

**National Grain
and Feed Association**

Top Regulatory Issues Facing the Grain, Feed and Processing Industry in 2014

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October 15, 2014

Fresno, Calif.

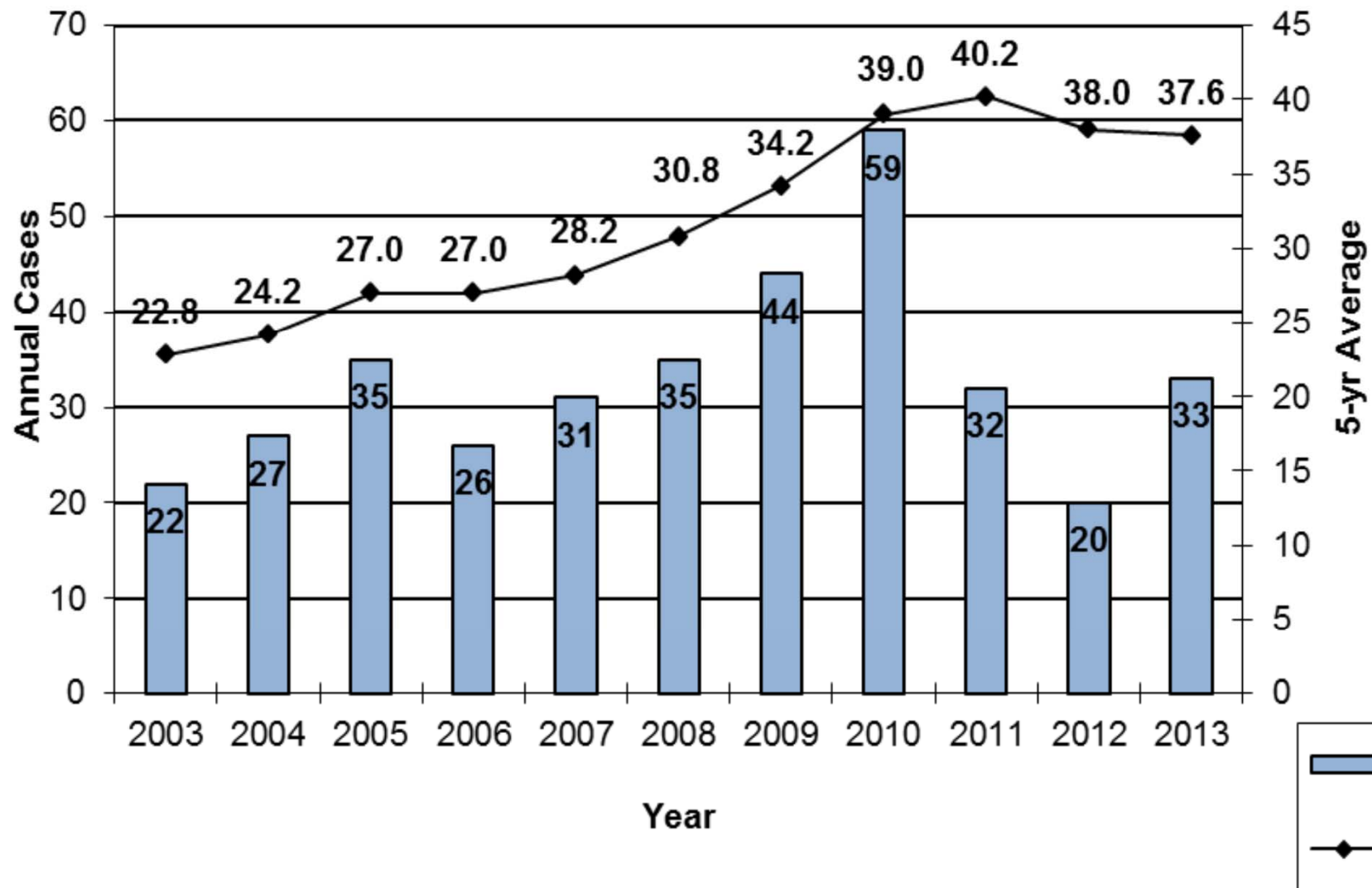


Overview of Presentation

- Increased OSHA Enforcement - How Did We Get Here?
- What Does This Mean for the Grain Industry?
- What Issues Directly Impact the Grain Industry?
- What Are the Next Steps?



