

Memorandum

To : Marley Hart, Executive Officer
Occupational Safety & Health Standards Board
2520 Venture Oaks Way Ste. 350
Sacramento, CA 95833

Date: October 5, 2009

RECEIVED

OCT 06 2009

From : Department of Industrial Relations
Division of Occupational Safety and Health

Len Welsh, Chief



**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Subject : **Form 9- General Industry Safety Orders Section 4999(j) Cal/OSHA Form 9-063**

GISO Section 4999(j) requires that cranes that rotate must be guarded with barricades, to prevent employees from being struck by moving portion of the crane. However, the Superior Court of Sacramento County ruled in the 1980s that the requirement did not apply to oilers and others who must work immediately around the crane (oilers assist the crane operator, maintain the crane and the barricades around it, and oftentimes drive the crane to and from the jobsite). Since that time, several Decisions After Reconsideration from the Occupational Safety and Health Appeals Board have cemented that exception in place.

However, accidents continue to occur where oilers and others are injured and killed by cranes or parts of cranes, mainly because the crane operator and the oiler are out of communication and the operator does not see the oiler before starting to rotate the crane. The following accidents are examples of the range of hazards that exist for this class of workers:

- At approximately 1:40 p.m. on June 24, 1997, Employee #1 was returning to the back of a crane after getting a drink from a water jug situated on the front of the crane. He was struck by the counterweight and became pinned against the concrete barrier separating two lanes of traffic. Employee #1 was killed instantly.
- At approximately 10:30 a.m. on October 3, 1989, Employee #1 and Employee #2 were reviewing a set of blueprints lying on the deck of the FMC Link Belt HTC-50, hydraulic truck mounted crane. They were located within the swing radius of the rear of the rotating super-structure. As the crane swung back to the left to lower the load to the unloading position directly over the rear of the crane, the counterweight of the rotating superstructure struck Employee #1 in the chest killing him.
- Employee #1 was in the process of adding fuel oil to the fuel tank of the truck part, or carriage, of the truck crane as it was being used to load concrete panels onto a trailer. He did not tell the crane operator that he was fueling the crane. As he started to fuel the crane, it swung around, crushing Employee #1 between the counterweight of the crane and the fuel tank of the crane carriage.
- Employee #1 (an aider, or operator helper) was working near an FMC Link Belt 50-ton hydraulic truck crane. The crane was being used to hoist and lower materials from a one-story building during installation of a prebuilt roof. Employee #1 placed himself within the swing radius of the rear of the rotating superstructure and was crushed and killed between the counterweight and the body of the crane.

Surname

Joel Foss *JF*

State of California
Department of Industrial Relations
Division of Occupational Safety and Health

1. Date: 14 November, 2009

2. Eng./IH: Abigail Fabricante

Division of Occupational Safety and Health Reg./Dist./Unit: R1-D4 Enforcement

REQUEST FOR NEW OR CHANGE IN EXISTING SAFETY ORDER

4. Industry: General Industry

5. Proposal for a new Safety Order. (Fill out PART I).
Proposal for modifying an existing Safety Order. (Fill out PART II).

PART I
NEW SAFETY ORDER

6. Hazard Description (include process, condition, machinery, equipment or product involved):

See Part II

7. Recommended New Safety Order Language (Other nationally recognized standards may be used as a format.)

See Part II

REQUEST FOR NEW OR CHANGE IN EXISTING SAFETY ORDER

PART II
CHANGE IN EXISTING SAFETY ORDER

8. Reason(s) for request (employer's appeal granted, advice of Legal Unit staff, safety order needs clarification or other): OSHAB DAR in re: Owl Crane [August 1987] held that Section 4999(j) does not apply to crane oilers.

Crane oilers who perform maintenance duties such as checking oil and lubricating crane components are exposed to the hazards associated with work activities that are of necessity within the swing radius (danger area) of the rotating superstructure of mobile cranes. These workers are exposed hazards of being caught between rotating parts of the crane and outside obstructions or parts of rotating machine deck and non-rotating parts of crane.

9. T8 Section/Subsection you are suggesting be changed:

GISO Section 4999(j)

10. Suggested change(s) to existing Safety Order (exact new wording):

(j) Where a rotating crane is positioned to operate in areas where persons may be caught between rotating parts of the crane and outside obstructions or parts of rotating machine deck and non-rotating parts of crane, those danger areas shall be barricaded or other positive means shall be taken to prevent traffic and workers, except the operator from entering such areas while the crane is operating.

