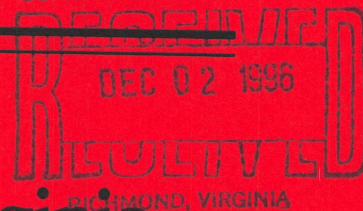


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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 961079

JAN 20 1997

BLAIR CONSTRUCTION, INC.,

Appellant,

v.

**RANDY WEATHERFORD,
t/a W. S. CONSTRUCTION,**

Appellee.

JOINT APPENDIX

**David W. Shreve
ATTORNEY AT LAW
Seventh & Franklin Streets
Altavista, VA 24517
(804) 369-6621**

Counsel for Appellant

**Joe Garrett
GARRETT & GARRETT, P.C.
770 Main Street
Danville, VA 24541
(804) 792-2906**

Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF CAMPBELL

BLAIR CONSTRUCTION, INC.,)
A Virginia Corporation,)
)
Plaintiff,)
)
v.)
)
RANDY WEATHERFORD)
t/a W. S. CONSTRUCTION)
136 Austin Circle)
Danville, Virginia 24540)
(County of Pittsylvania),)
)
Defendant.)

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

Comes now the Plaintiff, BLAIR CONSTRUCTION, INC., by counsel, and moves for judgment against the Defendant, RANDY WEATHERFORD, in the amount and on the grounds hereinafter set forth:

1. BLAIR CONSTRUCTION, INC., (Blair) is a Virginia corporation engaged primarily in the business of general contracting for the construction of commercial buildings.

2. RANDY WEATHERFORD (Weatherford), on information and belief, is an individual trading as W. S. Construction and is engaged in the business of steel erection for commercial buildings.

3. Abbott Laboratories (Abbott) is a major national pharmaceutical manufacturer and has a large manufacturing facility which is part of its Ross Products Division located in Altavista, Virginia.

4. Venue is properly laid in this Court in accordance with the provisions of VA. CODE ANN. §8.01-262.1 A (Repl. Vol. 1992).

5. In late 1993, Abbott made known its intention to build a 310,000 square foot, more or less, warehouse facility at its Altavista site and invited Blair to bid on the job.

6. While preparing the bid for Abbott, **KENNETH V. BeCRAFT** (BeCraft) of Blair was contacted by Weatherford, who wished to submit a bid to Blair for subcontracting the building erection, to include setting the steel, installing roofing and side panels.

7. On January 3, 1994, Weatherford did submit a bid to erect the Abbott project for \$229,000.00 plus \$24,000.00 for using concealed screws and friction fit insulation, for a total bid price of \$253,000.00. A copy of that bid is attached hereto as Exhibit A.

8. Blair submitted a bid to Abbott based on Weatherford's bid of \$253,000.00 and became the successful bidder and was awarded the contract for construction of the warehouse for Abbott.

9. After the construction contract was awarded, Abbott determined to add an additional 10,000 square feet to the building and Weatherford and BeCraft, on behalf of Blair, agreed that Weatherford would perform the additional erection work for the sum of \$7,150.00, thereby making Weatherford's bid price \$260,150.00.

10. Having been awarded the contract by Abbott, Blair proceeded to order the prefabricated metal building from

Varco-Pruden with delivery, and hence commencement of Weatherford's portion of the contract, scheduled for May 2, 1994.

11. During the period of time between January 3, 1994, and May 5, 1994, BeCraft and Weatherford discussed the project on many occasions, mostly at the request of Weatherford who said he just wanted to "stay in touch". On April 8, 1994, BeCraft sent Weatherford a confirmation of the parties' agreement, attached hereto as Exhibit B, and during the month of April Weatherford met with Abbott's site manager at the job site to review safety and permitting procedures. Weatherford left that meeting, acknowledging that he understood the procedures and that he would commence work on May 2, 1994, or as soon thereafter as the building was delivered to the site.

12. On April 27, 1994, Weatherford sent a facsimile message to BeCraft to add \$60,000.00 to his price due to the stringent safety regulations imposed by Abbott.

13. On April 29, 1994, BeCraft told Weatherford that Abbott was not requiring anything more stringent than was already required by the Occupational Safety and Health Administration but that if Weatherford could point out any justification for the additional funds BeCraft would make the request of Abbott.

14. April 29, 1994, was a Friday and Weatherford told BeCraft that he would think about it over the weekend and call him back on Monday. Weatherford did not call and despite repeated attempts by BeCraft to reach him it was not until May 5, 1994, that BeCraft was successful in reaching Weatherford by way of his mobile

telephone. At that time, Weatherford told BeCraft that he would not perform his contract.

COUNT ONE - BREACH OF CONTRACT

15. The parties hereto had a firm meeting of the minds, as evidenced by Blair's confirmation of April 8, 1994, attached as Exhibit B, with respect to the scope of the work and the price to be paid.

16. Notwithstanding the fact that he was contractually bound to do so, Weatherford refused to perform the erection of the building for Blair.

17. As a direct and proximate result thereof, Blair had to procure three other subcontractors to perform the work Weatherford had contracted to perform and expended \$560,000.00 resulting in the loss to Blair of the difference between Weatherford's contract price of \$260,150.00 and the amount actually expended or \$299,850.00.

COUNT TWO - CONSTRUCTIVE FRAUD

18. The allegations of paragraphs 1 through 17, inclusive, are here realleged.

19. Weatherford represented to Blair that he was willing to erect the warehouse building for Abbott for the sum of \$260,150.00. This constituted a misrepresentation of a material fact.

20. Weatherford's misrepresentation was made with the intent that Blair rely on it and Blair did, in fact, rely on it to its detriment.

21. Blair is damaged by Weatherford's misrepresentation in the amount of \$299,850.00.

WHEREFORE, BLAIR CONSTRUCTION, INC., demands judgment against RANDY WEATHERFORD in the amount of \$299,850.00 with interest thereon from May 5, 1994, to the date of judgment pursuant to VA. CODE ANN. §8.01-382 (Repl. Vol. 1992) and at the judgment rate thereafter until paid, together with its costs and attorney's fees in this behalf expended.

BLAIR CONSTRUCTION, INC.,
A Virginia Corporation

BY: _____
Of Counsel

David W. Shreve, Esquire
SHREVE & BERGER
Post Office Box 547
Altavista, Virginia 24517

W. S. Construction

P.O. Box 418

Blairs, VA 24527

804 724-2127 FAX 724-2129

January 3, 1994

RANDI
WEATHERSPROPOSALABBOTT LABS

We are pleased to quote the sum of \$ 229,000⁰⁰
to erect the above project. The following are included:

- 1-time mobilization.
- No materials, labor only.
- No reworking of material or field fabricating.
- Siding to be 3' wide w/exposed or semi-concealed screws.
- If walls are 16" wide w/concealed screws and friction fit insulation, add \$24,000⁰⁰.
- Connection of down spouts to other construction by others.
- No touch up painting or priming. If WSC damages any priming, we will correct.
- All common walls open.
- Wall penetrations will cost \$ 75⁰⁰ ea.
- Roof penetrations or smoke dooms will cost \$100⁰⁰ ea.
- Roof pipe flashings will cost \$35⁰⁰ ea.
- Insulation to be of max width.
- No bad weather days.
- No cleaning of materials. Stage area is to be close to building site, w/proper blocking for storage of material and in a state to min. dirt or mud.
- Must have good access to site and building.
- Not responsible for damage to site by our equipment.
- Unloading to be done @ mobilization and erect to start immediately after.

253,000

EXHIBIT A

102

6

BLAIR CONST. ACTION, INC.

P.O. Box 6880
Scott and Stringfellow Bldg. Suite 201
810 Main Street
LYNCHBURG, VIRGINIA 24505

AGREEMENT

(804) 847-1011
FAX (804) 847-8834

DATE: April 8, 1994

***NOTE: NO TOBACCO PRODUCTS ON PREMISES.
DESIGNATED EATING AREA.
SAFETY GLASSES/HARD HATS REQUIRED.
SAFETY MANUAL FOR EACH SUB AVAILABLE.
MANDATORY (ALL WORKERS) SAFETY SEMINAR
AVAILABLE EACH DAY FROM 2-3 P.M.
MANDATORY PROJECT MEETING EACH WED. 11 A.

TO: W. S. Construction
P. O. Box 416
Blair, Va. 24527

JOB: Abbott Labs
Altavista, Va.

confirmation

This is our ~~acceptance~~ of your written ~~verbal~~ quotation dated 01/03/94 for the following in accordance with plans and specifications.

Complete installation of/furnishing the following materials:

Erection of Varco-Pruden Metal Building including

Spanloc (concealed fasteners), insulation & liner panel.

Base proposal 229,000 + 24,000 = \$ 253,000

Added frame/roof (10,900 S.F.) = 7,150

Wall penetrations ----- \$ 75 ea.

Roof penetrations ----- 100 ea.

Roof pipe flashing ----- 35 ea.

The above for the sum of See above

Sales tax is / is not included.

Metal building delivery schedule: First week May

Date of installation/schedule to follow. Building to be "Closed In" 12 weeks after above delivery.

Please submit N/A copies of shop drawings or manufacturer's literature for approval.

Please send to our office a certificate of insurance with full coverage of worker's compensation and general liability.

NOTE: Varco-Pruden drawings are expected week 4/11.

BLAIR CONSTRUCTION, INC.

BY: [Signature]

Please return one signed copy to our office for our files.

EXHIBIT B

ACCEPTED BY: _____

TITLE: _____

VIRGINIA: IN THE CIRCUIT COURT FOR CAMPBELL COUNTY

BLAIR CONSTRUCTION, INC.,
a Virginia corporation,

Plaintiff,

v.

RANDY WEATHERFORD
t/a W. S. CONSTRUCTION

Defendant.

:
:
:
:
:
:
:
:
:
:
:
:
:

ANSWER TO MOTION
FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

Comes now the defendant, Randy Weatherford, by counsel,
and answers the Motion for Judgment against him as follows:

1. The allegations are ADMITTED.
2. The allegations are DENIED.
3. The allegations are DENIED.
4. The allegations are DENIED. Our objection to venue
is being filed simultaneously with this Answer.
5. The allegations are DENIED.
6. The allegations are DENIED.
7. The allegations are DENIED.
8. The allegations are DENIED.
9. The allegations are DENIED.
10. The allegations are DENIED.
11. The allegations are DENIED.
12. The allegations are DENIED.

Allan Garrett
Joe Garrett

GARRETT & GARRETT
Attorneys At Law
A Professional Corporation

770 Main Street
Danville, Virginia 24541

13. The allegations are DENIED.
14. The allegations are DENIED.
15. The allegations are DENIED.
16. The allegations are DENIED.
17. The allegations are DENIED.
18. The allegations are DENIED.
19. The allegations are DENIED.
20. The allegations are DENIED.
21. The allegations are DENIED.

WHEREFORE, Randy Weatherford moves to dismiss the Motion for Judgment filed against him and further objects to venue in the Circuit Court of Campbell County.

RANDY WEATHERFORD

By counsel

Counsel:

GARRETT & GARRETT, P.C.
770 Main Street
Danville, Virginia 24541
(804) 799-8100

By: 

Joe Garrett

CERTIFICATE

I, Joe Garrett, certify that a true copy of the foregoing Answer to Motion for Judgment was mailed to David W. Shreve, Esq., SHREVE & BERGER, P. O. Box 547, Altavista, Virginia 24517, on this the 29th day of December, 1994.

Allan Garrett
Joe Garrett

GARRETT & GARRETT
Attorneys At Law
A Professional Corporation

770 Main Street
Danville, Virginia 24541

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF CAMPBELL

BLAIR CONSTRUCTION, INC.,
A Virginia Corporation,

Plaintiff,

v.

Case No.: 031CL94000285-00

RANDY WEATHERFORD,
t/a W. S. CONSTRUCTION,

Defendant.

AMENDED MOTION FOR JUDGMENT

Comes now the Plaintiff, BLAIR CONSTRUCTION, INC., by counsel, and moves for judgment against the Defendant, RANDY WEATHERFORD, t/a W. S. CONSTRUCTION, in the amount and on the grounds hereinafter set forth:

1. Paragraphs 1 through 16, inclusive, of the Motion for Judgment herein are here realleged.

2. Paragraph 17 of the Motion for Judgment is amended to read as follows, "As a direct and proximate result thereof, BLAIR had to procure three other subcontractors, and perform work itself, to perform the work WEATHERFORD had contracted to perform and expended the following amounts:

Pro Erectors, Inc.	\$102,287.50
Iron Erectors, Inc.	393,389.19
T & R Hill Construction, Inc.	65,684.50
Blair Construction, Inc.	<u>46,927.31</u>
	\$608,288.50,

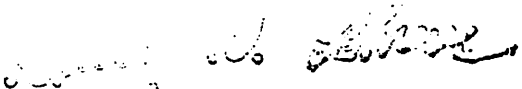
resulting in the loss to BLAIR of the difference between WEATHERFORD's contract price of \$260,150.00 and the amount actually expended, or \$348,138.50."

3. Paragraphs 18, 19 and 20 of the Motion for Judgment herein are here realleged.

4. Paragraph 21 of the Motion for Judgment is amended to read as follows, "BLAIR is damaged by WEATHERFORD's misrepresentation in the amount of \$348,138.50."

WHEREFORE, BLAIR CONSTRUCTION, INC. demands judgment against RANDY WEATHERFORD, t/a W. S. CONSTRUCTION, in the amount of \$348,138.50, with interest thereon from May 5, 1994, to the date of judgment pursuant to VA. CODE ANN. §8.01-382 (Repl. Vol. 1992) and at the judgment rate thereafter until paid, together with its costs and attorney's fees in this behalf expended.

BLAIR CONSTRUCTION, INC.,
A Virginia Corporation

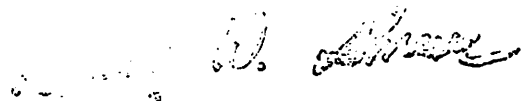
By: 
Of Counsel

David W. Shreve, Esquire
SHREVE & BERGER
Post Office Box 547
Altavista, Virginia 24517

CERTIFICATE

This is to certify that I have this 14th day of September, 1995, mailed a true copy of the foregoing Amended Motion for Judgment to the following counsel of record:

JOE GARRETT, Esquire
Attorney at Law
770 Main Street
Danville, Virginia 24541


David W. Shreve

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE COUNTY OF CAMPBELL

3
4 BLAIR CONSTRUCTION, INC.,

5 Plaintiff,

6 v.

7 RANDY WEATHERFORD t/a
8 W. S. CONSTRUCTION,

9 Defendant.

10
11 THE HONORABLE J. MICHAEL GAMBLE, PRESIDING

12
13 Transcript of Proceedings
14 January 29, 1996
15 Rustburg, Virginia

16
17 VIRGINIA
18 CIRCUIT COURT
19 CAMPBELL COUNTY
20 Received and Filed this the
21 25th day of March 1996
22 D. Map

23 * * * *

24 EVANS & COMPANY
25 Court Reporters
Post Office Box 11822
Lynchburg, Virginia 24506
(804) 239-2552

Reported By: DIANE M. WHITMAN, RPR

1 basically, residential type ~~construction~~ * *

2 Q Was there a time when you did residential work?

3 A We did residential work to support the
4 commercial work until about 1985.

5 Q And in 1985 did you go exclusively with
6 commercial construction?

7 A Yes.

8 Q What precipitated your decision to do that?

9 A Because we were so rural. Residential homes
10 were so distant and the dollars involved and I really
11 preferred to do commercial work and -- and because they
12 were -- were larger contracts.

13 Q All right. What size company is Blair
14 Construction now and was it then in 1993, late 1993 and
15 ninety-four?

16 A In 1976 we were doing one hundred and
17 seventy-five thousand a year and last year receipts were
18 over twenty million.

19 Q How many employees does Blair employ?

20 A It -- it varies from seventy-five to one
21 hundred, because of the season.

22 Q Okay. And what's the typical number of
23 projects that you'll have going at any given time?

24 A Twelve to fifteen.

25 Q How much projects did you have going when you

1 A Well, basically, the Gretna office is
2 maintenance for equipment and -- and payables, bills
3 payable, and, also, we maintain a project manager there
4 and I maintain an office there as well as Lynchburg and
5 that handles that area and the Danville area.

6 The Lynchburg office pretty much handles the
7 Altavista, Campbell County, Roanoke, and Lynchburg work
8 and that office has an executive vice president, Mr.
9 Henderson, and a vice president, Ken BeCraft, and two
10 other project managers and secretaries, of course.

11 Q What do Mr. Henderson and Mr. BeCraft,
12 actually, do?

13 A Basically, they assemble bids and the majority
14 of theirs are of a design/build nature. They assemble the
15 project, put it together, price it, and either they will
16 give it to a project manager or in some cases they may
17 manage it themselves.

18 Q Now, when you say "manage it themselves,"
19 what's entailed in contract management?

20 A Contract management is to -- to expedite
21 contracts with subcontractors, also, be sure that
22 materials are available at the correct time, which, of
23 course, this would involve scheduling, and they would be
24 on site and in the office. Also, they would take the bid
25 that they have done. They would do monthly billings.

1 So, it -- I mean they -- they really get
2 married to this project from beginning to end.

3 Q Was Ken BeCraft the one who was given this
4 project to design and build?

5 A Yes, after -- when the bidding process started.
6 Initially, I did the initial estimates for Ross back in
7 eighty -- ninety-three.

8 Q Now, explain that to the jury.

9 How did you get involved with doing this thing
10 initially and when?

11 A Mr. DoBois from Ross called me and said that
12 they were interested in doing a -- in building a warehouse
13 facility in Altavista.