U.S. Grain Entrapments



Regional and Local Emphasis Programs

- Local Emphasis Programs
 - Region V (IL, IN, WI, MI, OH) 2/01/2013
 - Region VI (AR, LA, NM, OK, TX) 10/01/2012
 - Region VII (IA, KS, MO, NE) 10/01/2012
 - Region VIII (CO, MT, ND, SD, UT, WY) 10/05/2012
 - Region X (AK, ID, OR, WA) 2/20/13
- Combustible Dust NEP has been reissued



Six Figure OSHA Initial Fines Grain Facilities 2011-2012

- **\$144,400** CPI-Lansing, LLC; Red Cloud **NE**, December 2012
- **\$157,500** Ware Milling Co., Inc.; Waycross **GA**, May 2012
- **\$406,000** Bartlett Grain Company; Atchison **KS**, April 2012
- **\$191,700** Alabama Farmers Co-op; Decatur **AL**, April 2012
- **\$812,000** SD Wheat Growers; McLaughlin **SD**, March 2012
- **\$758,450** All Feed Processing; Galva **IL**, November 2011
- **\$132,000** C.O. Grain Inc.; Atkinson **NE**, November 2011

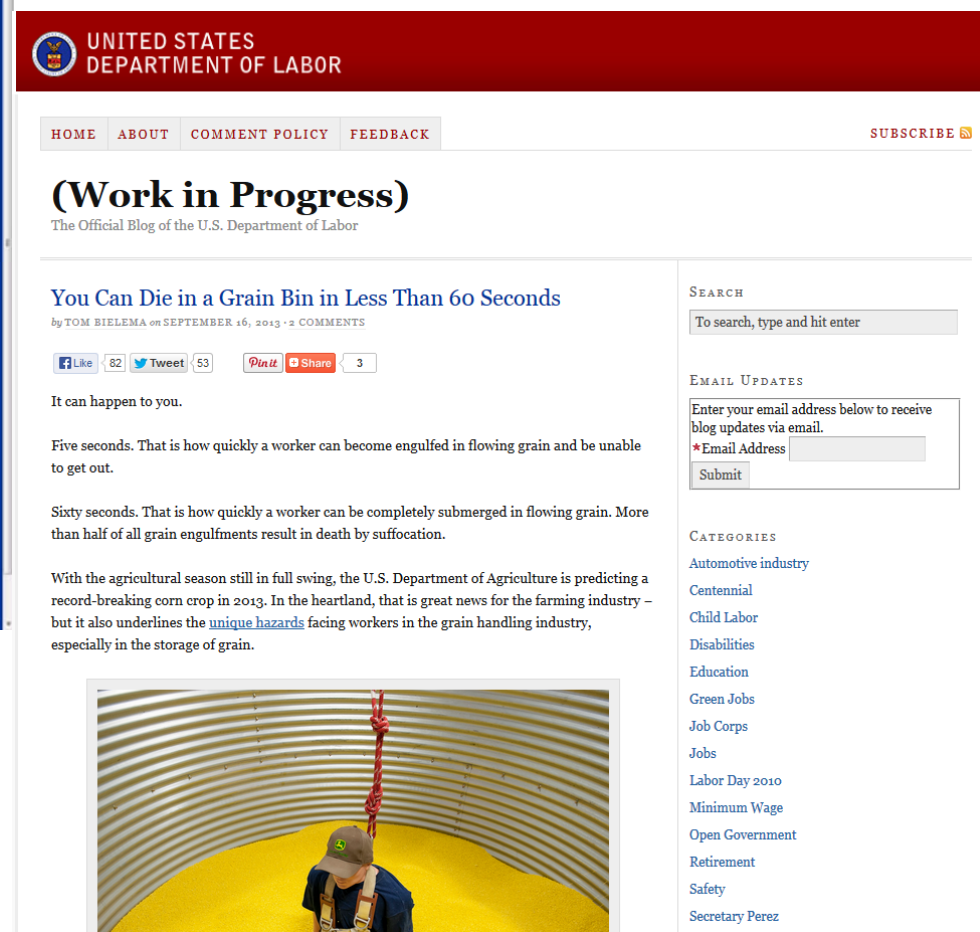
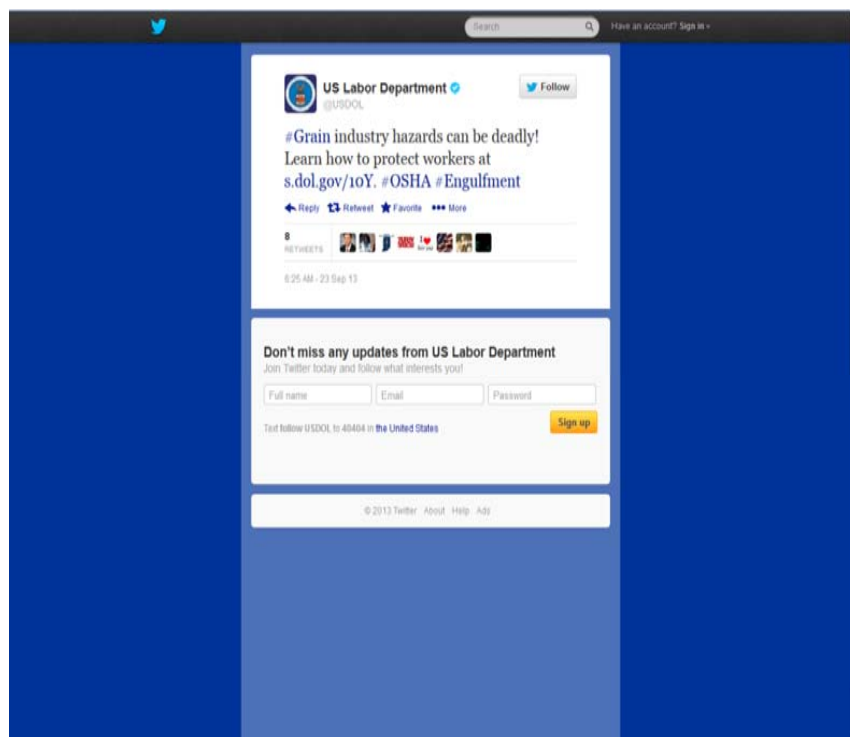