(1) The employer shall establish procedures to ensure that oilers or other persons whose job duties require them to be within the danger areas shall remain in a safe location outside of such areas unless the operator gives verbal or visual authorization to move about the crane. Visual signals utilized in this manner shall be discussed and understood by the employees using them.

(2) The operator shall not perform any activity requiring rotation of the crane until such authorized persons have moved to a safe location.

(Note: The driver's cab of a truck mounted mobile crane is not considered to be within the danger area.)

11. 
Safety Engineer/Industrial Hygienist

12. 
Supervisor


Research & Standards Development

LAS VEGAS SUN

worker safety:

Killed crane oiler's family sues MGM Mirage, others

By Jeff German (contact)

Published Wed, May 6, 2009 (2 a.m.)

Updated Wed, May 6, 2009 (7:30 p.m.)

The relatives of a 39-year-old crane oiler killed last year in a construction accident at CityCenter are suing over his death.

Dustin Tarter's May 31 death, which at the time was the sixth in 18 months at the mammoth Strip project, sparked a one-day walkout by his fellow workers over unsafe working conditions.

His story was among those chronicled in a series of Sun articles on the high rate of construction deaths on the Strip that won this year's Pulitzer Prize for Public Service.

The defendants in the suit include: the project's owner, MGM Mirage; its general contractor, Perini Building Co.; and Dielco Crane Service, the company operating the crane that crushed Tarter to death.

"We believe the practices at the City Center project were shoddy at times and that unrealistic deadlines may have played a part in this," said Tracy Eglet, managing partner of the personal injury law firm of Mainor Eglet Cottle, which filed the suit.

"It appears that profits may have taken a greater priority than worker safety. Mr. Tarter's family has been devastated by his untimely death, as have other families who have lost loved one's on this project."

MGM Mirage spokesman Alan Feldman said the casino company is not responsible for Tarter's death.

"We believe MGM Mirage should not have been named as a defendant in this lawsuit, and the charges against us will be quickly dismissed," Feldman said. "Our condolences go out to the members of Mr. Tarter's family as they struggle with this tragic situation."

Last fall, the Nevada Occupational Safety and Health Administration fined Dielco \$12,000 for a series of violations, including failing to instruct employees to sound a horn before swinging the crane, a warning that could have prevented Tarter's death.

The suit alleged that the crane was "defective" and "that the horn/warning system failed to perform as expected and was more dangerous than reasonably expected by an ordinary consumer."

Lance Pierce, the Dielco worker the suit said was running the crane at the time of Tarter's death, took control "after willfully consuming or using alcohol or another substance, knowing that he would thereafter operate the crane," the suit alleged. Pierce is also named as a defendant.

In its investigation, OSHA could not substantiate the claim that Pierce had been drinking on the job.

And Dick Dieleman, who runs Dielco Crane, said late Tuesday the allegations against Pierce are false. He said Piece is still running the same crane.

Dieleman said he did not want to comment on the allegations leveled against his company until he has a chance to read the suit.

He said, however, that he considered Tarter a personal friend and the company is "sorry for his loss."

OSHA cited Dielco for failing to properly instruct employees on how to use the crane and failing to follow the manufacturer's guidelines.

The state agency concluded that Tarter was oiling the crane's tracks when the operator rotated the crane, causing the counterweight to drip and crush Tarter.

The lawsuit alleged that MGM Mirage, Perini Building Co. and Dielco all were negligent in their "hiring, training and supervision of employees" on the \$8.7 billion CityCenter job site.

The family, including Tarter's mother, Lynda Jackson, is seeking general and punitive damages.

Tarter was born and raised in Boulder City. His father, Richard was a plumber-pipefitter who died in a construction accident in San Diego.

Just three weeks before Tarter died, one of his brother's was killed in a motorcycle accident.

After Tarter's death, his half-brother, Ryan Walters, told the Sun that Tarter was an avid outdoorsman who loved motorcycle riding, boating, hunting and skiing.

"He loved life in general," Walters said.

Jeff German is the Sun's senior investigative reporter.

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