14 Basically, they thought they were going to try
15 to do it on a design/build nature and would -- could I put
16 some preliminary numbers together and we do that quite
17 often.

18 So, I, basically, took what criteria they had
19 and assembled some construction costs.

20 Q Was that any sort of formalized bid?

21 A We did type up just a -- a simple format
22 just -- so they would know the square footage and maybe
23 the height but, basically, it's a very simple explanation
24 of what the cost would be.

25 Q At that point was the project even put out to

1 bids?

2 A No, no. We hadn't even -- there wasn't even
3 sight work involved. It was just the building itself and
4 then they -- Ross called us in -- in the fall of
5 ninety-four and --

6 Q Fall of what year?

7 A Fall of ninety-four -- let' see.

8 Ninety-three. I'm sorry.

9 Q All right.

10 A And asked us to -- if we would like to
11 participate in bidding this project and if -- if they
12 decided to proceed that we would build it in the
13 ninety-four season.

14 Q Now, was any other contractor, general
15 contractor, such as yourself, contacted to bid this job?

16 A There were four others if I remember correctly.

17 Q And so you were one of four who was in the
18 running?

19 A I was one of five I think.

20 Q Okay. You had four others?

21 A Yes.

22 Q Did you know this at the time that the bid was
23 but together?

24 A Oh, yes, yes. They -- they had us all come in
25 and met with us and pretty much gave us -- gave us all the

1 same criteria as far as the size building.

2 Q Now, what type contract was this to be?

3 A This was to be a design/build contract.

4 Q Explain for the jury, if you will, just what a
5 design/build is as opposed to an architecturally designed
6 contract.

7 A When we get plans from an architectural design,
8 basically, they are done from site work to finish. All
9 the finishes other than maybe color selections is all
10 right there in the spec book and the plan, all dimensions,
11 everything.

12 So, there's really no hidden agenda, so to
13 speak, unless there's just been an error made that was
14 unforeseen and we take the plans and go through them and
15 bid it and accept bids just like we do in the other
16 process.

17 A design/build -- basically, they give you a
18 criteria and -- and this particular one -- they just said
19 here's where we want to build it, make a proposal each of
20 you of how you would fit this building on this piece of
21 property, and we want it "X" number of square feet.

22 Therefore, we had to hire an engineering firm,
23 an architectural firm, which was McKinny (phonetic) in
24 this particular case out of Ashland, and together we
25 designed and -- and put the project together just as the

1 other contractors did.

2 You go from start to finish and you invite
3 subcontractors to give you prices and each will -- will --
4 will price the job if they choose to do so and you
5 assemble these prices.

6 Q Mr. Blair, you I think are a Varco-Pruden
7 licensed dealer, are you not?

8 A Yes, I am.

9 Q Explain for the jury what a Varco-Pruden
10 building is?

11 A It's a particular brand of pre-engineered type
12 building. There are about three or four major building
13 companies in -- in the United States. There are probably
14 fifteen, twenty, thirty metal building companies but Varco
15 is one of the top four in the nation and they -- they will
16 pre-engineer design a building to custom fit whatever your
17 needs are and it's a steel -- and an all steel structure.

18 Q Where is Varco-Pruden nationally located?

19 A The -- the plant that, basically, we deal with
20 is in Kernersville, North Carolina. Part of this job came
21 from Alabama, because they did a share of the workload
22 because the project was so large.

23 Q Have you been to these plants?

24 A I have been to the Kernersville plant. I have
25 not been to the Alabama plant.

1 million dollars worth of steel. * * *

2 So, it's -- it's a real small lot and all of
3 it -- when you have an order -- when it hits the lot it's
4 got to go out of there in about four or five days.

5 Q Now, Mr. Blair, I believe that this building
6 you testified was ordered from Varco-Pruden by Mr.
7 BeCraft.

8 Is that correct?

9 A That's correct.

10 Q During the course of the assimilation of this
11 bid and during the course of the construction what part or
12 what function did you play in the project?

13 A Well, initially, I went to the preconstruction
14 meeting at Altavista with all the other contractors. Then
15 Ken at that point -- we decided the engineering firm that
16 we wanted to use and he picked it up at that point once we
17 decided with McKinney and made a number of trips to
18 Ashland and they began to assemble the -- the dimension
19 and size and -- and the configuration on the lot.

20 Towards the end or, actually, the day of the
21 bid I went to the Lynchburg office and I was there,
22 because Ken was in Ashland, to -- to maybe receive anymore
23 bids or any -- any problems that we may have I could sort
24 them out on that end plus, you know, help him with the
25 final number.

1 unloaded.

2 I'm going to assume --

3 MR. GARRETT: Judge, I'm going to object to
4 both probably and assume.

5 I'm trying to be fairly tolerant, but I think
6 he's going a little too far.

7 THE WITNESS: This is red iron to be erected

8
9 BY MR. SHREVE: (Continuing)

10 Q Mr. Blair, what is the boom truck there -- what
11 is it doing?

12 A It's a crane unloading trucks.

13 Q Okay. How many trucks, approximately, brought
14 steel to this job?

15 A Fifty.

16 Q Okay. I'm going to show you what's marked as
17 Plaintiff's Exhibit Number 5 and ask if you can identify
18 this photograph.

19 A This is showing the first girt line to be
20 erected on the steel columns.

21 Q Who is doing that erection work?

22 A This is Mr. Ferris. Mr. Ferris started the
23 initial work here.

24 Q All right. I'm going to show you what we
25 marked as Plaintiff's Exhibit Number 6 and ask if you can

- 1 A My office did, yes. * * *
- 2 Q When did you first see it?
- 3 A I saw it probably shortly after that.
- 4 Q How shortly is shortly?
- 5 A A day.
- 6 Q Within a day or so?
- 7 A Yes.
- 8 Q Now, I've asked you about this as well in the
- 9 past.
- 10 Is that correct?
- 11 A I'm not sure.
- 12 Q Okay. I asked you about the numbering on the
- 13 W. S. Construction proposal.
- 14 I'm not trying to confuse you. First, I'm
- 15 going to ask about the numbering at the bottom.
- 16 What does it indicate?
- 17 A It says one of two.
- 18 Q Okay. And when did you first notice that it
- 19 was one of two?
- 20 A Never did.
- 21 Q Well, didn't you testify I think on September
- 22 the twentieth that you had just noticed it that day?
- 23 A The day that you brought it to my attention,
- 24 yes.
- 25 Q Okay. So, you noticed it on September the

1 twentieth?

2 A Yes.

3 Q And you will agree as well that on the page
4 which, apparently, has some kind of fax number at the top
5 that there's a designation that it's page one of a fax?

6 A Page one, yes, not one of two.

7 Q Well, does a fax machine leave one of two up
8 there?

9 A (The witness indicates.)

10 Q You raised the point. Does it?

11 A Don't see it.

12 Q Does your fax machine print that?

13 A Does my fax machine print what?

14 Q The number of pages that you're sending or do
15 you have to put a cover sheet with it?

16 A I really don't know. I don't fax.

17 Q Well, somebody in your office does, because
18 Exhibit "B", which is the confirmation, was, apparently, a
19 fax between your offices.

20 Is that right?

21 A I would like to see what you're saying.

22 Q That was, also, attached to the Motion For
23 Judgment as Exhibit "B".

24 A Uh-huh. Okay.

25 Q Okay. And it has the word confirmation

1 stricken out -- pardon me, confirmation and acceptance
2 stricken out.

3 Is that right?

4 A It has acceptance stricken out and --

5 Q Acceptance stricken out.

6 A -- confirmation in place of it, yes.

7 Q And it has a blank at the bottom there for
8 accepted by and title.

9 Is that correct?

10 A Yes.

11 Q And what is it dated?

12 A April 8th.

13 Q Okay. And it provides for a variety of things
14 in a note.

15 Is that correct?

16 A That is correct.

17 Q Including a safety manual for each sub
18 available.

19 Isn't that what it says?

20 I think that's the fourth one down.

21 A Yes, uh-huh.

22 Q Okay. Did you turn these documents over to
23 your attorney or did Ken BeCraft or who turned them over
24 to him?

25 MR. SHREVE: If it please the court, I'm going

1 THE COURT: Give ~~it~~ to me. 

2 MR. GARRETT: I'm sorry.

3 THE COURT: Everybody does it a little bit
4 different.

5 MR. GARRETT: Okay.

6

7 BY MR. GARRETT: (Continuing)

8 Q Did you ever have any personal correspondence
9 with either Mr. Weatherford or any representative of W. S.
10 Construction during this negotiation?

11 A Me personally with Mr. Weatherford?

12 Q Yes, you personally.

13 A No, sir, I did not.

14 Q Now, you were talking about before we got
15 started talking about this job the Huber job, which,
16 apparently, was a little bit larger than this job as well.

17 Is that correct?

18 A Yes.

19 Q And you performed the steel erection work in
20 that job.

21 Is that correct?

22 A You mean Blair Construction?

23 Q Yes.

24 A We subbed it to subcontractors, yes.

25 Q Was netting used in that job?

1 A In the Huber job?

2 Q In the Huber job.

3 A No.

4 Q Have you done any job other than -- or I should
5 say up to the job with Ross Laboratories that you had used
6 netting or was that the first?

7 A The first.

8 Q And how many commercial buildings do you think
9 you had built during that period of time?

10 A From --

11 Q Seventy-six forward or whatever you feel
12 comfortable with.

13 A 1976?

14 Q Yes.

15 A Oh, maybe one hundred, one hundred and fifty.
16 You're speaking of pre-engineered?

17 Q Yes.

18 A Okay. Yes.

19 Q One hundred to one hundred and fifty?

20 A Yes.

21 Q Now, were you, ultimately, shown this
22 contractors' safety guide that Abbott Laboratory - Ross
23 Products Division provided you all?

24 A The only time that I saw it is when you
25 introduced it to me at the deposition.

(Pause)



MR. SHREVE: No objection.

THE COURT: All right. It will be Defendant's Exhibit "B".

MR. GARRETT: Just I can pull the one out of the deposition.

THE COURT: He didn't object.

MR. GARRETT: Okay.

BY MR. GARRETT: (Continuing)

Q Now, did you have any written correspondence with Mr. Weatherford whatsoever?

A Did -- did Blair Construction?

We had his original bid proposal.

Q I think we've covered that and I think we've already covered the confirmation that you sent out.

Did you receive -- is it your contention that you only received page one on the bid proposal?

A That's the sheet that I saw, yes.

Q It's your contention you did not note that it was one of two and did not receive a second page?

Is that your contention?

A I did not until you pointed it out that day. To be quite honest I didn't.

Q Have you looked for a second page since then?

1 A I have not, no, sir.

2 Q Now, there was, also, the question of a -- a
3 fax and it's availability to be produced in court. I
4 think it's the fax of April 29, 1994.

5 Do you remember our discussing that?

6 A The fax?

7 Q That was from Randy Weatherford about a cost
8 increase.

9 A I remember a -- a fax about cost increase, yes.

10 Q Okay. And when we talked earlier --

11 A Now, I did not see that initially.

12 Q You say you did not see it?

13 A Initially. I was told on the telephone.

14 Q When did you become aware of it?

15 A You mean when did someone tell me on the
16 telephone?

17 Q Yes.

18 A Apparently, that -- maybe the day they received
19 it, yes.

20 Q Now, when we took your deposition on September
21 20, 1995, did you have a copy of that fax at that time?

22 A In my possession or someone presented.

23 I assume so, yes.

24 Q Are you sure about that?

25 (Pause)

1 Q I know you testified about it. I'm asking you
2 if you had it or any member of your company had it in
3 their possession at that time.

4 A No. I think we found it about two weeks later
5 or something if that's -- yes, if that's what you're
6 leading to, yes.

7 Q Yes. That's where I'm leading to.

8 A Right, yes.

9 Q So, we took your deposition on September the
10 twelfth of ninety-five.

11 Is that correct?

12 A I assume so, yes, sir.

13 Q And you say you found the fax about two weeks
14 later?

15 A Mr. BeCraft did.

16 Q Where was the fax found?

17 A In the lower left-hand draw of his desk I think
18 or one of his desk draws.

19 Q Did you all maintain a file for your dealings
20 with Randy Weatherford?

21 A Yes, sir.

22 Q Do you know why this would not have been in the
23 file?

24 A No, sir.

25 Q Now, Mr. Stader at that time I think was doing

1 consulting work for you.

2 Is that correct?

3 A Yes.

4 Q Back at the time of this Varco-Pruden building.

5 Did he go to this sight based upon your
6 reports?

7 A For monthly reviews?

8 Not for monthly reviews that I remember, no.

9 Q Did he ever go to the site at all?

10 A I -- I do not know.

11 Q Did you back in the time of January of
12 ninety-four through May of 1994 have him review the
13 contractors' safety guide, your own expert?

14 A Repeat the question, please.

15 Q In the period of time from January of 1994 --
16 and I know we're dealing with alot of dates. Hopefully,
17 we're going to keep them straight.

18 But from January of ninety-four through say May
19 of 1994 did you have occasion to present this contractors'
20 safety guide and the agreement in it to Mr. Stader for
21 review or analysis?

22 A I did not, no.

23 Q Do you know if any of your employees submitted
24 it?

25 A I do not know.

1 Q And at that time he was, basically, under
2 retainer to your company.

3 Is that correct?

4 A He bills us monthly for hourly.

5 Q And his job would be to do what, inspect all of
6 your jobs?

7 Is that correct?

8 A Yes. He -- he goes from job to job.

9 Q And would his job, also, be to render advise to
10 you or any of your other superintendents if they asked for
11 it?

12 A If they asked for it, yes.

13 Q Now, at the time that you testified do you
14 recall what you said the fax increased as far as cost for
15 safety reasons would be?

16 A You mean a fax from Mr. Weatherford?

17 Q Yes.

18 A For an increase?

19 Q Yes.

20 A I think I remember at the time that Ken had
21 told me seventy-five thousand.

22 Q Would you be surprised that you testified to
23 sixty thousand at your deposition?

24 A It could be.

25 Q You didn't have a copy of it at the time. So,

1 erection, specifically, on the telephone, yes.

2 Q Well, by discussing the numbers I mean did you
3 discuss them as to how many thousands went to where or did
4 you just say we have the final total figure of "X"?

5 A Both.

6 Q And what discussion did you all have about
7 erection and its cost?

8 A Basically, we had Mr. Weatherford's numbers and
9 we wanted -- if I remember correctly at that time, we
10 wanted to verify that -- that we felt that the numbers
11 were okay and -- and this was a major portion and a -- a
12 critical part of the job.

13 So, any time you have a major sub you discuss
14 it.

15 Q You will agree that the contract had to be in
16 the mail by the afternoon of January 4, ninety-five --
17 pardon me, January 4, ninety-four.

18 A Right.

19 Q By five?

20 A Yes.

21 Q Are you aware that Bailey Henderson was still
22 checking references on January the fourth?

23 A I asked him to, yes.

24 Q Do you know what time that was?

25 A It was probably in the middle of the afternoon

1 after lunch. He had previously called and we had him call
2 again.

3 Q Are you aware of any correspondence that you --
4 written correspondence that you or anyone else at Blair
5 Construction had with Randy Weatherford from May 1,
6 ninety-four, up until the present?

7 MR. SHREVE: Objection.

8 It gets into the settlement issue we already
9 discussed.

10 THE COURT: Sustained.

11

12 BY MR. GARRETT: (Continuing)

13 Q Are you aware of any written correspondence
14 from Randy Weatherford or W. S. Construction other than
15 the proposal of January 3, ninety-four, and the fax of
16 April 29, ninety-four?

17 A Which had the increase -- is that what you're
18 talking about for the April?

19 Q (Indicates.)

20 A I do not.

21 Q Are you aware of any signed writings signed by
22 W. S. Construction or Randy Weatherford?

23 A No.

24 Q And you have searched your files looking for
25 such writings.

1 Is that correct?

2 A Yes.

3 Q Basically, you delegated all of your dealing as
4 far as the company on this project to Ken.

5 Is that correct?

6 A For the entire project?

7 Q Well, I guess I could restrict it to the steel
8 erection.

9 A Yes, the steel erection, yes.

10 Q Now, Abbott Laboratories imposed some
11 restrictions that were different from some other jobs that
12 you worked on.

13 Is that correct?

14 A Yes, a couple of them, yes.

15 Q And you had to abide by their safety manual or
16 do you know?

17 If you don't know, just state and I'll ask
18 another witness.

19 A I don't know. I mean we've had several that
20 have some of the same, for instance, like Goodyear no
21 smoking if that's what you're leading to.

22 Q Well, for example, the photographs that were
23 previously introduced by counsel -- those photographs were
24 not taken by Blair Construction, were they?

25 A We were not allowed to take any photos.

1 Q That's my point.

2 The only person who was allowed to take
3 photographs at the site was who?

4 A An employee of Ross or Abbott.

5 Q Okay. So, they even controlled who could take
6 photographs there.

7 Is that correct?

8 A Yes. That's not uncommon.

9 MR. GARRETT: Judge, I don't think I have
10 anymore questions at this time.

11 THE COURT: Mr. Shreve.

12 MR. SHREVE: Let me follow up very quickly.
13
14
15

16 REDIRECT EXAMINATION

17 BY MR. SHREVE:

18 Q Mr. Garrett made reference to the Huber job and
19 the fact that you had that job going at the same time.

20 Did that detract from your ability to go by and
21 supervise and oversee the Abbott Laboratory job?

22 A Not at all. We have people responsible.

23 Q No. I mean I'm talking about you personally.

24 A Right, because we have people responsible at
25 each -- each job.

1 to any of the issues that are before this jury?