Six Figure OSHA Initial Fines Grain Facilities 2011-2012 (Continued)

- **\$258,000** Corpus Christi Grain Co.; TX, October 2011
- **\$229,000** Cenex Harvest States; Columbus MT, August 2011
- **\$167,000** All Feeds Processing; Galva IL, June 2011
- **\$122,500** Lakeland Feed; Hamilton MN, May 2011
- **\$378,000** North Central Coop; Ipswich SD, March, 2011
- **\$465,500** Gavilon Grain LLC; Morral OH, March 2011



OSHA and Social Media



Proactive Targeting Philosophy

OSHA Inspection Statistics (Federal and State)	FY10	FY11	FY12	FY13
Total Inspection	296	380	438	356
Percent Programmed Inspections	46%	60%	63%	61%
Total Violations Issued	1,289	1,552	1,160	958

Most Frequently Cited OSHA Standards in Grain Handling Industry

Most frequently cited standards in 1910.272 include:

- 1910.272 J01 – failure to implement a written housekeeping program for fugitive dust.
- 1910.272 J02II – failure to immediately remove fugitive dust accumulations, or provide equivalent protection.
- 1910.272 G01 III – failure to test the atmosphere within a bin before employees enter.
- 1910.272 G01 II – failure to deenergize and disconnect all equipment in a grain storage.
- 1910.272 M03 – failure to maintain a certification record of performed preventative maintenance inspections.
- 1910.272 G01 I – failure to issue a permit prior to entering the bin.
- 1910.272 G04 – failure to provide rescue equipment suitable for the bin being entered.
- 1910.272 D – failure to implement an emergency action plan.
- 1910.272 E02 – failure to train employees for special tasks, such as bin entry.
- 1910.272 G02 – failure to provide lifelines and harnesses for employees entering the bin at or above the level of the grain.



