

Procedures followed by the book?

“Like we’ve been through, workers were fixing a pipe,” Edward explained. “They were tightening a bolt when built-up water pressure

caused the pipe to explode.”

“The inspector said the pipe should’ve been de-pressurized before the bolts were tightened,” Chris said.

“He’s never worked on pipes like this,” said Edward. “He’s never used that kind of wrench. And he cited us for using a bolt we don’t even have on the job site.”

“So you’re sure you were using the safest way possible for that job?” asked Chris.

“Industry standards are not to de-pressurize for that job. We did everything right,” Edward said confidently.

Was the firm able to get the fine dismissed?

This regular feature sharpens your thinking and helps keep both you and your firm out of trouble. It describes a real legal conflict and lets you judge the outcome.

Make your decision, then please turn to Page 4 for the court’s ruling.

Work area ...

(continued from Page 1)

be a little more specific?”

“Sorry, wish I could!” said Mitchell. “You may need to ask one of them.”

“OK,” said Joe.

Employee takes closer look

Joe had worked on the portable concrete mixing plant before. The system could be used to dispense sand, rocks, cement or water.

There was no one around the rock hopper for Joe to ask what was wrong.

Maybe there’s a jam in the hopper, Joe thought. Let me climb up and give it a look.

Joe pulled himself into the bin so he could examine what might be wrong with the equipment. He stood on what felt like a firm load of rocks.

“There’s the problem!” Joe said to no one in particular. “I’m going to need a –”

Panic shot through him as the stones below him gave way.

“Help! Help!” Joe yelled as the weight of the rocks pulled him down and he became engulfed.

No sign of Joe

“Has anyone heard from Joe?” Mitchell asked around. “Did he work on the rock hopper?”

“Haven’t seen him since earlier this morning,” someone said.

Mitchell’s eyes widened and he

sprinted to the rock hopper. From a few feet away he could see an arm poking up from under the pile of rocks in the bin.

“Come quick! Man down!” Mitchell yelled. When the work crew pulled Joe out, it was too late to resuscitate him.

Why no confined space plan?

Result: “OSHA just contacted us about the inspection,” said the company lawyer. “We’re getting a citation for not following the confined space standard.”

What you need to know:

Any work area large enough for a person but with limited entry or exit is a potential confined space under OSHA regs.

OSHA provides an online library of resources for specific CS areas like underground storage tanks, temporary enclosures, residential construction, sewer lines and trenches.

Go to [osha.gov/publications/bytopic/confined-spaces](https://www.osha.gov/publications/bytopic/confined-spaces) for free downloadable items.

Mitchell pulled his hands to his face. “Confined space,” he sighed.

“Someone should’ve been there watching Joe work,” said Mitchell. “We didn’t even realize how dangerous working inside it could be.”

Supervisors must ID hazards

While it may have been an

honest mistake not identifying the equipment as a confined space (CS) or not taking steps to protect workers, OSHA couldn’t let this employer off lightly.

OSHA fined it \$118,200 for CS and other safety violations. Also: The Army Corps also got fined for its role in the lack of a permit-required CS program.

Key: A safety oversight can very easily lead to a tragedy.

Based on a fatal accident involving Mississippi Limestone of Mississippi.

TEST YOUR KNOWLEDGE

Working in the cold

Each season has its own unique hazards, and winter is certainly no exception.

As temperatures continue to drop across most of the country, see how well your people know the dangers of working in the cold by having them answer *True* or *False* to the following:

1. Hypothermia can only occur when outside temperatures dip below freezing.
2. Drink plenty of warm beverages, such as coffee, to stay hydrated and warm in cold weather.
3. Be sure to dress in layers if you’ll be outside or in very cold conditions.
4. Most victims aren’t aware they’re suffering from hypothermia.
5. Work quickly in cold conditions. It’s best to get the job done faster and get back inside.

ANSWERS

1. *False.* Hypothermia happens when your body’s warming system can’t keep up with heat loss. It’s more likely the lower the temperature drops, but it can occur at temperatures of up to 40 degrees. *False.* Caffeinated beverages, such as coffee, tea or hot chocolate, are diuretics. While dehydration may not seem like a winter hazard it is: Wearing warmer clothes can make you sweat and lose fluids. Water is best for staying hydrated.
3. *True.* It’s best to wear multiple layers. That way you can adjust by adding or subtracting layers as needed.
4. *True.* One symptom of hypothermia is confusion and clouded thinking. Work in pairs and look for odd behavior.
5. *False.* It takes energy to keep your muscles warm. Rushing can lead to exhaustion or fatigue.

Answers to the quiz:

Fines, accidents and damage supervisors could've prevented

News you can use to head off safety mishaps

In this regular section we highlight situations that led to fatalities, injuries, near-misses, damaged equipment or fines that frontline supervisors could've prevented.

Unguarded nip point breaks finger: \$249K fine

What happened: Whoever decided to remove a guard from a machine at this workplace made a serious mistake. Supervisors or facility operators should've flagged the hazard and corrected it before it led to an injury.

What people did: An employee at a furniture manufacturer in Temple, Texas, was feeding raw materials into a process line that glues furniture parts together. He reached into an area where a guard had been removed and had one of his fingers broken.

Result: MooreCo was fined \$249,657 for three repeat citations because it failed to:

- conduct periodic inspection of energy control procedures
- train employees on recognizing hazardous energy sources and means of energy isolation and control, and
- ensure lockout/tagout devices were used.

Firm takes blame for worker death from COVID

What happened: Allowed workers to congregate closely without face masks contributed to an employee's death from COVID, according to OSHA.