2 THE COURT: What --

3 MR. GARRETT: I'll be happy to state that in
4 front of the jury of why I think it's relevant.

5 THE COURT: Well, go ahead and state why you
6 think it's relevant.

7 MR. GARRETT: Judge, I think what is relevant
8 is that the older, more experienced superintendent
9 was put on the bigger job and that Ken BeCraft was
10 put on this job, and I mean Mr. Shreve made the
11 reference to he panicked in his opening argument and,
12 I think I'm entitled to ask, you know, how long -- he
13 says he's checking up on him, but he's, also, said,
14 you know, that he gave, basically, all the details of
15 the steel erection to -- to Ken BeCraft.

16 I think I'm entitled to ask, you know, how long
17 he's worked for him on that basis.

18 THE COURT: I think that's outside of the
19 scope.

20 So, I sustain the objection.

21 MR. GARRETT: Okay, Your Honor.

22 Thank you.

23 THE COURT: Okay. Anything else?

24 MR. SHREVE: I have no further questions for
25 Mr. Blair.

1 KENNETH V. BeCRAFT, was called as a witness,
2 and after having been first duly sworn, was examined and
3 testified on their oath as follows:

4
5 DIRECT EXAMINATION

6 BY MR. SHREVE:

7 Q Would you state your name for the ladies and
8 gentlemen of the jury, please?

9 A Kenneth Vaughn BeCraft.

10 Q Mr. BeCraft, by whom are you employed?

11 A Blair Construction.

12 Q How long have you been employed by Blair
13 Construction?

14 A Approximately, six and a half years.

15 Q What is your educational background?

16 A I have a bachelor's degree in civil engineering
17 technology from Virginia Polytechnic Institute.

18 Q When did you receive your degree in
19 engineering?

20 A 1979 is when I graduated.

21 Q What did you do upon graduation from Virginia
22 Tech?

23 A Went to work for Limatorque Corporation in the
24 City of Lynchburg, approximately, five years.

25 Q What were you doing for Limatorque Corporation?

1 A I was an engineer for Limitorque. It was
2 called an applications engineer.

3 Q All right, sir. What did you do after that?

4 A Went to work for Campbell County.

5 Q In what capacity?

6 A Became Campbell County's assistant county
7 administrator and -- which, also, was director of public
8 works.

9 Q Did that job require engineering expertise?

10 A Yes, it required the knowledge of engineering.

11 Q And how long did you work for Campbell County?

12 A Approximately, four years.

13 Q And where did you go to work after you left
14 Campbell County?

15 A I went directly to Blair Construction.

16 Q And you've been working for Blair Construction
17 ever since?

18 A Yes.

19 Q When did you first go to work for Blair
20 Construction?

21 A I believe it was July of eighty-nine.

22 Q All right, sir. Describe for the jury, if you
23 will, what your function is at Blair Construction.

24 A I have the title of vice president and my
25 primary responsibilities are to estimate new work and --

1 if -- if the type of work requires you to not only
2 estimate but do some design, which a design/build project
3 would be, I would be involved with some design work and
4 estimate and then if we obtain the work I would be
5 involved with the project managing the work and just being
6 involved with the project throughout the course of the
7 project.

8 Q During the course of time that you've been with
9 Blair Construction how many design/build contracts have
10 you been in charge of?

11 A I have not stopped to really try to count them,
12 but I would say fifteen.

13 Q Okay. During that period of time how many
14 other types of projects have you been in charge of?

15 A Probably twenty-five or thirty.

16 Q Okay. So, a total of maybe fiftyi projects all
17 together?

18 A (The witness indicates.)

19 Q In dollar amounts what range of projects do
20 these cover?

21 A A typical range would be one hundred thousand
22 dollars right up to five or six million dollars.

23 Q Is this Abbott project the largest project that
24 you've been in charge of for Blair?

25 A Yes.

1 Q Okay. When were you first given the Abbott
2 project?

3 Do you know what I'm talking about when I say
4 the Abbott project?

5 A Yes, sir.

6 Q The warehouse?

7 A Yes.

8 Q When were you first given that to do?

9 A Approximately, December of -- the beginning of
10 December of 1993 is when Abbott came out with a request
11 for proposal and I was given that document that described
12 what the -- what type of facility they were wanting a
13 price on.

14 Q And what was the due date on the bid that you
15 had to have it back to Abbott?

16 A At first they were asking for the proposals to
17 come back between Christmas and New Year's, like the
18 twenty-seventh or twenty-eighth. It was going to be
19 between Christmas and New Year's.

20 During a pre-bid conference, which is a -- when
21 you -- it's pretty typical for an owner when he's
22 requesting a proposal from three or four contractors or
23 however many contractors -- it's pretty typical for them
24 to invite all these contractors into one meeting and it's
25 called the pre-bid conference. During that pre-bid

14

1 conference some of the other contractors requested that
2 they wait and receive the proposals after the New Year.

3 So, it was decided that -- that they would
4 receive the bids in Columbus, Ohio on the fifth of
5 January.

6 Q All right. So, meaning you had until the
7 middle of when?

8 A The fourth. You had to send them overnight.
9 They had to be there. They would not take a facsimile.
10 It had to be an original document received in Columbus
11 and, also, in Abbott Park, Illinois, which is south of --
12 I mean north of Chicago, in their engineering facility.

13 You had to respond to both places and they had
14 to have original documents on the fifth of January, 1994.

15 Q So, you had about how much time from the time
16 you first got it until the time that you had to have the
17 bid out? How much time did you have to put the thing
18 together?

19 A Approximately, thirty calendar days.

20 Q Is that an unusual time frame to get a bid
21 together and get it to them?

22 A No.

23 Q You do that on a regular basis?

24 A Yes, sir.

25 Q All right.

1 configuration of it.

2 Q Okay.

3 A I guess the main thing I wanted to point out is
4 they did want a pre-engineered metal building.

5 Q Okay. And it could have been designed as a
6 square, rectangle, --

7 A Yes.

8 Q -- "L" shape as long as you got it on site.

9 Is that correct?

10 A Yes, sir.

11 Q Okay. In general terms I want you to describe
12 to the jury what you did in order to put this bid together
13 for the Abbott job.

14 A Well, there was alot of -- in addition to the
15 building there was lot of site work, meaning Abbott said
16 here's ten acres out behind our facility and -- in the
17 scope of the instructions they had gone into, you know,
18 how much truck -- how many tractor-trailers they wanted to
19 be able to park and how many they wanted to be constantly
20 moving in and out.

21 There was alot of site work that was going to
22 have to be engineered, also, as to how this would all
23 layout and whether the grounds were suitable.

24 So, we, meaning Blair Construction, decided to
25 talk to McKinny and Company. This is an architectural

1 Q Now, I'm going to jump ahead just a little bit.

2 Did you ever on this job have been any written
3 subcontracts with any contractors?

4 A Written subcontracts?

5 Q Right, written contracts with these people to
6 do this work on this job.

7 A Well, we -- we just had a -- once it was
8 decided that they would do the work we had -- we just got
9 a standard little format letter that we send saying that
10 we confirm their price and that it's -- I mean it's,
11 basically, verbal, whether it be the painter or the mason
12 that we told them that we want them to do the work, but we
13 do have some paperwork that follows for confirmation.

14 Q Is that, generally, signed and sent back?

15 A More often than not it's not. It's more
16 common -- we -- we ask for it to be signed and sent back
17 I'll say mainly if something would happen to the project
18 manager or they'll say during bill processes, because I'm
19 not the only one that might be involved with the project.
20 We got our accounts payable, accounts receivable, or
21 somebody might want to look at the file and I wasn't
22 there. They might say, well, who is the painting
23 contractor and, you know, if we heard there was a problem
24 with somebody, somebody -- Mr. Blair might want to know,
25 well, what -- how much is the painter, what kind of work

1 is he doing.

2 So, there is paperwork in the file that is kind
3 of -- there's a paper trail as to what's going on on the
4 job.

5 Q Does it cause you concern if it's not signed
6 and sent back?

7 A No, sir.

8 Q Okay. On this job do you know how many of
9 those letters were signed and sent back, if any?

10 A I'm aware of two.

11 Q Two of, approximately, twenty?

12 A Yes.

13 Q Do any of the other subcontractors ever come to
14 you and say we don't have an agreement or we're not going
15 to do this work?

16 A No, sir.

17 MR. GARRETT: Judge, I object to that on
18 relevance.

19 THE COURT: Sustained.

20

21 BY MR. SHREVE: (Continuing)

22 Q Now, Mr. BeCraft, did anyone else other than
23 Mr. Weatherford bid the steel erection for this job?

24 A Yes, sir. We had -- I had contacted
25 Pro-Erectors. It's a company that has done alot of work

16

1 for Blair Construction in steel erection and siding and
2 roofing placement and I had talked with Pro-Erectors and
3 received a price from them.

4 Q All right. I want to go into that just a
5 little bit with you with regard to the Pro-Erectors' bid.

6 Who is the principal in Pro-Erectors?

7 A I understand that -- it's my --

8 Q Who did you talk to?

9 Let me ask you that way.

10 A Bob Golliher.

11 Q And is he part owner of the company?

12 A I understand he is.

13 Q Okay. When did you talk to Mr. Golliher?

14 A Sometime during the month -- I would --
15 probably around the twenty-second, twenty-third of
16 December, sometime late December when I had -- when I
17 could tell him the configuration of the building.

18 Q All right. What did you, in fact -- was this a
19 face-to-face meeting, telephone? How did this meeting
20 take place?

21 A I believe it was just a telephone call.

22 Q Who initiated the phone call?

23 A I did.

24 Q And what, if anything, did you tell Mr.
25 Golliher about this building on the phone when you called

1 him to get a bid?

2 A Again, in the pre-engineered metal building
3 industry there's alot of common terms. So, I proceeded to
4 tell Mr. Golliher the length and width of the building,
5 the -- what's called the eave height of the building,
6 which is like the gutter height of the building, and the
7 fact that the roof was a gable roof, like a house, the
8 fact that what -- what is called bay spacing was fifty --
9 was, generally, fifty-two foot by fifty-two foot, meaning
10 in either direction you had a column that would occur
11 every fifty-two foot, whether it be along the -- the
12 gutter or going back into the building.

13 So, that -- that's referred to as bay spacing
14 and that's -- you need to know that.

15 Then I -- I said I told him the eave height.

16 Q Yes.

17 A The width and the length of the building, the
18 fact that there were two sections of the building that had
19 a lower roof. These are called lean-to areas. On the
20 front side wall of the building there was a lean-to. I
21 gave him the width and length of that.

22 This -- that was, primarily, where the shipping
23 area would be where they didn't need as tall a roof.

24 On the right end wall of the building there was
25 a lower roof area requirement where a process called

1 palletizing would end up taking place, where the product
2 would come from the main plant over into the building and
3 the product would be put in these individual cases that
4 would be put on pallets and taken from there and put into
5 the storage racks.

6 So, --

7 Q You gave -- I'm sorry. Go ahead.

8 A Yes, sir. And I, also, again, told him the bay
9 spacing, the fact that it was, generally, fifty-two foot
10 by fifty-two foot bay spacing, which -- which meant that
11 it was going to be what's called a bar joist bar.

12 Whenever you span more than thirty foot it's
13 pretty -- it's pretty typical that you got to put what's
14 called bar joists.

15 Q Now, what is, for the benefit of the jury, a
16 bar joist and what is the alternative method of building a
17 building without bar joists if there is one?

18 A Okay. Under thirty foot it's pretty common to
19 go with what's called a purlin, which is a -- a "Z"
20 member. It looks like a "Z" and that goes -- it goes --
21 well, it goes the bay spacing.

22 In my case it was fifty-two foot. A -- a "Z"
23 purlin -- I'm not aware that it can span fifty-two foot.
24 You have to go to a -- a bar joist.

25 Q Now, do you have any -- anything with you to

1 purlins have been more than I think thirty-two foot.

2 Q Is that their maximum span length?

3 A I can't answer that, Mr. Shreve. The most
4 popular "Z" purlin that's --

5 MR. GARRETT: Judge, what does most popular
6 have to do with it?

7 MR. SHREVE: That's fair.

8 MR. GARRETT: I object to it.

9 MR. SHREVE: That's fair.

10 THE COURT: Okay.

11

12 BY MR. SHREVE: (Continuing)

13 Q You did indicate to Mr. Golliher that this was
14 a bar joist job, because the bays were fifty-two feet?

15 A Yes.

16 Q Based upon that conversation did Mr. Golliher
17 submit a bid to you?

18 A After telling him the type of roof and the type
19 of wall panels that would be utilized, yes, sir. He -- on
20 January 3rd he submitted a price.

21 Q And what was his price if you remember?

22 A I can tell you the exact number. I've got it
23 written here if I can look.

24 Q Sure.

25 (Pause)

1 A Four hundred and thirty-eight thousand four
2 hundred dollars.

3 Q Okay. At that point in time when he submitted
4 his price to you were you prepared to go with his price?

5 (Pause)

6 Q Did you hear my question?

7 A That was the only price that I had asked for,
8 Mr. Shreve, but in the -- in the interim period while I
9 was waiting on Pro-Erectors to price this job, which they
10 gave to me on the third of January, W. S. Construction had
11 had called and had indicated or said that they were going
12 to send me a price.

13 Q Let's be specific about that.

14 Who called you and when?

15 A Randy Weatherford called. It was either the
16 twenty-ninth or thirtieth of December. I believe it was
17 one of those two days.

18 Q Had Mr. Weatherford not called would you have
19 gone with Pro-Erectors as the bid to erect the steel?

20 MR. GARRETT: Judge, I'm going to object to
21 that.

22 It calls for conclusion and speculation.

23 MR. SHREVE: It doesn't call for speculation at
24 all, Your Honor. It was his job to put the bid
25 together.

1 MR. GARRETT: No. I think it was his job to
2 get the most competitive bid.

3 THE COURT: Objection overruled.

4

5 BY MR. SHREVE: (Continuing)

6 Q Had Mr. Weatherford not called would you have
7 gone with Pro-Erectors' bid of four thirty-eight four?

8 A Yes, sir.

9 Q You indicated that you got a call from Mr.
10 Weatherford.

11 Did you initiate that or did he initiate that
12 call?

13 A He called me. He called our office, Blair
14 Construction's office in Lynchburg, Virginia.

15 Q Okay. And you received that call you think on
16 the twenty-ninth or thirtieth of December?

17 A Yes.

18 Q What, if anything, did Mr. Weatherford say to
19 you about this Abbott project?

20 A He asked me if Blair Construction was going to
21 be submitting a proposal for this facility, that he had
22 heard we, Blair Construction, indeed -- in fact, was going
23 to and I indicated, yes, and he said -- he said, well, are
24 you going to let me give you a price on it? He said
25 I've -- I've -- he said I'm going to be pricing everybody

1 September 5th, 1994, and I told Mr. Weatherford the
2 projected schedule as to when a steel erector would be
3 able to start.

4 Abbott -- the way that Abbott was asking for
5 this building to be proposed -- they did not have a
6 financial -- a financial commitment from their board of
7 directors to spend -- to do the whole project.

8 That was going to happen in a board meeting
9 sometime the end of February and, again, this was in
10 December when the bids were being prepared.

11 They made it clear that -- in the bid proposal
12 that they wanted to identify how much money would be spent
13 preparing the land, grading, and doing -- getting all the
14 paperwork going, how much money would be spent prior to
15 the end of February when they could still cancel and not
16 erector this or go on with ordering the steel and erecting
17 the building if their board of directors did not commit to
18 the project.

19 Q So, did you tell Mr. Weatherford that during
20 that conversation before his bid?

21 A Right. I had projected a -- a beginning of May
22 steel delivery, when steel would get to the project. I
23 let him know that the steel would have to be erected in
24 twelve weeks and that, basically, the -- we had the
25 September 5th date that we had to meet as far as being

1 inside the building.

2 Q All right. Mr. BeCraft, I'm going to show you
3 a document, which I have marked as Plaintiff's Exhibit
4 Number 14 and I would ask you if you can identify this
5 document.

6 (Pause)

7 A This is the proposal that I received via fax in
8 my office, Blair Construction's office, on January 3rd
9 from W. S. Construction.

10 Q Where were you when you received that proposal?

11 A Blair Construction's office in Lynchburg,
12 Virginia --

13 Q And how --

14 A -- on January 3rd.

15 Q I'm sorry. And how did you receive that
16 proposal?

17 A Via fax, facsimile, fax machine.

18 Q All right. At the bottom of that document it
19 says pages one of two.

20 Is that correct?

21 A Yes, sir.

22 Q How many pages did you, actually, receive on
23 January the third?

24 A To my knowledge I only received one page.

25 Q Did you ever prior to the time that the steel

1 started going up with another contractor -- did you ever
2 receive a second page of that document?

3 A Not to my knowledge, no, sir.

4 Q Was there ever a second page of that document
5 submitted prior to the time this lawsuit was filed?

6 A Not to my knowledge, no, sir.

7 Q When was the first time you ever saw what is
8 said to have been a second page of that document?

9 A I believe it was when -- in your office, Mr.
10 Shreve, during the testimony, the -- what do you call the
11 process we went through?

12 Q Depositions.

13 A Depositions. During that process I believe is
14 when it was made -- I believe it was made an exhibit or --

15 Q And that was prior to this building being
16 completed?

17 A Yes, sir.

18 Q Is the document that you're holding that you
19 received from Mr. Weatherford January 3, 1994, complete?
20 Does it contain all the material details of a contract to
21 erect this building?

22 MR. GARRETT: Judge, I'm going to object to
23 that.

24 Something states it's one of two and it's only
25 one page. That calls for speculation and conclusion

1 on his part.

2 THE COURT: That's a matter of cross
3 examination. I'll let you cross examine him on it.

4 Objection is overruled.

5

6 BY MR. SHREVE: (Continuing)

7 Q Mr. BeCraft, is everything contained on that
8 document, that page one of two, allegedly necessary in
9 order for all the material details of the contract to be
10 formed?