Company Name:

Inspection Site:



Citation 2 Item 1 Type of Violation: Willful

29 CFR 1910.272(j)(1): The employer did not develop and implement a written housekeeping program that established the frequency and the method(s) determined best to reduce accumulations of fugitive grain dust on ledges, floors, equipment, and other exposed surfaces in the grain handling facility

- (a) On or about 10/06/11 - Feed Mill, no housekeeping program was established to reduce the accumulation of combustible dust, allowing accumulation of dust on ledges, floors, platforms, electrical equipment, and other exposed surfaces.

Abatement Documentation Required

Date By Which Violation Must be Abated: 04/13/2012

Proposed Penalty: \$ 63000.00

Company Name:

Inspection Site:



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Abatement Documentation Required

Date By Which Violation Must be Abated: 04/13/2012

Proposed Penalty: \$ 63000.00

Citation and Notification of Penalty

Company Name:

Inspection Site:

Citation 2 Item 3 Type of Violation: **Willful**

29 CFR1910.272(j)(3): The use of compressed air to blow dust from ledges, walls, and other areas was permitted when machinery that presented an ignition source in the areas was not shut-down:

On or about October 15, 2011, employees working in and near the grain elevator were exposed to fire and explosion hazards in that compressed air was used for cleaning without first shutting down machinery that presented potential ignition sources.

29 CFR 1903.19(d)(1) requires certification and documentation that the abatement of the above violation is completed.

Date By Which Violation Must be Abated:

05/07/2012

Proposed Penalty:

\$ 70000.00

Citation 2 Item 2 Type of Violation: **Willful**

29 CFR 1910.272(g)(3): In the grain handling facility an observer, equipped to provide assistance, was not stationed outside the bin, silo, or tank being entered by an employee:

- a) On or about and times prior to November 8, 2011, at the [REDACTED] facility, the employer did not ensure that employees who entered grain storage bins were protected from bin entry hazards because an observer, equipped to provide assistance in an emergency, was not always stationed outside the bin entered by employees.

ABATEMENT CERTIFICATION AND DOCUMENTATION ARE REQUIRED.

Date By Which Violation Must be Abated:	05/28/2012
Proposed Penalty:	\$ 38500.00



Robert E. Vazzi
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 314096355
Inspection Dates: 11/08/2011 - 12/08/2011
Issuance Date: 05/02/2012



Citation and Notification of Penalty

Company Name:
Inspection Site:



Citation 2 Item 1 Type of Violation: **Willful**

29 CFR 1910.272(g)(1)(ii): Prior to entry, all mechanical, electrical, hydraulic, and pneumatic equipment which presented a danger to employees inside bins, silos, or tanks in the grain handling facility were not disconnected, locked out and tagged, blocked off, or prevented from operating by other means or methods:

- a) On or about November 8, 2011, at the [REDACTED] facility, the employer did not ensure employees were protected from bin entry hazards. The screw auger was not locked out or otherwise prevented from operating, which exposed the employee inside grain storage bins to amputation hazards.

ABATEMENT CERTIFICATION AND DOCUMENTATION ARE REQUIRED.

Date By Which Violation Must be Abated: 05/28/2012
Proposed Penalty: \$ 38500.00

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number:
Inspection Date(s): 12/12/2012 - 12/12/2012
Issuance Date: 04 [REDACTED]



Citation and Notification of Penalty

Company Name: [REDACTED]
Inspection Site: [REDACTED]

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 2A Type of Violation: **Serious**

29 CFR 1910.146(c)(2): The employer did not inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the permit spaces:

(a) For employees exposed to potential health and/or physical hazards where the north and south elevator boot pits were entered for cleaning and other maintenance activities at [REDACTED]
[REDACTED]

Abatement Note: Abatement certification is required for this item (see enclosed "Sample Abatement Certification Letter").

Date By Which Violation Must be Abated:
Proposed Penalty:

04/29/2013
\$2000.00

OSHA Needs to Monitor Effectiveness of Enforcement

- In January 2013, the General Accounting Office (GAO) issued a report regarding the effectiveness of OSHA's enforcement programs.
- The report concluded that OSHA “knows little” about which of its enforcement related activities is ensuring compliance.
 - Which compliance assistance efforts are effective
- Enhancing monitoring of enforcement activities and determining which works best is key for Agency to achieve mission.



