

COMMONWEALTH OF LABOR
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC NO. 2366-93

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

DIVERSE ERECTION, INC.

RESPONDENT

* * * * *

DECISION AND ORDER
OF THIS REVIEW COMMISSION

We call this case for review on our own motion by our authority contained in section 47 (3) of our rules of procedure (ROP).¹ Neither party petitioned this commission for review under ROP 48 (1).

On April 2, 1996 our hearing officer issued his recommended order sustaining all citations and proposed penalties. We exercise our call for review in this case to reexamine the penalty for citation 1, item 3, a violation of 29 CFR²1910.552 (b) (i) (ii). The hearing officer properly sustained the citation because the inspecting compliance officer observed respondent Diverse Erection's employees riding pre-cast concrete beams which were being moved about by a crane. Complainant's exhibits 7 and 8 and transcript of the evidence (TE) 24. Compliance officer Thompson testified an employee riding one of the beams carried by the crane could be killed by a fall. TE 24.

¹ Enacted as section 47 (3), 803 KAR 50:010.

² Code of Federal Regulations

We agree. Upon review of the secretary's photographs of the work in progress (complainant's exhibits 2, 3, 4, 6, 7 and 8), we note the pre-cast reinforced concrete beams weigh several tons each, at the very least. Were one of these beams to fall with an employee riding on it and strike that employee, he would be killed and we so find. This, then, leads us to a change in the calculation of the penalty in this case as is our right under KRS 338.991 (6).

The secretary of labor's compliance officer testified he came up with a \$3,500 gravity based penalty for citation 1, item 3. When reduced by the 95 percent adjustment factors, that left a penalty of \$175. TE 25. To reach his proposed gravity based penalty, the compliance officer testified he awarded a greater probability (meaning the probability of an accident is greater because the employee rode directly on the suspended beam) and medium severity (severity of any injury) because the employee would survive the fall. TE 25.

We find the compliance officer's testimony a fall from a suspended pre-cast concrete beam could result in death to be more persuasive based on the weight of the beams being lifted and the employee's proximity to the lifted beam. TE 24. We conclude, therefore, that the gravity based penalty (high severity-greater probability) to be \$5,000 (TE 21) which adjusted by 95 percent yields a penalty of \$250.

We affirm the hearing officer's recommended order to the extent it is consistent with this decision.

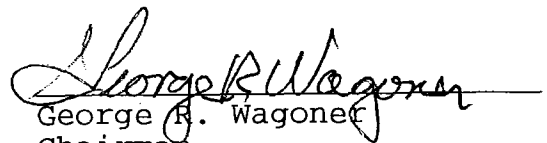
We affirm citation 1, item 1, with a penalty of \$175, item 2 with a penalty of \$250 and item 3 with a penalty of \$250. We also affirm citation 1, item 1, with no penalty.

If abatement has not already been accomplished by respondent, we order him to do so within 30 days.

It is so ordered.

Entered May 10, 1996

FOR THE FULL COMMISSION


George R. Wagoner
Chairman

Copy of the foregoing Order has been served upon the following parties in the manner indicated:

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This 13th day of May, 1996.



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