11 A I believe it is. It -- all the pricing, all
12 the -- all the base pricing, all the -- the unit pricing
13 was very nice to have, also.

14 When I say unit pricing -- this proposal, also,
15 gave an amount should -- and it's quite common for
16 openings, whether they be a door wants to be added or
17 whether the mechanical people add another pipe popping
18 through the roof -- the -- this proposal contained a
19 unit -- unit prices for different type of openings if they
20 were going to be added later, which was very nice to have
21 in that we didn't have to worry about that later if
22 anything changed.

23 Q So, where it says wall penetrations will cost
24 seventy-five dollars is that if anybody wants to put
25 something up through a wall that's what he'll charge?

1 A That's the way I read it, yes, sir, wall
2 penetrations.

3 Q And the same thing with roof pipe flashings?

4 A Yes, sir.

5 Q Okay. There's some writing on the right-hand
6 margin of that page, two hundred and fifty-three thousand.

7 Whose writing is that?

8 A That's my writing.

9 Q What does that represent?

10 A Okay. The -- the first number at the top of
11 the page says we are pleased to quote the sum of two
12 hundred and twenty-nine thousand. Then later on, the
13 fifth item down, the statement says if walls are sixteen
14 inch wide with concealed screws and fiction thin
15 insulation, which is an option that's pretty common in the
16 metal building pre-engineered industry -- he's saying if
17 you go with a concealed screw fastener, add twenty-four
18 thousand dollars.

19 In fact, we were. So, I added the two hundred
20 twenty-nine thousand and the twenty-four thousand, which
21 made the base price two hundred and fifty-three thousand
22 dollars.

23 Q All right, sir.

24 MR. SHREVE: May it please the court, I would
25 move for the introduction of the bid document

A F T E R N O O N S E S S I O N



THE COURT: All right. Bring the jury in.

(Whereupon, the jury entered the
courtroom at 2:05 p.m.)

THE COURT: All right. Go ahead, Mr. Shreve.

MR. SHREVE: Thank you, Your Honor.

BY MR. SHREVE: (Continuing)

Q Mr. BeCraft, I believe that when with broke for
lunch I was asking you whether you received a fax from Mr.
Weatherford on January the third, 1994, and you've
identified that and we've introduced that as Plaintiff's
Exhibit Number 14.

When you received that fax what, if anything,
did you do?

A The fax of January 3rd?

Q Right. When you received Mr. Weatherford's bid
January the third, 1994, what did you do in response to
receiving that fax?

A I talked to Mr. Weatherford on the phone. I
called just to make sure, you know, the price was okay.

Q Now, what did you say, specifically, and what

1 did Mr. Weatherford say, specifically, if you recollect?

2 A I believe at that point I had not received a
3 price from Pro-Erectors and my main reason for calling Mr.
4 Weatherford was just to go over the bid.

5 The price seemed fairly aggressive. So, I
6 called Mr. Weatherford and went back over the project with
7 him and he stated that he had been working out of town
8 with his men for sometime and that he had promised his men
9 he was going to get this job and he knew he was going to
10 get it. He knew it was an aggressive price.

11 Q Aggressive meaning low?

12 A Yes, sir.

13 Q Did you go over with him the scheduling at that
14 point in time?

15 A I don't recall if I reiterated it during that
16 conversation, but Mr. Weatherford just indicated that this
17 would be a job that he could commute back and forth. He
18 would not -- it would not be an out of town job for his
19 people.

20 Q Did he tell you that there would be any
21 particular savings associated with not commuting?

22 A He -- he stated that this would not be an out
23 of town job for his men and it -- it would allow -- it
24 would allow him to have a job where they could commute
25 back and forth to the job site without having to stay in

1 motels.

2 Q Okay. When you received the bid did you speak
3 with Mr. Blair and with Bailey Henderson?

4 A Yes, sir.

5 Q When did you communicate to Mr. Blair that you
6 had received this bid?

7 A On January the third after receiving the bid.

8 Q What about Mr. Henderson? When did you tell
9 him that you had gotten the bid?

10 A The same day, that day.

11 Q What, if anything, did you ask either one of
12 them to do with reference to Mr. Weatherford?

13 A Well, I made each of them aware of the proposal
14 and I think collectively between the three of us we
15 decided that we would --

16 MR. GARRETT: Judge, I'm going to object to
17 what they collectively decided.

18 I think that's improper. I think he can
19 testify to what he decided.

20 THE COURT: Yes. You ought to rephrase the
21 question.

22 MR. SHREVE: All right.

23

24 BY MR. SHREVE: (Continuing)

25 Q What, if anything, did you decide about Mr.

1 Weatherford's bid at that point in time after conferring
2 with Mr. Henderson and Mr. Blair?

3 A In showing Mr. Blair and Mr. Henderson the
4 proposal and -- and letting them know that I had talked
5 with Mr. Weatherford as to the validity and just that --
6 you know, that it was a good proposal, a good price.

7 Mr. Henderson told me that he would be glad
8 to --

9 Q Don't go into what Mr. Henderson told you to
10 do.

11 Did you ask him to check the references?

12 A Yes, sir.

13 Q Okay. And later on did Mr. Henderson, in fact,
14 check the references?

15 A Yes. On January the fourth Mr. Henderson was
16 able to call and check --

17 Q All right. Now, --

18 A -- a reference.

19 Q I'm going to move from January 3rd to January
20 4th at this point and ask you where you were on January
21 the fourth.

22 A Okay. On the morning of January the fourth --
23 early that morning I drove to McKinny and Company's office
24 in Ashland, Virginia, which is north of Richmond.

25 The proposal, as I stated earlier, had to be

1 sent to Abbott's office in Columbus and Abbott's office in
2 Abbott Park, Illinois. The amount of information that was
3 having to be sent in this package was considerable. So,
4 it had been decided that the proposal would be put
5 together in McKinny and Company's office and that I would
6 come there that morning to -- to help in putting that
7 together.

8 Q What time did you arrive at McKinny and Company
9 that morning?

10 A I don't recall.

11 Approximately, ten o'clock.

12 Q Was the bid package put together pretty much
13 when you got there or in what stage of completion was the
14 bid package?

15 A It was in various stages. Some of the general
16 information that could be handled by my secretarial staff
17 had been -- had been put together and some of it still
18 needed to be put together, things that, predominantly,
19 McKinny and Company were instrumental in.

20 Q All right. When you got to McKinny and Company
21 did you have occasion to call Mr. Weatherford again?

22 A Yes, sir.

23 Q What was the reason for you calling Mr.
24 Weatherford from Ashland on January the fourth?

25 A Just to let him know that we were using his

1 price. It had been determined, because at that point I --
2 I had received -- on the third later that day I had
3 received a proposal from Pro-Erectors. On the morning of
4 the fourth Mr. Henderson did some checking on references
5 and I had a chance to talk with Mr. Henderson and Mr.
6 Blair and a decision had been made by Blair Construction
7 to use this proposal.

8 So, I called Randy Weatherford to let him know
9 this and just make sure he was comfortable with his
10 proposal.

11 Q And what did he tell you, if anything?

12 A I just recall affirmative, that -- I believe he
13 just reiterated he was going to get this job.

14 Q Did you use Mr. Weatherford's price in
15 submitting Blair Construction's bid to Abbott
16 Laboratories?

17 A Yes, sir.

18 Q I'm going to show you a document in just a
19 minute and ask if you can identify this document.

20 (Whereupon, an off-the-record
21 discussion was had.)

22

23

24 BY MR. SHREVE: (Continuing)

25 Q I'm going to show you a document and ask if you

1 can examine the document that I'm going to hand to you and
2 tell me what it is, please.

3 A (The witness complies.)

4 (Pause)

5 A This is -- this is the document that was sent
6 out of McKinny's office on the fourth. This is what we
7 made final preparation on that afternoon and sent it out
8 Federal Express.

9 Q Is that the bid package to Abbott Laboratories?

10 A Yes, sir.

11 Q All right. Mr. BeCraft, I'm going to hand you
12 a series of pages, photocopies from that document, stapled
13 together consisting of five pages, which I have marked as
14 Plaintiff's Exhibit Number 15 and ask if you can identify
15 those as being true photostatic copies of those pages of
16 the bid document.

17 (Pause)

18 A Yes, sir. They are part of the bid package.

19 Q I'm going to refer you to the front page of
20 that document and ask you to describe what the first of
21 those pages is, please.

22 A This is the cover letter for the proposal
23 package and it's just, again, a cover letter that says
24 proposal for Altavista distribution warehouse,
25 build/design contract sixty-four sixty, Altavista,

1 Virginia, Ross Products Division - Abbott Laboratory,
2 engineer Ross Hager (phonetic) Abbott.

3 Q That's on Blair letterhead?

4 A Yes, sir.

5 Q Turn to the second page.

6 A (The witness complies.)

7 Q Is that, also, on Blair letterhead?

8 A Yes, sir.

9 Q And on the second page can you read the
10 first -- well, tell me to whom that is addressed and read
11 the first paragraph, please.

12 A Again, on Blair letterhead. This is the -- a
13 letter addressed to Robert E. Reed (phonetic). He is the
14 head of purchasing in the Columbus office for Abbott and
15 it says in reference to Altavista distribution center,
16 project sixty-four sixty "A", gentlemen in Blair
17 Construction in response to Ross Laboratories' request for
18 design dated November 30th, 1993, is pleased to offer a
19 proposal for the subject project with components as
20 follows and it goes on to give a -- the contents of what's
21 within the package, within the proposal package.

22 Do you want me to read all those different
23 items?

24 Q No. Does it have in there a breakdown of the
25 various components of the project?

1 A Yes, sir, a cost breakdown, just various
2 breakdowns, different exhibits, different documents that
3 were required by the company offering the proposal to fill
4 out, the Abbott documents, that -- McKinny and Company's
5 qualification sheets, an outline statement.

6 Q Are these all drawings that went with it as
7 well?

8 A These were all items -- there's probably --
9 well, seventy to eighty pages are identified in this index
10 here.

11 Q All right. There is an exhibit attached and
12 this is a letter that went out over your signature.

13 Is that correct?

14 A Yes.

15 Q There's an exhibit attached marked Exhibit "B".

16 Can you complain to the jury what that is?

17 A Exhibit "B" is the subcontractors' schedule.
18 It's a form that was included in the request for proposal
19 where you -- it gives you a place to identify
20 subcontractors that you are proposing to use in this
21 project -- on this project.

22 Q And in the space on that is there a place for
23 the pre-engineer erection subcontractor's name and address
24 to be listed?

25 A Yes, sir. I typed -- I had my secretaries type

1 that in.

2 Q All right. And what is in that space for the
3 pre-engineer erection?

4 A Under subcontractor's name it's to be
5 determined.

6 Q Why is it to be determined and not W. S.
7 Construction or Randy Weatherford?

8 A Again, as much as my secretarial staff could do
9 prior to me going to Ashland with all of the architectural
10 engineering items that made up these eighty some pages --
11 we were doing this on January 3rd literally. So, this was
12 during the time when we were still receiving proposals
13 from W. S. Construction and Pro-Erectors and, also,
14 checking references.

15 So, this was a document that was, you know,
16 filled out ahead of being able to determine who it was.

17 Q So, you had not, actually, made the final
18 determination at that point?

19 A Not when -- this was done the morning of the
20 third.

21 Q All right. Now, on the morning of the fourth
22 when this bid was submitted did you, also, turning over to
23 the next page, submit a cost breakdown with the proposal
24 that went to Abbott?

25 A Yes, sir.

1 Q And on that cost breakdown under building, the
2 third item -- would you read that to the jury, please?

3 A The third item under building is pre-engineered
4 metal building erection and beside that is listed two
5 hundred and seventy thousand dollars.

6 Q Would you highlight that on your copy, please?

7 A Yes, sir.

8 Q Is that, in fact, Mr. Weatherford's bid for the
9 erection of this building?

10 A That was using W. S. Construction's proposal
11 and adding some money in for the door openings that were
12 anticipated.

13 Yes, sir, that was a result of Mr. -- W. S.
14 Construction's proposal.

15 Q And did this figure figure into your total
16 proposal to Abbott Laboratories?

17 A That was part of that total proposal.

18 Q All right.

19 MR. SHREVE: May it please the court, I would
20 move for the introduction of these pages as Exhibit
21 Number 15 collectively.

22 MR. GARRETT: Judge, I don't object to it
23 coming in, but I think the entire contract should
24 come in at the same time.

25 I have no objection to it coming in as long as

1 the whole contract goes in separately.

2 THE COURT: Do you want to off the whole
3 contract along with it?

4 MR. SHREVE: Well, Your Honor, I can.

5 It contains alot of material that is totally
6 extraneous to this lawsuit and irrelevant. I was
7 just trying to simplify things for the jury, frankly.

8 MR. GARRETT: Judge, my point is, you know,
9 that this creates I think the appearance, you know,
10 that there are five pages and the bid documentation
11 for this is fairly extensive.

12 That's my point.

13 THE COURT: I think the whole contract ought to
14 come in, also.

15 MR. SHREVE: I'll be glad to put it in all as
16 Exhibit 15.

17 MR. GARRETT: If he wants to make a separate
18 exhibit of the pages, that's fine, too.

19 THE COURT: I'm going to admit the separate
20 pages as Plaintiff's Exhibit 15 and I'm going to
21 admit the whole contract as Plaintiff's Exhibit 15
22 "A".

23 MR. SHREVE: Thank you, Your Honor.

24

25 BY MR. SHREVE: (Continuing)

1 Q So, the two hundred and seventy thousand
2 dollars represented the two sixty one fifty that Mr.
3 Weatherford had bid plus some additional allowances?

4 MR. GARRETT: Judge, he's leading at this point
5 and I don't think it's appropriate.

6 THE COURT: Yes. Don't lead the witness.
7

8 BY MR. SHREVE: (Continuing)

9 Q What does the two hundred and seventy thousand
10 dollar figure in the bid proposal represent?

11 A It represents the -- the base amount plus the
12 dollar -- the amount for conceal fastener, the special
13 siding that Mr. Weatherford gave us a separate price, plus
14 allowances for openings, which, again, was listed in the
15 proposal as to how much those openings would cost.

16 Q All right. Mr. BeCraft, after the bid was
17 submitted to Abbott Laboratories what happened in the next
18 two weeks regarding this contract?

19 A Approximately, one week after -- after
20 submittal we -- Blair Construction was notified that
21 Abbott Labs would -- would like to meet with Blair
22 Construction and go over all the proposal.

23 Q Did that meeting, in fact, occur?

24 A Yes, sir.

25 Q After January the fourth of ninety-four when

1 you sent the bid package off to Abbott what was your next
2 contact with Mr. Weatherford?

3 A We had several phone calls. I don't know all
4 the dates, but Mr. Weatherford called asking how Blair
5 Construction had, in fact, done on the proposal.

6 Q What did you tell him?

7 A I indicated that we had been invited to sit
8 down with the -- Abbott Labs and go over our proposal.
9 So, we were optimistic.

10 Q Did you have any other phone calls with him
11 before you met with him face to face?

12 A Yes, sir.

13 Q With Mr. Weatherford I mean.

14 A Yes, sir.

15 Q Give the jury, generally, the time frame as
16 best you remember of those phone calls and what was said
17 before you met with him face to face.

18 A During the course -- during January the
19 course -- the month of January there was several phone
20 calls and -- and I'll say most of these were from Mr.
21 Weatherford just inquiring as to whether or not we had --
22 Blair Construction had been given a contract to do the job
23 and my information after Blair Construction met with
24 Abbott Laboratories in the middle of January -- we --
25 Blair Construction was, in fact, given a contract to do

1 the preliminary grading and design work.

2 I stated earlier that it was in the -- it was
3 in the -- in the instructions that a contract would not be
4 given until the board approved the capital expenditure for
5 building the facility until the end of February, beginning
6 of March.

7 Q Was Mr. Weatherford told this in those phone
8 conversations?

9 A Yes, sir. I -- I just indicated that we had --
10 Blair Construction had been given the go ahead on doing
11 the grading and the final design work and, actually,
12 ordering the building.

13 So, we're getting the paperwork going.

14 So . . .

15 Q All right. Did you have occasion to -- well,
16 let me back up.

17 Did Mr. Weatherford indicate to you any
18 hesitancy in going forward with his part of the contract
19 during those phone calls that you had in January?

20 A None whatsoever. He was very upbeat and
21 optimistic that -- that the project would go through
22 just --

23 Q Now, did you have --

24 A -- like I was.

25 Q I'm sorry. Did you have a face-to-face meeting

1 with Mr. Weatherford in January?

2 A On January 31st Mr. Weatherford and I did meet
3 in Blair Construction's Gretna office just to bring him
4 up --

5 Q What transpired -- what transpired during that
6 meeting?

7 A I don't recall, you know, exactly everything we
8 went over.

9 The main thing was to bring -- just letting him
10 know where we were on the project, just -- you know,
11 what -- what all had been done.

12 That was the first time I had met with Mr.
13 Weatherford.

14 Q Were any drawings or anything of that nature
15 exchanged that day? Do you remember?

16 A I don't recall.

17 Q You said that was the first time you met Mr.
18 Weatherford face to face?

19 A I believe so.

20 Q Okay. Did he -- did Mr. Weatherford at that
21 point express any hesitancy about going forward with his
22 part of this contract?

23 A No, sir.

24 Q Did you have any contact with Mr. Weatherford
25 between January 31st, that day you met face to face in

1 Gretna, and April the eighth, 1994?

2 A Yes, sir.

3 Q All right. Can you explain for the jury, if
4 you will, time by time each time that there was any
5 contact between you?