OSHA – Second Term

Rulemaking

- Injury and Illness Prevention Program
- Silica
- Combustible Dust
- MSD Column on OSHA 300 Log
- Walking/Working Surfaces e.g. rolling stock fall protection
- HazCom

Enforcement

- Reallocation of budget
- Appointments to OSH Review Commission
- Emphasis Programs
- Press Releases
- Severe Violator Enforcement Program
- State Oversight
- Whistleblower actions



OSHA Budget

- FY 2011: \$573,096,000
- FY 2012: \$564,788,000
- FY 2013: \$563,658,000 (Full Year CR)—with Sequestration: \$535,246,000
- FY 2014 - \$552,200,000 - \$17 million increase from the sequestration.
 - All of the cuts are in compliance assistance and standards, not enforcement.



OSHA Budget (cont.)

President Obama's FY 2015 \$565 million budget request for OSHA includes:

- Almost \$3 million in additional funds for federal enforcement;
- Nearly \$4 million more for the agency's whistleblower programs;
- Close to \$1 million increase for other programs, such as compliance assistance; and
- Budget for developing safety standards would only increase by \$200,000.



OSHA Recordkeeping

- On November 8, 2013, (OSHA) published its proposed rule to amend its recordkeeping regulations.
- The new regulation will not change what injuries and illnesses have to be recorded or how they are recorded, but will create new requirements for employers to submit these records directly to OSHA electronically.
- Employers with 250 or more employees, who are required to keep records, will have to submit records to OSHA on a quarterly basis. Employers with 20 or more employees, and who are in certain designated industries, will have to submit their summary records annually. Certain other employers, who OSHA contacts, will be required to submit more detailed information about specific injuries and illnesses.
- OSHA will post in a searchable online database company and location specific data on injuries and illnesses, other than employee identification information.



Regulatory Reform

- **The Regulatory Accountability Act** [[H.R.2122](#)] [[S.1029](#)] *(to modernize the 1946 Administrative Procedure Act), passed 236-179*
- **The Sunshine for Regulatory Decrees and Settlements Act** [[H.R.1493](#)] [[S.714](#)] *(to bring greater transparency to the “sue and settle” process), passed 236-179*
- **The RAPID Act** [[H.R.2641](#)] and **Federal Permitting Improvement Act** [[S.1397](#)] *(to streamline the permitting process), passed 229-179*
- These bills would overhaul regulatory issues and streamline the permitting process by, placing deadlines on federal agency reviews, preventing consent agreement abuse between special interest groups and agencies, and increasing general transparency in rulemaking. Without significant changes, the regulatory process will continue to delay many projects, from conventional fuels to renewable energy.