What people did: Amston Supply, a trailer sales company in Caledonia, Wisconsin, was fined for failure to provide employment

free from known COVID-19 hazards likely to cause death or serious physical harm. An employee who'd been with the company for one month died from the coronavirus. Eleven other employees tested positive for COVID. Employees were permitted to work in close proximity of each other without wearing face masks.

Result: \$9,557 in fines.

Note: For more info and help on COVID compliance, go to our website and search for "covid"

Cited 6 times in 7 years for workers not tying off

What happened: OSHA's fined a building contractor six times in seven years for lack of fall arrest equipment and putting workers in danger. The fines are piling up sky-high!

What people did: Framing contractor Emerald Incorporated is once again shelling out for a range of safety hazards, such as:

- not providing protective helmets or eye and face protection
- lack of training on fall hazards
- not equipping stairways with adequate handrails along all unprotected sides and edges
- not prohibiting staff from standing on top steps of ladders
- letting uncertified drivers operate lift trucks, and
- failing to ensure employees working six feet or higher above lower levels were protected by guardrails, safety nets or personal fall arrest systems.

Result: This latest inspection will set Emerald back \$229,792.

SAFETY TRAINING TIPS

■ First-ever heat safety rule coming from OSHA

Heads up: OSHA is preparing a new safety reg to address heat hazards in the workplace.

Safety professionals are asked to weigh in on what a heat safety rule should look like, and whether or not OSHA should make a rule, in part due to compliance costs for small businesses.

OSHA doesn't have a specific standard for hazardous heat conditions. The agency has used the General Duty Clause (see bottom of Page 1 for a related story) to issue citations in cases of heat illnesses or deaths.

Heat is the leading cause of death among all weather-related workplace hazards: "While heat illness is largely preventable and commonly underreported, thousands of workers are sickened each year by workplace heat exposure, and in some cases, heat exposure can be fatal," says Acting OSHA chief Jim Frederick.

Info: tinyurl.com/oshatheathazardsafetyregulation

■ Stress chemical safety with this simple tip

One way to get workers to take chemical safety seriously:

At the next training session, drop a few Mentos mints into a two-liter bottle of cola.

It'll get messy. A huge fountain should shoot out of the bottle, about six feet high. And workers might have seen this trick before.

But after the fountain dies down, remind them that if everyday substances can cause that kind of reaction, the chemicals at your workplace can do even worse, especially if combined.

Outdated equipment malfunctions and leads to death of employee in a fiery explosion

Backup measures weren't safe enough

“Let’s go,” Supervisor Dewey Mathis said. “These vehicles aren’t going to fuel up themselves.”

“All right, all right,” maintenance worker Louis Murphy said. “I’m coming. But you do know the nozzle is broken on this pump, right?” Louis asked.

Kept info to himself

“I didn’t know that,” Dewey said, looking through the maintenance records. “Did you make a note of it?”

“Well ... no,” Louis said. “But just look at the thing. It’s clearly broken.”

“Louis, you have to report these things,” Dewey said. “You know that.”

“It slipped my mind,” Louis said.

“That’s no excuse,” Dewey said. “Replace this one with the spare, and don’t forget to record the repair.”

“That replacement nozzle is pretty old,” Louis said. “Is it really up to the task?”

“We used it for years without a problem,” Dewey said. “Besides, if you reported this one was broken when

you noticed it, we’d already have a new one.”

“Right. Sorry,” Louis said.

Set to automatic

Louis replaced the nozzle with the old spare. He started fueling a vehicle and set the switch to its automatic setting.

After a while of fueling, he wondered why the pump hadn’t stopped yet. Gasoline began overflowing from the tank.

“Hit the shut-off!” he yelled. But a split second later, a spark from a nearby wire set off a massive explosion, killing Louis.

His family learned the old nozzle was outdated and banned by industry standards. The family sued his employer for negligence, claiming it continued using outdated equipment to save a buck.

Result: A jury agreed with the family’s claims and awarded it \$1.5 million.

Key: Old and outdated equipment needs to be discarded immediately. It’s never OK to use it as a back up to safer equipment.

Based on an accident at Westport Marina.

What you need to know:

Many companies hang onto older equipment in case it’s needed later.

But that’s a dangerous and unacceptable practice.

Make sure to:

- Discard outdated and worn equipment immediately
- Check that backup equipment and PPE is just as safe as the primary equipment, and
- Examine reserve supplies regularly. Check for defects and make sure they’re up to date.

Sharpen Your Judgment – The Decision

(continued from Page 1)

Yes. The company appealed the fine to the Occupational Safety and Health Review Commission (OSHRC) which overturned it.

OSHA used the controversial general duty clause to claim that the pipe should’ve been de-pressurized before workers attempted to tighten the bolts.

Even though there wasn’t a particular standard that said this was the case, OSHA argued it fell under the clause’s terms that workers need to be protected against hazards.

The company questioned OSHA’s understanding of its industry. It argued there was no rule that said this kind of pipe should be de-pressurized.

It claimed it followed all industry safety standards to protect its workers.

The judge agreed that OSHA got this one wrong. It was confused over the equipment used and made an inaccurate claim that the company should’ve de-pressurized the pipe.

Analysis: Fight fines if you’re in the right

This company prevailed where many others failed by getting the fine dismissed.

The key: It knew not only OSHA’s rules, but also the industry requirements and standards. Arming yourself with as much knowledge as possible could save your company as well.

Based on Secretary of Labor v. K.E.R.

EDITOR-IN-CHIEF:
SCOTT BALL
sball@safetynewsalert.com

MANAGING EDITOR:
MERRIELL MOYER

PRODUCTION EDITOR:
JEN ERB

EDITORIAL DIRECTOR:
CURT BROWN

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