6 A I don't have a listing of all the times, but
7 Mr. Weatherford -- he would call on occasion to just see
8 how the job -- getting an update from me on how the job
9 was going and I let him know that grading -- the -- the
10 grading or the site work had begun and that, you know, we
11 were moving on and that -- that everything was proceeding
12 on course.

13 Approximately, you know, the end of February,
14 the beginning of March we did get the go ahead on doing
15 the construction of the building. I let Mr. Weatherford
16 know that.

17 So, that would have been a call that I made to
18 him.

19 He had indicated to me that he would probably
20 go by the job site on occasion and that he would keep
21 checking with me on occasion, that he was just wanting to
22 keep it updated. I said that's great, I welcome calls,
23 and I'll let you know something as quick as I can and I
24 did let him know.

25 During that -- in the time period that you

1 indicated, Mr. Shreve, I was having alot of going back and
2 forth with the Abbott engineering people just on the final
3 design of the site work and everything and there had even
4 been some questions about possibly doing more to the
5 building than what my proposal had -- what had been
6 included in my proposal.

7 One item I recall -- this building was going to
8 be -- is forty foot tall. There was a big concern from
9 the Abbott engineering people that as you drive across the
10 front of the facility, meaning twenty-nine Main Street,
11 that you're going to see this big, tall, forty foot, beige
12 or brown building and they were concerned that it was
13 going to look too gaudy.

14 So, they had asked about putting a feature,
15 like a stripe, a horizontal stripe, around the building so
16 you would, actually -- you would go with a different color
17 metal about halfway up.

18 I went back -- calling Mr. Weatherford so we
19 could price that and he was -- he participated in pricing
20 that, also, and gave that price to Abbott and they did not
21 elect to do that.

22 That was one conversation.

23 Another -- another time on the right end -- end
24 wall of the -- of the big main building where I had said
25 earlier that there was a lower roof section -- that did

1 not extend the full width of the building in my proposal.
2 Abbott asked how much it would cost to go ahead and fill
3 in the rest of that. I'll call it an inside corner. They
4 felt like that would just be wasted space not to go ahead
5 and fill that in and I talked with Mr. Weatherford about
6 that and they did, in fact, decide to do that.

7 Q Did Mr. Weatherford give you a price for doing
8 that additional erection work?

9 A Based on the price that he had given me for the
10 main building and the square footage I did a unit rate
11 price.

12 MR. GARRETT: Judge, that's not responsive I
13 don't think to the question.

14 The question was did Mr. Weatherford give him a
15 price.

16 THE COURT: Yes, that was the question.

17 MR. SHREVE: That's correct.

18

19 BY MR. SHREVE: (Continuing)

20 Q Did Mr. Weatherford give you a price on doing
21 that extra work?

22 A No, he did not give me a price.

23 Q Did you compute what that work would be based
24 on the square footage of the price he had already given
25 you?

1 Number 16, and ask if you can identify this document.

2 Take a moment to look at it.

3 A All right.

4 (Pause)

5 A Yes, sir. This was the paperwork that was sent
6 to W. S. Construction confirming the --

7 Q All right. Wait just a minute and let me ask
8 you a question.

9 I would like for you, if you would, to read to
10 the jury the first page of this Exhibit Number 16.

11 A Okay. This is a letter under Blair
12 Construction's letterhead dated April 8th to W. S.
13 Construction.

14 Dear sir: Please find enclosed our
15 confirmation of your written quotation for the
16 above-referenced project. Please sign and return one copy
17 to me for my file, sincerely, and it's my -- signed off by
18 myself.

19 Q And what is the second page?

20 A This is a -- a standard form agreement that
21 Blair Construction has that we send to subcontractors
22 confirming that the work is going to happen and all the
23 information about the contract is noted in here.

24 Again, --

25 Q I would like --

1 A And, again, all the specifics of the job, if
2 there's anything specific in nature to the job, which in
3 this case, meaning the Abbott job, there were items noted
4 on the top right.

5 I'll read those.

6 Q Okay.

7 A No tobacco products on premises, there's a
8 designated eating area, safety glasses and hard hats
9 required, safety manual for each sub is available or --
10 available, and mandatory all workers safety seminar
11 available each day from two to three p.m., and mandatory
12 project meeting each Wednesday at eleven a.m.

13 Q All right. Does this document -- did you, in
14 fact, send this document to Mr. Weatherford?

15 A Yes, sir.

16 Q Is this the same form document that was sent to
17 all of the other subcontractors on the job?

18 A Yes, sir.

19 Q Is this the same document that you said only
20 two of the subcontractors signed and sent back?

21 A To the best of my knowledge only two came back.

22 Q Okay. Out of a total of how many on the job?

23 A Probably twenty.

24 Q Did it ever give you any cause for concern that
25 this document wasn't signed by Mr. Weatherford?

1 MR. GARRETT: Hasn't that been asked and
2 answered?

3 I thought it had.

4 THE COURT: Are you stating an objection?

5 MR. GARRETT: Yes. I'm stating an objection.

6 I think that question has been asked and
7 answered before. I may be wrong. Lunch has been in
8 between.

9 THE COURT: I don't remember. So, I'm going to
10 let him answer.

11 MR. GARRETT: Okay.

12

13 BY MR. SHREVE: (Continuing)

14 Q Did it give you any cause for concern that Mr.
15 Weatherford didn't sign this and send it back to you on
16 April the eighth of ninety-four?

17 A No, not with the amount of conversation and the
18 meeting that I had had with Mr. Weatherford.

19 I mean this -- again, this is -- you put this
20 in the file. It's available to my secretaries for who is
21 the erector, who is the mason, who is the concrete
22 finisher. If I call in and say call the mason, because I
23 need something done, this is in the file.

24 It's for billing purpose.

25 Q All right. Mr. BeCraft, --

1 Q At any time did he express any hesitancy of his
2 willingness to go through with his part of the contract?

3 A None whatsoever. He was very optimistic.

4 Q All right.

5 A And looking forward to doing the job.

6 Q Now, on this standard form agreement the first
7 sentence of the text of the agreement reads this is our
8 acceptance of your written slash verbal quotation dated
9 January 3rd, 1994, for the following, in quotes, plans and
10 specifications and someone has "X'd" through acceptance
11 and typed in confirmation and underscored written.

12 Who did that?

13 A My secretary.

14 Q At your instruction?

15 A Yes, sir.

16 Q Now, why was it sent as a confirmation as
17 opposed to a written -- excuse me, an acceptance of a
18 written quotation?

19 A It was just a confirmation that -- that
20 everything was in place.

21 Q Okay.

22 A With all the dealings we had going on it was
23 just a confirmation.

24 Q Okay.

25 MR. SHREVE: If it please the court, I would

1 move for the introduction of the cover letter and the
2 confirmation dated April 8th, 1994, as Plaintiff's
3 Exhibit Number 16.

4 THE COURT: It will be admitted.

5 MR. SHREVE: Thank you, Your Honor.

6

7 BY MR. SHREVE: (Continuing)

8 Q Mr. BeCraft, did you on April 19th, 1994, have
9 occasion to exchange some additional documents with Mr.
10 Weatherford?

11 A On April 19th?

12 Q Yes, sir.

13 A I believe that's the date where I had received
14 some first information from Varco-Pruden, who is the
15 supplier of the -- of all the steel and roofing and
16 siding. I had received a first submittal from
17 Varco-Pruden and -- and forwarded a copy of those on to
18 Mr. Weatherford. They were referred to --

19 Q Wait just a minute, please.

20 I'm showing you a document that I've marked as
21 Plaintiff's Exhibit Number 17 and it's styled letter of
22 transmittal, Blair Construction, Inc., at the top. I'm
23 going to ask you if you can identify that.

24 A Yes. That's --

25 Q What is that?

1 A It's a letter of transmittal directed to W. S.
2 Construction and -- and the item -- the box is checked off
3 saying phase one drawings and the reference at the top is
4 to the Ross - Abbott Laboratories.

5 Q Was this something which you, in fact, sent by
6 mail to Mr. Weatherford, these phase one drawings?

7 A Either mailed or UPS. I'm not . . .

8 Q Does this letter of transmittal indicate
9 anything to you in the form that it's in as to the method
10 of transmission?

11 Let me see if I can be more specific in my
12 question to be fair to you.

13 Is that something you would have faxed?

14 A Not likely.

15 Q aOkay. Is that a standard Blair Construction
16 form?

17 A Yes, sir.

18 Q And what do you do when you use that form?

19 A Just include this letter of transmittal with
20 the -- with the drawings and you check off the appropriate
21 box, which here I've checked off and elected to type in
22 phase one drawings.

23 Q Now, what are phase one drawings?

24 Excuse me. Was this sent to Mr. Weatherford
25 from Blair's office?

1 A Yes, sir.

2 MR. SHREVE: If it please the court, I would
3 move for the admission of the letter of transmittal
4 of April 19th as Plaintiff's Exhibit Number 17.

5 THE COURT: It will be admitted.

6 MR. SHREVE: Thank you, Your Honor.

7

8 BY MR. SHREVE: (Continuing)

9 Q What were phase one drawings?

10 A Well, the building -- Varco-Pruden, the metal
11 building manufacturer, was going to send the building in
12 two deliveries. The building was so -- such a large order
13 that they -- they were going to fabricate, meaning get all
14 the steel and siding and such ready for a part, which they
15 called phase one, and they -- in talking with myself we
16 had agreed on which end of the building would be most
17 suitable to start erecting, setting the steel.

18 So, that's where we concentrated, meaning Blair
19 Construction concentrated, in putting in all the concrete
20 foundations and all.

21 So, these were phase one drawings, drawings for
22 that first half of the building that was coming in.

23 Q Now, was that something that would help Mr.
24 Weatherford in, actually, erecting the building itself?

25 A I don't have the phase one drawings -- those

1 particular phase one drawings here to look at, but what I
2 recall is that those phase one drawings were not all of
3 phase one.

4 I mean they were more the -- the anchor bolt,
5 meaning the connections of how the building was going to
6 bolt to my concrete footings, but in talking with Mr.
7 Weatherford we had just agreed that anything I get from
8 Varco I'll forward it on to you as soon as I get it.

9 So, in answer to your question, yes, they could
10 be confirmed that the bay spacing is what I said, but it
11 was not nuts and bolts final documents.

12 Q Why did you send that to him at that time as
13 opposed to waiting until you got the shop drawings of,
14 actually, how it goes together final drawings?

15 A Well, as I stated, I just indicated I would
16 forward -- anything I got from Varco-Pruden I would
17 forward to him as soon as I got it.

18 Q Did you have weekly progress meetings with the
19 staff at Abbott Laboratories?

20 A Yes, sir. As noted in the agreement form there
21 was a weekly project meeting where we, Blair Construction,
22 would sit down with all Abbott -- I mean with all
23 subcontractors that were working presently and Abbott
24 engineering people and reviewed the progress of the job
25 and -- in keeping with the schedule, yes, sir.

1 Q Mr. BeCraft, I've hand you what I've marked as
2 Plaintiff's Exhibit Number 18 and I want you to go through
3 that and tell the jury what these documents represent.

4 (Pause)

5 A After each meeting Blair Construction had an
6 office -- site office trailer right on site. We, Blair
7 Construction, had a superintendent that was on the job in
8 charge of all of the men and subcontractors full time.
9 Blair Construction had a secretary on -- in the site
10 office who, also, attended these meetings. She took
11 minutes of each of the weekly meetings.

12 Mr. Shreve, you've given me copies of the March
13 9th minutes, the March 16th minutes, March 23rd, March
14 30th, April 6th, April 13th, April 27th, May 4th, and May
15 11th minutes. That's what you have given me copies of,
16 copies of those minutes.

17 Q And I think the first meeting -- minutes was
18 what date?

19 A March 9th is the first one here.

20 Q Okay.

21 A I'm sorry, March 2nd. I was reading where it
22 says next meeting March 9th. It was March 2nd.

23 Q So, you have got the minutes from the progress
24 meetings from March 2 then through May 11th in that
25 exhibit.

1 Is that correct?

2 A May 4th. Again, it says --

3 Q May 4th. Were these minutes sent each week to
4 Mr. Weatherford?

5 A Yes, sir. There's a listing of contractors at
6 the top of the minutes of each week and W. S. Construction
7 is listed on these as a sub -- as a contractor and there's
8 an asterisk beside the contractors that were in
9 attendance. It so notes. The asterisk says in
10 attendance, but W. S. Construction was sent a copy of each
11 of the weekly minutes.

12 Q Were you, also, talking with Mr. Weatherford
13 during that period of time?

14 A Yes, sir. He -- he acknowledged that he had
15 been receiving those and appreciated it, that it was
16 helpful to kind of track the job.

17 MR. SHREVE: May it please the court, I would
18 move for the introduction of the minutes of the March
19 2 through May 4, 1994, meetings with Abbott as
20 Plaintiff's Exhibit 18 collectively.

21 THE COURT: It will be admitted.

22 MR. SHREVE: Thank you, Your Honor.

23

24 BY MR. SHREVE: (Continuing)

25 Q Mr. BeCraft, on April 27, 1994, did you have

1 occasion to meet with Mr. Weatherford and anyone else?

2 A Yes, sir.

3 Q With whom did you meet?

4 A There was a meeting held at the site office
5 trailer, at Blair's site office trailer, on the site
6 between myself, Randy Weatherford, and Everett Grady.

7 Q What day of the week was this meeting held?

8 A A Wednesday.

9 Q What was the purpose of the meeting?

10 A Varco-Pruden had -- at this point had
11 identified May the ninth as being the first delivery,
12 phase one delivery.

13 Q All right.

14 A Therefore, a meeting -- I set up a meeting
15 between Mr. Weatherford and Everett Grady, who is Abbott's
16 site engineer.

17 We're getting ready to bring in a new major
18 contractor onto the premises. There's going to be a lot of
19 activity on May the ninth.

20 I wanted to introduce Mr. Weatherford to Mr.
21 Grady. I wanted to talk about what was going to happen
22 that day when thirteen or fourteen tractor-trailer loads
23 of steel showed up.

24 We were building a big building on a small
25 sight. So, we wanted to coordinate where this material

7 1 would be off loaded and where it would be set so it would
2 be -- work the best for the job.

3 Q Who was present at that meeting?

4 A During the meeting Mr. Grady and myself and Mr.
5 Weatherford were the three participants in the meeting.
6 It took place, again, in Blair's office trailer on site.

7 Martha Maddox the site secretary for Blair
8 Construction was in the adjoining room where the front
9 door is where all the parties have to come in and out and
10 William Willis, Blair's superintendent, had a chance to
11 meet Randy Weatherford that day, but he was not sitting in
12 on the meeting.

13 Q Was the substance of all the conversation
14 between just the three of you, you, Everett Grady, and Mr.
15 Weatherford?

16 A Yes.

17 Q Now, was Mr. Weatherford given any plans that
18 day, any erection plans that day?

19 A I'm sure he was not given any Varco-Pruden
20 erection drawings that day. A bigger set of Varco-Pruden
21 erection drawings came with the building.

22 He very well could have looked at some
23 architectural drawings that, in fact, showed what I had
24 said all along, about the building being forty foot tall
25 and a certain size.

1 to my office the next day. * * *

2 Q So, did you on April the twenty-seventh have
3 the shop drawings necessary to erect this building?

4 A No, sir.

5 Q And you got them when?

6 A The tenth of May.

7 Q The building was delivered -- started to be
8 delivered when?

9 A On the ninth.

10 Q Okay. Was the issue back on April 27th in that
11 meeting with Everett Grady -- was the issue of safety
12 discussed at all that day?

13 A Yes, sir. Abbott -- when Blair Construction
14 came on board with Abbott Blair Construction was given an
15 Abbott safety manual and was told that anybody working,
16 any contractor, whether it be a general contractor or a
17 subcontractor, any company, would be receiving a copy of
18 the Abbott safety manual and -- and, also, that they had a
19 thirty minute video that they wanted all employees on a
20 one time basis to sit down and -- and review and this was
21 given to Randy Weatherford during that meeting.

22 Q Who gave that to Mr. Weatherford during that
23 meeting?

24 A Everett Grady.

25 Q I'm going to show you in just a moment what's

1 MR. GARRETT: Yes, sir, I think it should be
2 inserted as page one.

3 THE COURT: Okay.

4 MR. SHREVE: I got no problem with that.

5 THE COURT: All right. As soon as we take a
6 break I'll get the secretary to --

7 MR. GARRETT: If you want to, I can probably
8 just force it.

9 THE COURT: No. We'll just do that. I'll just
10 put it in here assuming there's going to be no other
11 objection to this.

12 MR. GARRETT: I haven't looked at it, but
13 assuming it's all the manual I don't have a problem.

14 THE COURT: Everybody has been pointing to it
15 for a long time.

16 MR. GARRETT: Yes, assuming that it's all
17 there I don't have a problem with it, Judge.

18
19 BY MR. SHREVE: (Continuing)

20 Q Is this the book, Mr. BeCraft, the infamous
21 book, that was given to Mr. Weatherford at that meeting on
22 the twenty-seventh of April?

23 A Yes, sir.

24 Q And this has a Contractors' Safety Agreement as
25 a separate page.

1 Was it the first page in this document --
2 loose-leaf --

3 A I believe that's correct. Yes.

4 Q Okay. Did you on behalf of Blair Construction
5 sign this Contractors' Safety Agreement?

6 A When I received the manual, yes, sir.

7 Q And that was I take it much earlier than the
8 time it was issued to Mr. Weatherford.

9 Is that correct?

10 A Yes, sir.

11 Q All right.

12 MR. SHREVE: May it please the court, I would
13 move for the introduction of the Contractors' Safety
14 Guide as Plaintiff's Exhibit 19.