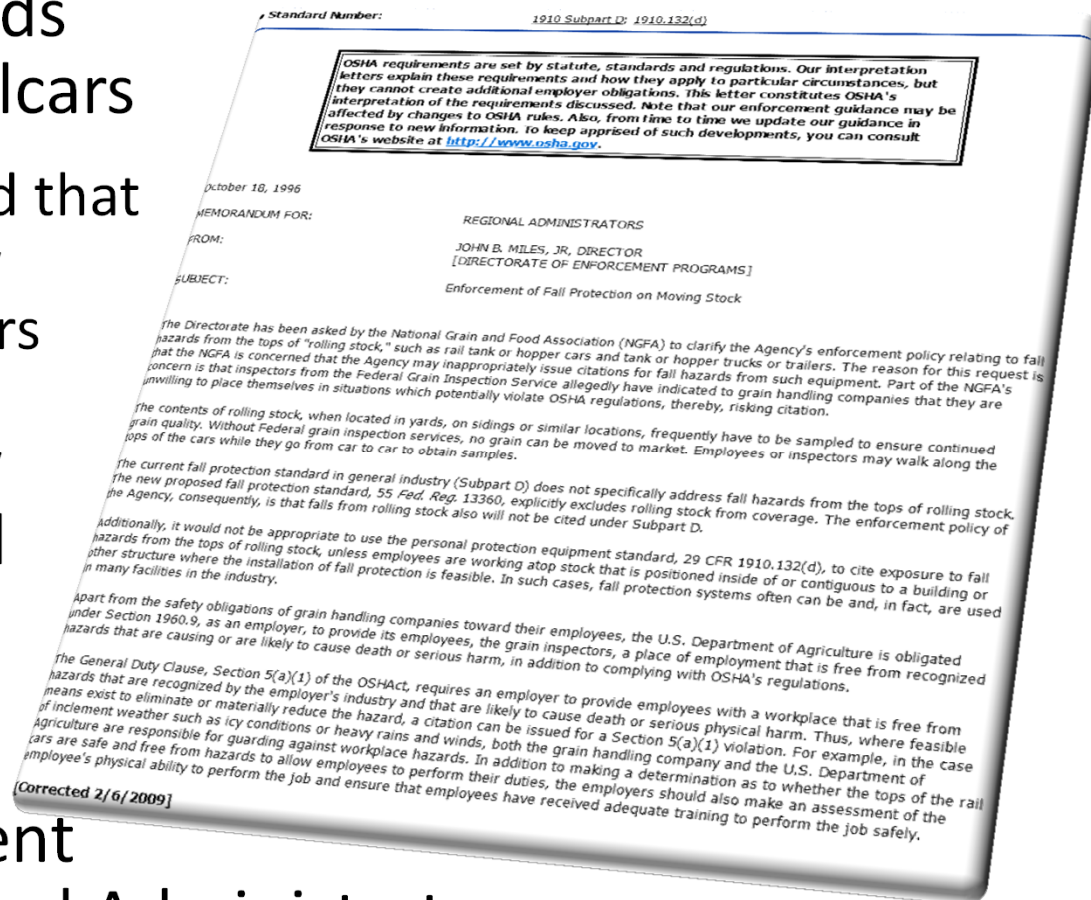
Fall Protection

- Employees must tie-off or be protected by guard rails when working at heights above 4 feet
- Fall protection for work on top of Rolling Stock is NOT addressed in:
 - Walking-working surfaces general industry standard (Subpart D); or
 - The PPE Standard (29 CFR § 1910.132(d))



The 1996 “Miles Memo”

- NGFA requested clarification of OSHA’s enforcement policy re: fall hazards from work atop railcars
 - Industry concerned that OSHA was wrongly citing grain handlers
- OSHA and industry leaders met to find a practical solution
- OSHA issued an internal enforcement memo to its Regional Administrators



The Miles Memo

Subpart D

- Does not explicitly address falls from rolling stock
- A *proposed* fall protection standard at that time explicitly excluded rolling stock from coverage

PPE

- Inappropriate to use 1910.132(d) to cite exposures to fall hazards on top of rolling stock
- Unless employees working atop stock positioned inside of or contiguous to a building/structure and installation is feasible

GDC

- Citation may be issued under § 5(a)(1) where *feasible* means exist to eliminate or materially reduce the fall hazards
- The abatement examples listed in the memo do not include the use PPE



