



Don't Slip Up On OSHA Abatement

Insights

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I worry a great deal about employers being hit with "failure to abate" citations where OSHA determines in a subsequent inspection that the employer failed to abate items cited at past inspections. In actuality, while we have handled failure to abate citations, it's probably been 20 years since a current client was tagged for failure to abate. I find that OSHA is pretty disciplined about employing failure to abate citations, but that does not stop me from worrying. Why? Because any time humans are involved, there is a risk that something fell through the cracks. Let me count the ways

Error one. The employer failed to document those corrections and cannot easily prove that they corrected the items and these violations are new failings. Error two. It's a big danged plant and we missed a rail or a box or a hole, etc. Error three, the employer made a correction but failed to adequately describe it to OSHA in its certification of abatement. Now one is in the position of proving that one did articulate this abatement to OSHA and why didn't they object at the time.

Don't let this happen to you. Whether they admit or not, in some way, OSHA often seeks rough Justice. rarely is an Area Office out to simply "get blood." They are trying to match the penalty to the behavior, and you do not want to develop a reputation as the kind of employer who fails to abate. That moniker may be more damaging to your reputation than a "willful" citation.

So with this admonition in mind, I share today's OSHA press release:

Jackson, NJ, steel company fined \$115,400 by US Labor Department's OSHA for failing to abate workplace hazards

JACKSON, N.J. – The U.S. Department of Labor's Occupational Safety and Health Administration has cited Jersey Shore Steel for four violations, including three failure-to-abate citations, at its Jackson facility. Proposed penalties total \$115,400 after OSHA's follow-up inspection opened in April.

"By not abating past violations, Jersey Shore Steel keeps its employees vulnerable to hazards that can cause injuries and, possibly, death," said Paula Dixon-Roderick, director of OSHA's Marlton Area Office. "It's vital to correct all hazards immediately to protect workers at the facility."

The failure-to-abate notices, which carry \$111,000 in penalties, relate to the company's failure to develop and implement a written lockout/tagout program that prevents inadvertent machine start-up; require fork truck operators to have their performance evaluated at least once every three years; and train workers to use portable fire extinguishers. A failure-to-abate notice applies to a condition, hazard or practice, found upon re-inspection, that the employer was originally cited for and failed to correct.

The company was also cited for one repeat violation, with a \$4,400 penalty, due to the lack of machine guarding on a press brake. A repeat violation exists when an employer previously has been cited for the same or a similar violation of a standard, regulation, rule or order at any other facility in federal enforcement states within the last five years. A similar violation was cited in November 2012.

The citations can be viewed at:

http://www.osha.gov/ooc/citations/jersey_shore_steel_insp_900106_sept30.pdf*.

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