15 THE COURT: Okay. It will be admitted along
16 with this Contractors' Safety Agreement that's in the
17 flap on the inside of the binder.

18 MR. SHREVE: May it please the court, just for
19 purposes of convenience, I would propose that perhaps
20 we -- for the record take that thing out of the
21 loose- leaf binder and just put it together with a
22 clip if Mr. Garrett doesn't have any objection to
23 that.

24 THE COURT: All right.

25 MR. SHREVE: So, we don't have a loose-leaf

1 folder in the file.

2 THE COURT: Okay.

3

4 BY MR. SHREVE: (Continuing)

5 Q Did Mr. Weatherford react in anyway to
6 receiving the Contractors' Safety Guide from Mr. Everett
7 Grady?

8 A I don't recall him reacting. There was no
9 reaction that I recall.

10 Q Mr. BeCraft, after the meeting, either when the
11 meeting broke up or thereafter, did Mr. Weatherford
12 express to you any hesitation in his willingness to go
13 forward with his part of the contract?

14 A No, sir.

15 Q During that meeting did he discuss to your
16 knowledge any additional pricing because of safety
17 requirements in that book?

18 A None whatsoever.

19 Q During that meeting did he ever indicate to
20 either Mr. Grady or to you that there would be an
21 additional cost because of any other requirements of that
22 book?

23 A No, sir.

24 Q Okay. Are you familiar with twenty-nine CFR
25 section nineteen twenty-six, steel erection standards?

1 with respect to whether the Abbott Labs' manual requires
2 anything of a contractor or subcontractor other than
3 what's already in the OSHA standards?

4 THE COURT: All right. Do you want to state
5 any further objection?

6 MR. GARRETT: Yes, Your Honor.

7 I don't think -- he's already said he didn't
8 know it by book and verse. I mean we're getting into
9 some pretty technical area here. I mean that's in
10 large part why we are here today.

11 THE COURT: Okay. This seems to be -- well, I
12 mean this doesn't seem to be. It is within the area
13 that he works.

14 I understand the objection, but it just seems
15 more a matter of cross examination.

16 MR. GARRETT: Okay.

17 THE COURT: So, I'm going to overrule the
18 objection.

19 MR. GARRETT: I can deal with it that way,
20 Judge.

21
22 BY MR. SHREVE: (Continuing)

23 Q Mr. BeCraft, is there in your opinion anything
24 greater required in the Abbott Laboratories' contract or
25 safety guide than what's in the OSHA regulations that I've

1 got in my hand?

2 A The only item that I recall -- I believe there
3 was a requirement saying safety glasses would be worn at
4 all times and it's my understanding that OSHA might only
5 require safety glasses on certain task oriented jobs, such
6 as, grinding and welding and such.

7 So, that's one -- I think that's the only item
8 that I was aware of that might be in addition to OSHA.

9 Q As Blair's project manager did you have
10 occasion to, also, discuss with the owner whether any
11 additional requirements for safety would be used other
12 than what was in the OSHA manual?

13 A Ask the question again, please.

14 Q I'm sorry. As Blair's project manager, the
15 person with Blair in charge of this job, did you have
16 occasion to speak with the owner's representative, Mr.
17 Grady, about whether anything over and above what was in
18 the OSHA manual would be required in the way of safety?

19 A Yes, sir. We talked. The only item that ever
20 came up was the safety glasses' issue.

21 Q All right, sir.

22 A That was the only item that -- that we were
23 saying it might be in addition to OSHA.

24 Q I'm going to show you a document dated April
25 29, 1994, and ask if you can identify this document, which

1 I have marked as Plaintiff's Exhibit 20?

2 A Yes, sir. This is a letter under W. S.
3 Construction's letterhead addressed to Blair Construction,
4 Ken BeCraft, from W. S. Construction in reference to
5 Abbott Labs.

6 Q Read that for the jury, please.

7 A It -- it says based on the strict safety
8 guidelines relating to the above-referenced job we will
9 have an increase for quote of one three ninety-four by
10 seventy-five thousand dollars. These are extra costs that
11 were not taken into consideration on the bid day.

12 Thank you.

13 I received this by fax on April 29th, the day
14 that it's dated. I received it by fax in Blair
15 Construction's office in Lynchburg, Virginia.

16 MR. SHREVE: If it please the court, I would
17 move for the introduction of Plaintiff's Exhibit 20,
18 a fax from W. S. Construction dated April 29, 1994.

19 THE COURT: All right. It will be admitted.

20

21 BY MR. SHREVE: (Continuing)

22 Q Mr. BeCraft, what, if anything, did you do when
23 you received that faxed message from Mr. Weatherford?

24 A I immediately called W. S. Construction and
25 talked --

1 Q With whom did you speak?

2 A I talked with Randy Weatherford.

3 Q Okay.

4 A I told him that I had just received this fax
5 and that I was shocked, that I was totally caught off
6 guard as to why he's adding -- wanting to add seventy-five
7 thousand dollars to -- to his contract, that he would need
8 to -- if there was something that was in addition to OSHA
9 that he was seeing that would require this extra dollars
10 to, please, let me know and I would be glad to go back to
11 Everett Grady, the appropriate Abbott people, and sit down
12 with them, even to have him with me and go over it.

13 I wanted to know what the -- what the
14 seventy-five thousand dollars was for.

15 I mean he had not during our meeting on the
16 twenty-seventh indicated anything to me that, hey, this
17 is, you know, in addition to OSHA or more than what the
18 industry calls for and I just asked him to let me know why
19 he's coming up with this and I'll be glad to sit done with
20 Everett Grady, with Abbott, and get it resolved.

21 Q Now, what, if anything, was his response when
22 you told him that?

23 A I told him what in addition to OSHA was going
24 to be required. He said, well, Ken. He said I've got
25 that manual. He said, you know, they are going to be --

1 they are going to be watching us. He said Randy said --
2 you heard him say that they are going to do inspections
3 once a week just to make sure we're being safe.

4 I said, well, Randy, I've got to know what in
5 addition to OSHA. I said I can't ask for seventy-five
6 thousand dollars more money just because they are going to
7 watch us build the building or come out and inspect us.

8 He agreed that he would get back with me on
9 Monday. I said, Randy, this is -- I said we got to
10 resolve this real quick.

11 Q Now, what day of the week was it when this fax
12 came in?

13 A This was a Friday afternoon.

14 Q What time did you talk to Mr. Weatherford?

15 A I just recall it was in the afternoon. I don't
16 know what time.

17 Q Go ahead.

18 A I said we got to resolve this immediately. I
19 said I've got a building coming -- coming and I said,
20 again, we'll sit down and talk with Abbott. If you've got
21 concerns, let me know what they are.

22 But he agreed that he would call me Monday and
23 we would go over what his concerns were.

24 Q Now, Monday would have been the third of May or
25 thereabouts?

1 A Yes.

2 Q Did he, in fact, call you that day?

3 A No, sir.

4 Q What was your next contact with Mr.

5 Weatherford?

6 A On Tuesday I tried to call, which I believe was
7 the third, and he was not in the office. He was not
8 available, on Tuesday.

9 On Wednesday the fourth I was becoming quite
10 nervous and I called his office again and, again, he was
11 not in his office. His secretary said he was on the road
12 that day. He was en route to a job in Winston Salem.

13 I told her my concern. I had to talk with him.
14 I had a building coming in the following Monday.

15 She gave me his mobile telephone number and I
16 immediately called that number as soon as I hung up and --
17 and was able to talk to Randy Weatherford.

18 Q Now, what, if anything, did you say to Mr.
19 Weatherford and what did he say to you in that
20 conversation?

21 A I said, Randy, I haven't heard from you. We
22 talked last Friday. I said we need to get resolved what
23 your concerns are so I can go back to Abbott and he said,
24 Ken, I'm not going to do the job. I said, Randy's, you're
25 not going to do the job? I said where in the world would

1 I find somebody to erect a three hundred plus -- three
2 hundred thousand plus square foot building in three or
3 four days? He said I've talked with some people that will
4 be calling you and hung up.

5 Q Did you have any contact with him after that
6 point in time?

7 A No, sir.

8 Q Was there anything particularly urgent about
9 getting this matter resolved with Mr. Weatherford right
10 then and there?

11 A Well, this was a Wednesday before the -- like I
12 said earlier, eleven or twelve or thirteen tractor-trailer
13 loads of steel was coming in on Monday the ninth with a
14 tremendous schedule that called for steel to be being set
15 immediately with the occupancy date that Abbott was
16 requiring.

17 So, --

18 Q Why couldn't --

19 A So, my immediate concern was to try to get
20 something going on making arrangements for somebody to get
21 this steel unloaded that was coming in.

22 Q Why couldn't you have put the building on hold?
23 Why couldn't you have called Varco-Pruden and said wait a
24 minute, don't send the steel down, I have something to
25 work out here?

1 you're building will be delivered on May the ninth. He
2 said I'm -- I'm erecting other Varco-Pruden buildings and
3 he said they are running a week late on all of them. He
4 said your building is going to be there on May the ninth
5 and he was exactly right.

6 Q During those conversations when he said -- when
7 he predicted that the schedule would be bumped by a week
8 did he ever indicate to you an unwillingness to perform
9 his part of the contract?

10 A None whatsoever.

11 Q Now, what did you do then after you made these
12 efforts and, finally, caught up with Mr. Weatherford?
13 What did you do when it became apparent to you that he was
14 not going to do the job?

15 A Well, the only other contractor that -- steel
16 erection contractor that I had talked with that was
17 familiar with this building was Pro-Erectors and
18 Pro-Erectors was currently working on a job for Blair
19 Construction in the -- in the South Boston, Halifax area.

20 Q Was that the Huber job?

21 A The Huber job, yes, sir, which is a very large
22 building, another project that happened at the same time
23 as Abbott Labs. I knew the answer, but I went ahead and
24 called Pro-Erectors immediately just --

25 Q With whom did you speak?

* of mind that Pro-Erectors could not do the job, not
* for the truth of it.
*

BY MR. SHREVE: (Continuing)

Q Mr. BeCraft, based upon your understanding from
Pro-Erectors that they could not do the job had anyone
else bid this job?

A To Blair Construction?

Q Right.

A Not the entire job, no, sir.

Q All right.

A Nobody -- no, other contractor had bid the
entire -- setting the steel and siding and roof.

Q So, it was Pro-Erectors and Mr. Weatherford and
that was it?

A Yes.

Q What did you do after you went to Pro-Erectors
in an effort to get this building put up?

A I called a company called Iron Erectors. The
gentleman's name is Ricky Ferris.

Q How did you know to call him? Why did you call
him?

A Mr. Ferris is a -- is a -- had been in the
office I want to say a month prior just saying that if we
ever had any erection work that he would be interested in

1 helping us.

2 It might have been two weeks prior to that. He
3 just indicated that he was in the business of steel
4 erection and would welcome an opportunity and he was --
5 had formerly worked with Commercial Steel in Lynchburg.
6 He was -- had his own company and was in Lynchburg.

7 Q So, did you then contact him?

8 A I contacted him.

9 Q And what, if anything, did you ask him to do?

10 A I asked him to come to the office and sit down
11 with me and -- and just talk about this building, this
12 schedule, this circumstance.

13 Q As a result of that meeting did Mr. Ferris
14 agree to undertake to erect this building?

15 A Mr. Ferris indicated he had twelve to fifteen
16 employees, that this would be a very big job for him, that
17 he could not -- he could not promise to erect the building
18 for the amount of dollars that was in my contract to -- to
19 erect it, that he would be glad to jump in and start
20 helping, that he would do the best he could, but he could
21 not lose money on the job and that he would have to
22 probably put on five or six more men at a minimum to get
23 into this job and start helping Blair Construction.

24 Q What sort of pricing arrangements did you reach
25 with Mr. Ferris?

1 A He agreed to just bill us on his time and
2 material cost during the course of the project and we
3 would see how it goes.

4 Q Did you make regular progress payments to him?

5 A Yes, sir, every -- I believe it's twice a
6 month.

7 Q Okay. Did you have any sort of written
8 agreement with him for the erection of this building?

9 A No, sir.

10 Q During the course of the building going up did
11 you have to contact other steel erectors to assist in
12 constructing the building?

13 A Yes, sir.

14 Q Who did you contact and when, just briefly?

15 A I went back to Pro-Erectors when it got to the
16 point where the roofing needed to start going on and we
17 were being asked to even expedite the schedule more so,
18 again, in other words, get a certain area of it ready
19 quicker than the September 5th.

20 Q And who was asking you to do that?

21 A Abbott Labs.

22 Q All right. Go ahead.

23 A So, again, working with Pro-Erectors and
24 knowing how -- how they were working with Blair
25 Construction at Huber I got back with Bob Golliher at

1 Pro-Erectors and told Bob that we -- that the red iron,
2 the structural steel, was being set.

3 At this point this was about the beginning of
4 June. So, approximately, three weeks of steel erection
5 had been going on. So, I got back with Pro-Erectors and
6 asked if they would be able to put any men on the job to
7 start putting the roof on.

8 Q And did they, in fact, supply men for that
9 purpose?

10 A Yes, sir.

11 Q Were there others who, also, you had to contact
12 in order to help out?

13 A Yes, sir.

14 Q And who were they?

15 A Well, next chronologically -- Blair
16 Construction has -- we do alot of these Varco-Pruden
17 pre-engineered metal buildings and the more common or the
18 more typical building that we build -- the more popular is
19 a smaller building. There's not alot of seven acre
20 buildings being built in Central Virginia.

21 So, we had -- Blair Construction has a crew of
22 five to seven men that would put Blair Construction --
23 Blair Construction would erect a ten thousand, twenty
24 thousand square foot building -- pretty typical.

25 This particular project at Abbott was way to

1 large for -- for our crew with the schedule. So, we had
2 Blair Construction's crew come in and do some of the
3 siding as -- as we were trying to keep on the schedule
4 that was being required.

5 Q Now, did you have to take them off another job
6 in order to do that?

7 A I don't recall.

8 Yes, they -- Blair Construction's people --
9 Blair Construction had alot of things going on, but we --
10 Blair Construction was bringing this crew in when it could
11 see a little bit of relief on those jobs to help out on
12 this job.

13 Q All right. Was anybody else called in to help
14 with the erection?

15 A Yes. I want to say after -- maybe two-thirds
16 of the roof was put on by Pro-Erectors and Iron Erectors.
17 Iron Erectors did a little bit of roofing.

18 Q Iron Erectors being Mr. Ferris?

19 A Mr. Ferris' company.

20 Approximately, two-thirds of the roof was on.
21 Pro-Erectors had gotten to the point at the Huber project
22 that they were erecting for Blair Construction that they
23 couldn't help us anymore. They had helped as long as they
24 could. They needed to concentrate their efforts to -- on
25 the Huber job.

1 So, when Pro-Erectors left a company called "T"
2 & "R" Hill we contacted and -- and they were able to send
3 some erection people to finish the roof.

4 Q So, I take it then Pro-Erectors, Blair
5 Construction's crew under the guidance of Charlie Parsons
6 I believe --

7 A Yes.

8 Q -- and "T" & "R" Hill and Mr. Ferris of Iron
9 Erectors were the four entities that participated in
10 building this building?

11 A That's correct.

12 Q All right. Was everything they did supposed to
13 be within the scope of Mr. Weatherford's contract?

14 A Yes, sir. We -- we had -- at the end of the
15 project, which I don't think we identified as extra costs
16 -- we had some work that was done at the end of the
17 project, a conveyor tunnel that was built that --

18 Q That's a separate project?

19 A It was a separate project that happened at the
20 end.

21 So, I don't know if I need to -- to mention
22 that. That was not brought into these --

23 Q That's not apart of the damages that Blair
24 Construction is claiming in this at all?

25 A No.

1 Q That's a completely separate project?

2 A Yes, sir. But it was something that took place
3 at the end of the project.

4 Q Mr. BeCraft, --

5 A And there was -- the question you asked about
6 the scope of his work --

7 Q Yes.

8 A There was some damages that had to be repaired
9 as a separate cost to Mr. Ferris. There was some damages
10 on a piece of equipment that hit a roof that --

11 Q But that was his cost?

12 A Yes.

13 Q Okay.

14 A That was -- that was part of Iron Erector's
15 cost.

16 Q All right. Were safety nets required for the
17 roofing on this job?

18 A Fall protection was required on this job
19 meaning --

20 Q Were safety nets used at any point in time?

21 A Approximately, halfway through the roof to
22 two-thirds through the roof a decision was made to hang
23 some nets under the area of the roof that was just being
24 installed.

25 Q Who paid for the safety netting?

1 A Blair Construction.

2 Q Okay. Did you as the general contractor or to
3 your knowledge did any of the subcontractors on this job
4 have any problems complying with the OSHA safety
5 standards?

6 A None, no, sir. We were just keeping an eye --
7 like any other project. We were keeping an eye on it in
8 reviewing with Abbott, just -- nothing unusual, no, sir.

9 Q And has Blair Construction settled up and paid
10 in full for all the steel erection work that was done on
11 this building?

12 A Yes, sir.

13 MR. SHREVE: Your Honor, I don't have any
14 further questions for this witness. .

15 Thank you, Mr. BeCraft.

16 THE COURT: All right. Mr. Garrett.

17

18

19

20 CROSS EXAMINATION

21 BY MR. GARRETT:

22 Q Mr. BeCraft, I think you said that you're vice
23 president of Blair Construction and have been for six and
24 a half years.

25 Is that right?

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MR. GARRETT: But right now I'm dealing with the certification page, which is at the end.

MR. SHREVE: Thank you.

BY MR. GARRETT: (Continuing)

Q What does that say?