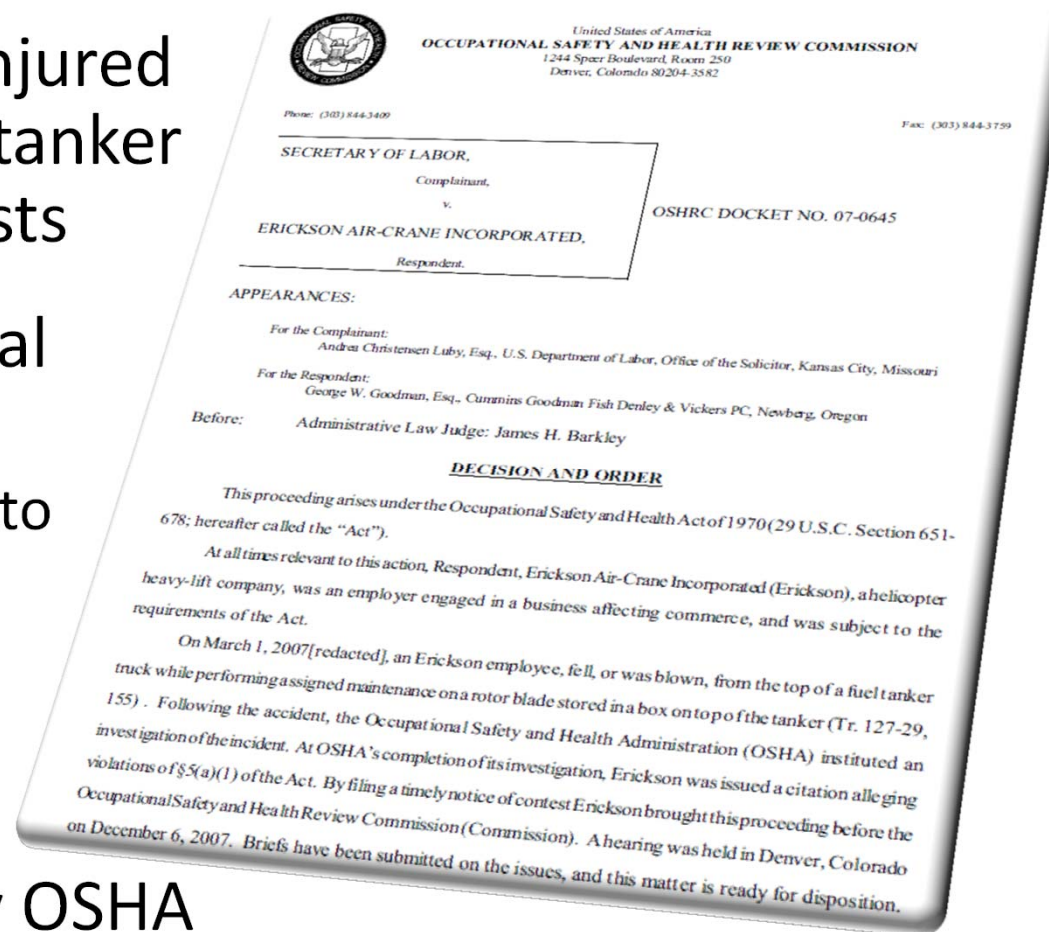
OSHA's Enforcement Agenda

- Some OSHA Area Offices are now issuing citations contrary to the Miles Memo
 - Adherence to the Miles Memo varies between each area office, region, and administration
 - Some only issue citations inside loading areas contiguous to the elevator
 - Others issue citations outside the loading zone