A It says that I hereby certify that the answers to the foregoing interrogatories are true and correct to the best of my knowledge, information, and belief.

Q And you signed that.

Is that correct?

A Yes, sir.

Q And it's notarized.

Is that correct?

A Yes, sir.

Q And my question to you on interrogatory three was, please, state when Blair Construction, Inc., submitted a bid to Abbott Laboratories based on W. S. Construction's proposal and what was your answer?

A Bid to Abbott was made January 3rd, 1994.

Q All right. Was that correct or was that an

1 error?

2 A That was an error.

3 Q All right.

4 A The bid was made -- was received by Abbott on
5 the fifth.

6 Q Now, I think you, also, testified in your
7 direct examination dealing with the -- there's alot
8 here -- with the phase one drawings that they were not the
9 kind of item that could be sent by telefax, by fax
10 machine.

11 Is that right?

12 A I believe I answered I don't think -- I don't
13 believe I telefaxed them. I believe I mailed them.

14 It could be that I telefaxed a portion of them
15 or telefaxed a copy of the transmittal to let Mr.
16 Weatherford know they were coming.

17 Q I think you testified you either mailed them or
18 sent them by UPS. You were not likely to fax those.

19 Is that correct?

20 A I believe that's what I said earlier.

21 Q Are you aware in your interrogatory number four
22 that you, in fact, indicated that these were telefaxed?

23 A I don't recall.

24 Q My question in interrogatory four, which you
25 signed the same certificate for, was, please, state when

MR. FERRIS: Yes, sir.

THE COURT: All right. I'm recognizing you to be back here at nine o'clock in the morning and if you don't do that, of course, it's a matter that the court can cite you for.

Do you understand that?

MR. FERRIS: Yes, sir.

THE COURT: Okay. All right. You're excused and we'll see you at nine in the morning.

MR. FERRIS: Okay.

MR. SHREVE: Thank you, Your Honor.

THE COURT: All right. Bring the jury in.

(Whereupon, the jury entered the courtroom at 3:40 p.m.)

THE COURT: All right. Go ahead, Mr. Garrett.

BY MR. GARRETT: (Continuing)

Q Mr. BeCraft, I think I had just asked you about the phase one drawings on April 19, 1994, and I think I had asked you -- you had said on direct examination that you were not likely to have faxed those.

Did you state that on direct examination?

A I got confused, Mr. Garrett.

1 Q That's what the question was. I agree but read
2 your answer.

3 A All right. The confirmation was telefaxed and
4 mailed April 8th, 1994, and never received back from
5 Weatherford. Phase one drawings were telefaxed April
6 19th, 1994.

7 Q Do you agree that there you stated that the
8 phase one drawings were telefaxed?

9 A That's what -- yeah, that's what that says, but
10 I -- I believe in reading all -- through all that I was
11 referring -- I meant the confirmation, because that's what
12 it was talking about prior to that.

13 Q Well, you weren't -- the only time the phase
14 one drawings went out in any form was on April the
15 nineteenth, weren't they?

16 A What I'm -- what I'm saying is what I read
17 prior to saying they were telefaxed was about the
18 confirmation. Again, I think I was referring to the
19 confirmation was -- was telefaxed.

20 Q When you said phase one drawings were telefaxed
21 April 19, 1994?

22 That's your interpretation, that you were
23 referring to April 8th?

24 A That day we went through about three hours and
25 it sounded like -- you got my twisted around.

1 Q No, sir. No, sir. This isn't the depositions
2 at all.

3 These are questions that were asked by Mr.
4 Shreve in his office and you gave your answers. I wasn't
5 present and you signed them.

6 A Right.

7 Q And that's the answer you gave.

8 A Okay.

9 Q And my question is did you telefax phase one
10 drawings on April 19, 1994, or not?

11 A I don't -- I don't recall. I would think not.
12 Those were bigger drawings. They would have
13 had to have been reduced down to small pieces to be
14 telefaxed.

15 I don't recall telefaxing them.

16 Q So, to the extent this interrogatory answer
17 says, quote, phase one drawings were telefaxed April 19,
18 1994, you do not believe that is correct?

19 A I'm not sure. I don't recall telefaxing them
20 at this point. I'm thinking that's not -- that's probably
21 not correct. I don't recall. I don't remember them right
22 now being telefaxed.

23 Q And you answered these interrogatories --

24 A I remember the confirmation being telefaxed.

25 Q And you answered these interrogatories,

1 apparently, on May the fourth of 1995.

2 Is that right?

3 A I believe so.

4 Q All right. Now, when you sent your
5 confirmation as you term it on April the eighth you have
6 attached as Plaintiff's Exhibit 16 a cover letter to it.

7 Is that correct?

8 A I believe so.

9 Q Which is asking that Randy Weatherford sign and
10 return one copy.

11 I'm not trying -- this is Plaintiff's 16 right
12 here.

13 A Yes, sir. That's correct.

14 Q And this is the April 8, 1994, confirmation
15 that you sent back, correct?

16 A That I sent to Mr. Weatherford, yes, sir.

17 Q Yes. Now, you say that this is a standard
18 form.

19 Is that correct?

20 A Yes, sir. That is a Blair form.

21 Q Do you always "X" out acceptance?

22 A No, sir. If I had not had all the prior
23 dealings and we had already worked things out and this was
24 the first time I ever talked or dealt with anybody, it
25 might have been acceptance.

1 Q But you changed the word acceptance to
2 confirmation.

3 Is that correct?

4 A Yes, sir.

5 Q And, of course, it had the space at the bottom
6 to be accepted by and the title of the individual
7 accepting.

8 Is that correct?

9 A I believe so.

10 Q All right. Did you mail anything else with
11 this confirmation with this cover letter?

12 A I don't recall mailing anything else.

13 Q Do you recall testifying in the
14 interrogatories, specifically, on interrogatory two that
15 you sent a copy of page one of Randy Weatherford's
16 proposal with that that day? Do you recall testifying to
17 that?

18 A I don't recall that, no, sir.

19 Q I direct your attention to interrogatory two.
20 I'm just interested really in the provision that's
21 underlined in red.

22 A You're referring here?

23 Q Yes.

24 (Pause)

25 A Okay.

1 Q All right.

2 A It is standard procedure to send a copy of that
3 with the confirmation or acceptance.

4 Q Well, I'm not asking about standard procedure.
5 I'm asking what --

6 A I don't recall.

7 Q -- you did.

8 A I don't recall. I don't recall if it went with
9 it. This has been two years. I don't recall today.

10 Q All right. Well in May of 1994 you testified
11 that you did.

12 A Okay.

13 Q And you're saying now you don't recall.
14 Is that correct?

15 A That's -- that's correct. Yes.

16 Q What day did you view that you had a contract
17 with Randy Weatherford or W. S. Construction?

18 A On the fourth of January when I called to just
19 confirm that -- that he was okay with his proposal and
20 price and that I was turning -- sending the proposal out
21 to Abbott Labs.

22 Q Well, how could you have a contract with him on
23 January 4, 1994, when you didn't even know yourself that
24 you had a contract until the end of February or early
25 March of ninety-four?

1 A Well, I guess I'll restate it and say that I
2 had a contract subject to Blair Construction being awarded
3 the job. We had an understanding.

4 Q All right.

5 A That's what I based my proposal on, using that,
6 Mr. Weatherford's proposal.

7 Q My question, again, is when do you think you
8 had a contract with Randy Weatherford or W. S.
9 Construction?

10 I'm not trying to badger you. I'm just -- I
11 understood you to say January 4, 1994, and now you're
12 saying at some later date.

13 I'm just asking you when you thought you had a
14 definite meeting of the minds, complete agreement on all
15 terms.

16 A I think we had a meeting of the minds when Mr.
17 Weatherford submitted that proposal and I called and gave
18 him an opportunity to -- to change it or review it or
19 confirm and -- subject to Blair getting the contract I
20 think we had a contract then.

21 Q So, there was a contract subject to a
22 condition.

23 Is that what you're saying, that is the
24 condition of you getting the other contract?

25 A I guess you can say that.

1 Q And you say that's based upon your conversation
2 with him.

3 Is that correct?

4 A On receiving his proposal -- proposal and I
5 believe two conversations the day I received it.

6 Q Well, the day you received it was January 3,
7 1994.

8 Is that correct?

9 A Yes, sir.

10 Q And you indicated that you called on the phone
11 and talked with him at some length.

12 Is that correct?

13 A On the third?

14 Q On the third.

15 A Yes, sir.

16 Q All right. Now, do you remember my asking you
17 questions at the deposition at Mr. Shreve's office on
18 September 12, 1995, as to all telephone conversations?

19 A I recall you wanting to know about what
20 happened in every telephone conversation.

21 Q And do you remember that I asked before lunch
22 and we, actually, gave you during lunch to compile all
23 your telephone bills and records so you could give me
24 exact dates and times and the lengths of all telephone
25 calls?

1 A Yes, sir.

2 Q Would it surprise you that there was no mention
3 in your testimony on September the twelfth, 1995, of any
4 phone call whatsoever on January 3, 1994?

5 A Yes, I guess it would surprise me.

6 Q Do you wish to look at the deposition to
7 confirm that it isn't there?

8 A I'll be glad to look through.

9 Q Do you think you need to?

10 A Well, I -- what I was -- what I had in Mr.
11 Shreve's office that day was telephone logs of -- listing
12 of calls from Blair Construction and I don't recall
13 whether this was a call from the job site or whether it
14 was a call from -- from -- which office. I don't know.

15 Q Didn't you, also, have the logs from your car
16 phone as well?

17 A Yes, from the car phone.

18 Q I asked you for specific conversations, any and
19 all that you could remember.

20 (Pause)

21 Q I tried to ask in chronological order. We went
22 out a couple of times.

23 (Pause)

24 Q Mr. BeCraft, are you satisfied that it's not in
25 there?

1 A I have not run across it, no, sir.

2 I was going from a -- again, a log of my car
3 phone and the Lynchburg office. I don't recall if it was
4 from the Gretna office or -- or the site office.

5 Q And you didn't make any notes during any of
6 these phone calls, did you?

7 A No, sir.

8 Q And when you testified --

9 A Wait a minute. You say during any of the phone
10 calls? Is that what you asked?

11 Q Yes. That's what I'm asking.

12 A Probably -- I don't think I made a note that
13 would, specifically, say the date and time of a telephone
14 call when that information was received, but I could
15 probably find you information that was a result of a phone
16 call.

17 Q Back to my question.

18 Have you kept notes that were made at the time
19 of the phone calls?

20 A No, sir.

21 Q And, basically, everything you're testifying
22 about the phone calls is from your memory.

23 Is that correct?

24 A And some telephone logs in some cases.

25 Q And the --

1 A Mostly -- mostly from memory as far as the
2 content.

3 Q And the way you testified at your deposition is
4 you got the time and read the date and the length of the
5 call and then you said what you thought it was about.

6 Isn't that correct?

7 A I believe I -- there was some that I probably
8 told you that I wasn't sure what the content of it would
9 have been about.

10 Q In fact, there were alot of them when you said
11 you weren't even sure you had reached him.

12 Is that correct?

13 A That's correct. There were alot of calls that
14 were just listed as one minute calls.

15 I do know that many times I called Mr.
16 Weatherford and he was not available.

17 Q All right.

18 A So, I'm sure that came up on the phone bills as
19 being a -- like a one minute call.

20 Q In all of this conversation about all of these
21 phone calls, which covered some twenty some odd pages in
22 this deposition, did you ever talk about the aggressive
23 price and how he wanted to get this job badly and he
24 wanted to keep his workmen here locally?

25 Did you ever mention that in your deposition

1 when you talked about all those phone calls?

2 A I didn't see it when I went through that right
3 there.

4 Q Now, you, also, say that you confirmed his
5 price on January the fourth.

6 Is that correct?

7 A Mr. Garrett, can I back up?

8 Q Yes.

9 A To the prior question?

10 Q Yes.

11 A About the phone call?

12 Q Yes.

13 A It might have been that Mr. Weatherford called
14 me. I know we had a telephone conversation that day.

15 So, --

16 Q Are you talking about January the third?

17 A January the third.

18 Q Well, your direct examination was I called on
19 the phone.

20 A That's what I remember. That's what -- I
21 remember talking with him and I'm remembering I called him
22 but he and I did talk after I received that proposal.

23 Q But there's no evidence -- or you didn't tell
24 us at the deposition any time about aggressive pricing and
25 the fact that he wanted to get this job badly so that he

1 could keep his workmen close to Danville, nothing like
2 that in any of those phone calls you discussed?

3 A I didn't see it in what I just read, no.

4 Q Now, the phone call that you say that you had
5 with him on January the fourth -- how long did it last?

6 A I don't recall. It was very, very brief.

7 Q It was less than a minute. It was point seven
8 of a minute, wasn't it?

9 A I think that's what I recall the telephone log
10 from McKinny's office saying.

11 Q And that was a long distance phone call from
12 Ashland?

13 A Yes, sir.

14 Q And what was said in point seven of a minute?

15 A Basically, I said I'm turning in my proposal,
16 are you comfortable with your price, and the answer was
17 affirmative.

18 Q Okay.

19 A In the affirmative.

20 Q Now, when did you say that you first met Randy
21 Weatherford?

22 A On January the thirty-first he came to the
23 Gretna office and I was able to meet him.

24 Q Do you remember my asking in another
25 interrogatory, and this would be Interrogatory Number 9,

1 when you stated that there was no face-to-face meeting
2 until a meeting with Everett Grady at the job site?

3 A I do recall that.

4 Just a couple of days after we did these
5 interrogatories I told Mr. Shreve that there had been a
6 meeting that he and I just had a face-to-face meeting on
7 January 31st in the Gretna office that I forgotten about
8 when you asked this question and -- it -- it was a
9 face-to-face meeting. He came to the office and we met
10 for ten or fifteen minutes just to go over where we were
11 on the job.

12 Q So, this answer was given in error in May, but
13 you say that you straightened it out just a few weeks
14 later and you were certain a few weeks later that there
15 wasn't another meeting -- or, pardon me, that there was
16 another meeting?

17 Is that what you're saying?

18 A It was after you asked -- I'm getting confused.
19 Are you talking about -- when you asked me.

20 Is that what you were showing me?

21 Q No, sir. These are the interrogatories that
22 you answered under oath.

23 A I'm getting confused between the
24 interrogatories and the depositions.

25 It was after the deposition that I recalled

1 that.

2 Q And, of course, you testified at the deposition
3 that the only meeting that you may have met was the one in
4 April with Mr. Grady?

5 A Right. That's -- right after that meeting was
6 when my secretary pointed out that we had had the
7 thirty-first meeting -- the meeting on January 31st and I
8 do recall that.

9 THE COURT: Excuse me just a minute, Mr.
10 Garrett.

11 Members of the jury, there's alot of discussion
12 about depositions and interrogatories and it occurs
13 to me that maybe I better tell you what the
14 difference is between the two, because I think you're
15 going continue to hear these terms during the course
16 of this trial.

17 Interrogatories are written questions, which
18 are submitted by one party to a case to another to
19 answer under oath; in other words, it's just like we
20 write down a group of questions and say answer them
21 and swear to your answers.

22 That's what an interrogatory is.

23 Depositions are where a witness is summoned
24 to -- usually to one lawyer's office or another and
25 the lawyers ask the witness questions about facts

1 that may come out in the case.

2 That's what a deposition is.

3 Both of these are approved procedures under the
4 rules of court that the courts and the attorneys
5 operate under in the State of Virginia. It's a
6 customary procedure.

7 They are more or less the same thing but done
8 in different forms; one you have written answers and
9 the other you have oral answers and those oral
10 answers are taken down by a court reporter just like
11 we have here today and they are typed. That's what
12 happens with the depositions.

13 All right. Go ahead, Mr. Garrett.

14 MR. GARRETT: Okay. Thank you, sir.

15

16 BY MR. GARRETT: (Continuing)

17 Q Now, I think you indicated on this confirmation
18 that you sent out to Mr. Weatherford in response to his
19 proposal or bid of January 3, 1994, that you added the ten
20 thousand nine hundred square feet and just came up with a
21 price that you thought was appropriate based on the square
22 footage of the overall project.

23 Is that right?

24 A I talked with -- I -- I unit -- I did a unit
25 rate calculation and I did confirm. I talked with Mr.

1 Weatherford on one of those phone calls and told him
2 that -- that I had come up with that and he agreed that
3 that was a good -- a good figure.

4 Q You're saying he agreed to this figure?

5 A Yes, sir, verbally on the telephone.

6 Q Okay. Who is your secretary or who was your
7 secretary at that time?

8 A It would have been Ellen Newman or Debbie
9 Rogers.

10 Q Who is Martha Maddox?

11 A She was the secretary at the site, at the
12 office trailer.

13 Q All right.

14 A Ellen Newman and Debbie Rogers are in the
15 office in Lynchburg.

16 Q And Martha Maddox would have been the one who
17 sent out the minutes if they were sent out.

18 Is that correct?

19 A Yes, sir.

20 Q Does she have any relation to any of the other
21 parties to this proceedings? Is she a girlfriend of any
22 other member?

23 A I think during the course of the project she
24 became friends with Ricky Ferris.

25 Q Now, I think you indicated when you had the

1 meeting on April 27 with Everett Grady that that was the
2 first time that you and Everett Grady and certainly Mr.
3 Weatherford had met together.

4 Is that correct?

5 A That is correct.

6 Q I guess it would have been what, the second
7 time you had ever met Mr. Weatherford?

8 Is that right?

9 A I believe so.

10 Q All right. And you indicated on direct
11 examination that money was not discussed at that meeting?

12 A I don't recall money being discussed at that
13 meeting.

14 Q Well, I'm going to direct your attention,
15 again, to your interrogatory number twelve when I said or
16 when I asked, please, state when any statements made by W.
17 S. Construction or Weatherford to Blair Construction,
18 Inc., that might constitute constructive fraud was said in
19 the contents of any such statement.