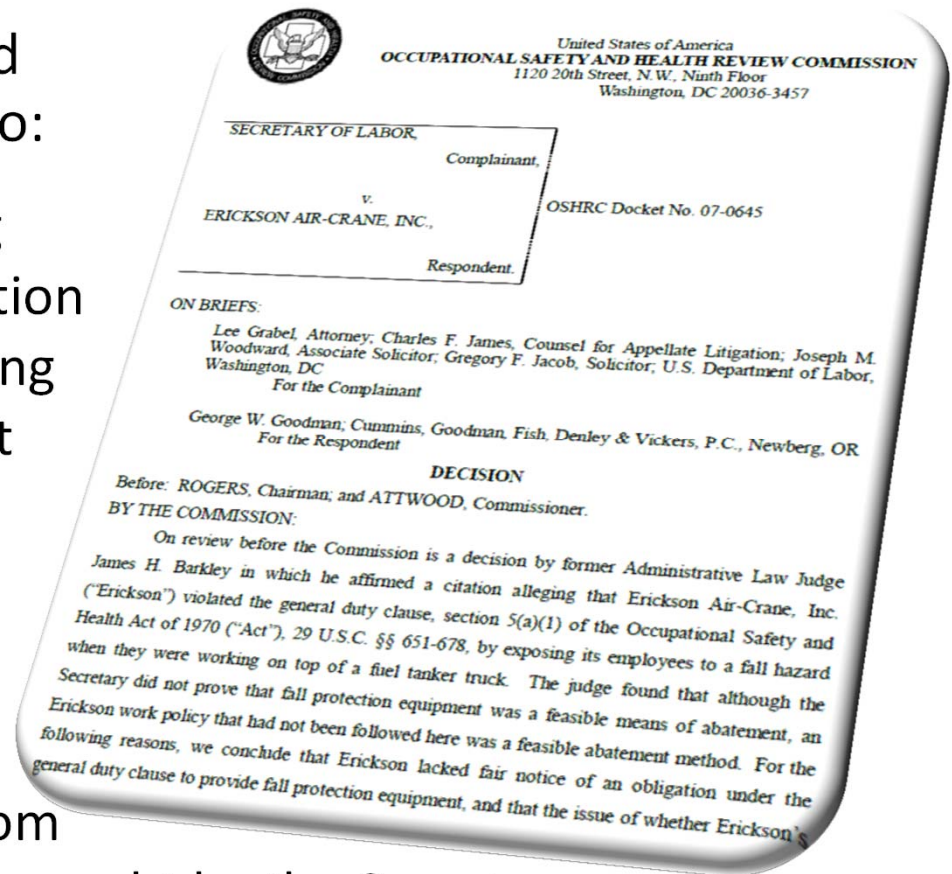
Erickson Air-Crane – ALJ Decision

- Case did not involve the grain industry
- Employee seriously injured after he fell 10' off a tanker truck due to wind gusts
- OSHA issued a General Duty Clause citation
 - “expos[ed] employees to fall hazards when they were working on top of fuel tanker trucks”
- The ALJ affirmed the citation issued by OSHA



Erickson Air-Crane - OSHRC Decision

- OSHRC found that the Miles Memo *did* put employers on notice of a duty to use fall protection or provide related training
- But, the Commission emphasized 2 elements from the Miles Memo:
 - Broad exemption of all rolling stock from OSHA's fall protection requirements (except for rolling stock located inside of or next to a building); and
 - Under the GDC, OSHA only requires administrative controls to reduce fall hazards, which are distinct from the fall protection equipment sought by the Secretary



Erickson Air-Crane Decision

- The *Erickson Air-Cane* decision reinforced that the Miles Memo:
 - Remains OSHA's binding and official interpretation of the law as it relates to fall protection on top of rolling stock; and
 - Applies to circumstances beyond just grain inspectors who have to inspect railcars down track
- The fact that some OSHA Area Offices continue issuing citations contrary to the Miles Memo does NOT change the law



FGIS Cited by OSHA

- FGIS cited by OSHA in July 2011 for not using fall protection on top of rail car; being appealed at national level
 - Further example of “broad” interpretation of letter of interpretation
 - OSHA recently cited an FGIS designated official agency
 - Recent settlement does not provide clarification
- Since 2010 several grain-handling facilities have been issued individual “willful” citations with fines between \$60-70,000



FGIS Cited by OSHA (cont.)

- In the OSHA-FGIS settlement, citation regarding work on top of rolling rail cars was dropped. However, OSHA did not rescind three other citations related to personal protective equipment (PPE) training.
- According to OSHA, FGIS employees allegedly did not conduct proper “hazard assessments” before working on top of the rail cars and did not receive adequate training in how to use PPE while on the car.



FGIS Cited by OSHA (cont.)

- FGIS reviewed its current rolling rail car fall protection training programs for its employees.
- Following the review, FGIS met with OSHA to discuss the use of PPE, after proper hazard assessment, in a range of “scenarios,” involving different types of facilities and equipment.
- FGIS has revised its employee training material to address the different types of facilities, equipment and types of operations to determine if the use of fall protection is feasible.
- NGFA and AAGIWA issued a joint statement clarifying how the memo impacts officially designated agencies.



Education

Education

- **“Grain Bin Safety: Protection You and Your Family”**
 - NGFA and NCGA safety training DVD
- **“Your Safety Matters”**
 - NGFA and GEAPS safety training DVD
- **“Don’t Go With the Flow”**
 - NGFA and Purdue University entrapment rescue training video
- **Facility Security Risk-Assessment and Security Guide**
 - Guide that assists in conducting facility risk assessments, as well as in developing and implementing facility security plans
- **Guidance for Sweep Auger Operations in Grain Bins**
 - Provides basic concepts that assists grain handling facilities in developing and implementing a sweep auger operations
- **Permit Required Confined Space/Boot Pit Evaluation Guide for Grain Elevators**
 - Provides basic concepts that assists in evaluating boot pits under OSHA’s permit-required confined space program



Thank You

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