20 Now, if you would, read your answer.

21 A (The witness complies.)

22 (Pause)

23 Q Out loud.

24 A Okay. When defendant's bid was submitted and
25 each and every time the job was discussed including after

1 the -- after the meeting with Everett Grady when
2 Weatherford told Kenneth BeCraft that there should be
3 money added to do the job due to strict safety
4 requirements.

5 Q All right.

6 A After the meeting.

7 Q Well, it says including after the meeting with
8 Everett Grady when --

9 A Including after the meeting. That's the way
10 that was intended, after the meeting, including the time
11 after the meeting when he sent the fax.

12 Q You're stating that the conversation regarding
13 money occurred afterwards and did not occur in front of
14 Everett Grady?

15 A That -- it was after -- after we had met he
16 sent a fax to me on the twenty-ninth, Friday.

17 Q I understand that, but the issue is was the
18 money discussed in front of Everett Grady?

19 A I don't recall any issue being discussed about
20 money.

21 Q So, you're saying --

22 A I don't recall any issue with Mr. Grady.

23 Q You don't recall any fact about seventy-five
24 thousand dollars being raised in front of Everett Grady
25 and his, basically, saying, well, that's between Blair

1 Construction and Randy Weatherford, our contract is with
2 Blair Construction?

3 You don't recall anything like that?

4 A It didn't register with me if he said anything
5 like that. I don't remember him saying he ought to add
6 money.

7 When I got the fax on the -- after the meeting
8 on the twenty-ninth is when --

9 Q So, you're saying your recollection of money
10 was not discussed at the meeting with Everett Grady.

11 Is that correct?

12 A I do not recall any -- any --

13 Q Well, I'm asking you to think about it and be
14 sure.

15 A I do not recall any talk about money, that he
16 would have to add money to his contract.

17 Q And the only people that would have been there
18 to hear the contents of the conversation would have been
19 you and Mr. Weatherford and Everett Grady.

20 Is that correct?

21 A That's correct.

22 Q When did you provide the safety manual to Randy
23 Weatherford?

24 A Mr. Weatherford -- Mr. Grady provided the
25 safety manual I believe for the first time at that April

1 27th meeting.

2 Q Okay. And if you stated in your
3 interrogatories April 22nd, and this would be
4 Interrogatory Number 16, that would be in error, too?

5 A If it says twenty-second. It should be the
6 twenty-seventh.

7 Q Twenty-seventh?

8 A Yes, sir.

9 Q All right.

10 (Pause)

11 A The meeting was April 27th.

12 Q Okay. So, this was done in error as far as the
13 date of the meeting.

14 Is that correct?

15 A It looks like it was.

16 Q Now, did you ever receive page two of the faxed
17 proposal of January 3, 1994?

18 A I don't -- I do not recall receiving page two.

19 Q You're not stating you didn't get it? You're
20 just stating you do not recall receiving it?

21 A I do not recall -- we did not -- I did not
22 receive it.

23 During the course of depositions or
24 interrogatories, during one of those processes, I believe
25 it was made available for me to see.

1 Q I asked you this at your deposition on page
2 twenty-seven and your first answer when I asked you did
3 you receive page two -- your answer was, no, sir.

4 Then my second question is stating under oath
5 you did not receive page two and your answer was to the
6 best of my knowledge I did not.

7 Then I asked you again. I'm asking you under
8 oath and you're saying to the best of your knowledge and
9 your answer is I do not recall receiving it.

10 A Right.

11 Q Did you get it? Do you just not know? I mean
12 where do we stand on it?

13 A I don't -- I do not recall ever receiving it.
14 If it came into the office, I do not recall receiving it.

15 Q Well, when did you notice that it was one of
16 two?

17 A I don't recall.

18 Q You don't recall that either?

19 A No, sir.

20 Q Did you recall prior to submitting it to Abbott
21 Laboratories?

22 A No, sir.

23 Q Now, when we discussed this case on September
24 12, 1995, when we were taking depositions, that is you
25 were testifying, were you able to locate the fax that you

1 had received from Randy Weatherford?

2 A The April 29th fax?

3 Q Yes, which is Plaintiff's Exhibit Number 20.

4 A I found that after those proceedings.

5 Q You concede you did not have that at the time.

6 Is that right?

7 A I -- I had received it. I knew I received it.

8 I could not find it.

9 Q Why wasn't it in the job file?

10 A I don't know.

11 Q I think you, also, testified at the deposition
12 that you thought the figure was sixty thousand rather than
13 seventy-five.

14 Is that right?

15 A I -- that's correct. I -- I had recalled
16 getting the fax from Randy Weatherford wanting more money
17 and that I couldn't find that fax, but I did find it after
18 those proceedings.

19 Q Now, I think we've established that you didn't
20 have it in the file.

21 Where did you find this communication, the
22 April 29 fax?

23 A It was in my top right draw under some other
24 correspondence from other things.

25 Q Was it misfiled, that is, effectively loss?

1 A I'm sorry.

2 Q Was it misfiled, that is, effectively lost and
3 you refound it?

4 A To be honest with you I think I put it there,
5 because I wanted to make sure it didn't get lost in the
6 file.

7 Q You hid it so well you couldn't find it.

8 Is that what you're saying?

9 A Maybe that's what it was.

10 Q Okay. Now, you, also, testified on direct that
11 you talked with Randy Weatherford on April 29th after you
12 received the fax indicating that you wanted some
13 justification for his increase?

14 A Yes, sir.

15 Q And do you remember we covered once again the
16 telephone records in this period of time?

17 Do you remember that?

18 A Yes, sir.

19 Q And I think there were three phone calls made
20 on April 29, ninety-four.

21 Do you recall testifying to that?

22 A I would have to read it. I don't -- I can't
23 remember on that as far as what was written.

24 Q And didn't you, in fact, testify that you
25 didn't think you had talked to him -- in fact, you knew

1 you hadn't talked to him on two of those calls and you
2 didn't think you had on the third?

3 A I -- I would have to see it.

4 Q Page ninety-two in your deposition, on April
5 29, eleven thirty-six, two minute call.

6 What was your testimony?

7 A I do not know if I talked with him,
8 specifically.

9 Q Okay. Dropping down to April 29, seven
10 thirty-two, for one minute.

11 A One minute call.

12 Q Okay.

13 A Same day at two thirty-three, a one minute
14 call.

15 Q Okay. Then I asked did you talk to him.

16 A Do you want me to read?

17 Q Yes, I want you to read your answer.

18 A I think those were just calls trying to get
19 ahold of him. I think one of the prior calls I've listed
20 indicated I talked to him on the twenty-ninth, finally,
21 later in the day.

22 Those are my calls to Mr. Weatherford.

23 Q Okay. The longest one was two minutes.

24 Is that correct?

25 A It -- it said I think one of the prior ones was

1 a called when I talked with him.

2 Q Well, --

3 A Those were so twisted around that day that I'm
4 real confused now with the way we were bouncing around
5 that day.

6 Q I tried to keep it in chronological order and I
7 gave you time to prepare it.

8 (Pause)

9 A Okay. There's an April 28th call at four
10 o'clock.

11 Q That's the day before you received the fax?

12 A Yes.

13 Q I'm not asking you -- you said in response to a
14 fax that you made a phone call and talked to him at
15 length.

16 I'm asking you where it is.

17 A I'm not sure where it is in here.

18 I was stating here that there was a sixteen
19 minute call. I would have to look back and see.

20 I don't know if the telephone company has got
21 the log straight.

22 Q You were saying there was a sixteen minute call
23 on the twenty-eighth?

24 A Uh-huh.

25 Q All right. But you didn't receive the fax

1 until the twenty-ninth.

2 Isn't that correct?

3 A I believe that's correct. It's dated April
4 29th.

5 Q All right.

6 A But there are -- again, there was --

7 Q Just answer my questions.

8 A Yes, sir.

9 Q When you talked to Mr. Grady and Mr.
10 Weatherford at the site was there any conversation about a
11 letter being provided?

12 A I do not recall.

13 Q You don't recall that?

14 A No, sir.

15 Q You don't recall Mr. Everett Grady indicating
16 that he would send a letter clarifying that Ross
17 Laboratories are not expecting anything other than OSHA
18 compliance?

19 A I recall Mr. Grady saying that that was -- the
20 book was -- contained OSHA requirements and that -- he
21 might have said that he would certify that, but I -- I
22 don't recall him saying he would send a letter to Mr.
23 Weatherford as a result of that.

24 I do recall Mr. Grady saying that that was just
25 OSHA requirements in the book.

1 Q And you're saying you do not recall anything
2 about a letter.

3 Is that correct?

4 A I don't recall him -- Mr. Grady saying he would
5 send a letter.

6 Q And you say that you were notified by Mr.
7 Weatherford by May the fifth that he would not be doing
8 the job.

9 Is that correct, on May the fifth?

10 A I'm not sure if it was the fourth or the fifth.

11 Q And the meeting you say with Mr. Grady was the
12 twenty-seventh.

13 Is that correct?

14 A That's correct.

15 Q Now, did you let Mr. Grady know that Mr.
16 Weatherford was concerned about safety and was requesting
17 additional monies for safety concerns?

18 A Not prior to Mr. Weatherford telling me that he
19 was not going to do the job, because I was waiting on Mr.
20 Weatherford to provide me information that I could take to
21 Mr. Grady and get it resolved.

22 Mr. Weatherford said he would give me
23 information substantiating that request. He did not call
24 back on Monday. When I, finally, got ahold of him on
25 Wednesday he did not offer to give me any substantiation.

* * *
1 when he wanted fall protection.

2 Q So, it was Mr. Grady's interpretation that he
3 felt like OSHA required either netting or safety belts?

4 A Yes, sir.

5 Q And had you ever used netting on a job before?

6 A No, sir.

7 Q Did you have to rent the netting to use it on
8 this job?

9 A Yes, sir.

10 Q Did you, in fact, ask for additional money to
11 be reimbursed to you for use of the netting?

12 A No, sir.

13 Q You did not?

14 A No, sir.

15 Q Are you certain of that?

16 A I might have made them aware of how much it
17 cost and gave them an opportunity to -- to participate in
18 the cost, but I didn't go into great lengths on a change
19 order request.

20 Q Well, I'm not asking about a change order. I'm
21 asking if you tried to be compensated for using the nets.

22 A I would certainly say there was an opportunity
23 where I let them know the cost of it. So, I did give them
24 the opportunity to assist in the cost, but they did not.

25 Q That was not received well, was it?

1 A No. Actually, it was received well, but they
2 just didn't carry through with it.

3 Q Well, your own wording on page eighty-seven at
4 line ten and eleven was that it was not received well.

5 (Pause)

6 A In other words, they did -- I was meaning they
7 did not give me any money. So -- I mean they didn't fuss
8 saying, heck, no, but they -- the bottom line was they did
9 not pay for it.

10 Q Did you draft any kind of additional letter or
11 make any additional phone call to Mr. Weatherford after
12 the phone call of May the fifth?

13 A No, sir.

14 Q Now, you say you tried to approach
15 Pro-Erectors.

16 Is that right, or reapproach?

17 A After that call?

18 Q Yes.

19 A Yes. I think there was a -- Blair
20 Construction -- yes, we did let them know that -- of the
21 circumstances and that they were not able to take the job
22 complete.

23 Q Now, this job was, basically, running on
24 schedule.

25 Is that correct, other than being a week

the Huber job.

Q Now, you, ultimately, -- well, let me back up to the manual.

Did you sign the safety manual on behalf of Blair Construction?

A I believe I did.

Q Okay. And was it a requirement that the sub sign it?

A I don't recall if -- if they were making the sub sign it. They were giving the manual out to -- to each sub.

Q Do you believe Abbott was asking the subcontractors to sign it?

A I don't recall. I -- I probably assumed they did, Mr. Garrett, because I signed it on behalf of Blair.

Q Once again, I'm using your wording on page thirty-seven of your deposition.

What does it say?

A I believe Abbott was asking the subcontractor to sign.

I believe they were, but I'm not positive.

Q Okay. What does it say down on lines thirteen and fourteen?

A It was my impression that Abbott was requesting each contractor to sign that.

1 Q Each subcontractor to sign that, correct?

2 A It was my impression, but I -- you would have
3 to ask Abbott about that.

4 Q You were there when they were handing out
5 manuals, weren't you?

6 A Not to all the sub -- not to all the
7 contractors.

8 The safety seminar that was required -- the
9 thirty minute video the contractor would go to and be
10 given the manual. So, I can't say that I was right there
11 when each one -- each company received it.

12 Q But in that safety agreement it provided for
13 termination of the employee if they did not abide by the
14 Abbott manual.

15 Isn't that correct?

16 A I believe so.

17 Q It provided for termination of Blair
18 Construction if you all did not abide by the manual,
19 didn't it?

20 A I believe it does say that.

21 Q And it was, basically, their idea, their
22 concern to get the nets in on the job.

23 Isn't that correct?

24 A Their idea to get the nets in?

25 Q Yes.

1 already going to be done at the time they needed it. We
2 just wanted to -- we were going to need to have additional
3 people to get the rest of the roof on.

4 That was going to -- we could -- we could start
5 that area first as opposed to another area, but in order
6 to might the overall schedule we had to get some extra
7 help.

8 Q Now, this is page -- page forty-five of the
9 safety manual, which was provided by Blair Construction
10 and most if not all of the contractors, certainly Randy
11 Weatherford, correct?

12 A If this was part of the safety manual.

13 Q It's page forty-five of the safety manual.

14 A Okay.

15 Q Under "C" it indicates that nineteen twenty-six
16 one "O" five "A" is canceled.

17 Is that correct?

18 A Yes, sir.

19 Q Then it goes down on a note at the bottom of
20 the page, doesn't it?

21 A (The witness indicates.)

22 Q What does that note mean to you at the very
23 bottom of the page?

24 A At the very bottom?

25 Q Yes, at the very bottom and read it to the jury

if you would.

A The note says even though the use of this standard has been curtailed it is strongly recommended by OSHA that the employer evaluate all operations employees are involved with at a work site to determine what hazards might exist and the appropriate measures including PPE, which may utilize to eliminate or control the hazard.

Q What is PPE for the members of the jury?

A Right off I don't -- I don't -- I don't know.

Q You don't know?

A (The witness indicates.)

Q Okay.

A I'm not familiar with that abbreviation right off.

Q All right.

A Do you want me to finish reading it?

Q If you want to.

A Well, you asked me to.

Q Go on and read it.

A All other PPE requirements, specifically, addressed by OSHA as well as the industry as recognized requirements for wearing PPE are still being enforced by the agency by utilizing specific standards for the general duty clause five "A" one.

MR. GARRETT: Judge, we would offer this as a

1 separate exhibit if we may.

2 THE COURT: What's that, that page?

3 MR. GARRETT: Yes, page forty-five.

4 THE COURT: Okay. This is will be Defendant's
5 "C".

6

7 BY MR. GARRETT: (Continuing)

8 Q Do you think that's confusing, Mr. BeCraft?

9 A I read it quickly. I would have to go back
10 through it and see -- and refer to the other -- I would
11 have to study it a little more.

12 Q Would it give you concern if you had seen that
13 before you signed on to the manual?

14 A I don't know.

15 Q You don't know?

16 A I don't know.

17 Q And Mr. Weatherford had been given the manual
18 on April 27.

19 Is that correct?

20 A Yes, sir.

21 Q The first time he was given the manual?

22 A I believe so.

23 Q And the facts of the increase for the stringent
24 safety requirements arrived on the twenty-ninth, correct?

25 A Yes, sir.

1 Q Now, when you hired Ricky Ferris to complete
2 this contract or begin on the erection -- do you remember
3 doing that?

4 A When Ricky Ferris came on board?

5 Q Yes.

6 A Yes, sir.

7 Q Did you give him an explanation as to why you
8 were not using Weatherford Steel Erection or Randy
9 Weatherford?

10 A I'm sure I did make him aware of what had
11 happened prior to that.

12 Q Did you tell him that he wouldn't commit to a
13 contract?

14 A I don't know my exact wording, but I told him
15 that I -- you know, I had a contract for Randy Weatherford
16 to do the -- do the job or Weatherford Construction and he
17 had said he wasn't going to do it.

18 Q Did you, also, tell him that he had had the
19 contract a week or possibly longer and would not return
20 the contract?

21 A I don't recall that.

22 Q You're not saying it didn't occur? You're
23 saying you don't recall it?

24 A I don't recall having that conversation with
25 Mr. Ferris.

JAMES BAILEY HENDERSON, was called as a witness, and after having been first duly sworn, was examined and testified on their oath as follows:

DIRECT EXAMINATION

BY MR. SHREVE:

Q Would you state your name for the ladies and gentlemen of the jury, please?

A James Bailey Henderson.

Q Mr. Henderson, by whom are you employed?

A Blair Construction.

Q In what capacity?

A Vice president.

Q How long have you been with Blair?

A Thirteen years.

Q And before that what were you engaged in? What sort of business were you in?

A I was a general contractor.

Q How long have you been in the contracting business?

A Forty-one years.

Q All right, sir. Did you have occasion to participate in anyway in Blair's bid on the Abbott job in Altavista?

A Only getting one recommendation.

1 Q And what exactly did you do?

2 A Ken BeCraft was preparing the bid and Mr. Blair
3 and Ken was -- asked me to check a reference for Mr.
4 Weatherford.

5 Q And did you, in fact, check that reference?

6 A Yes, I did.

7 Q And did that reference come back favorable?

8 A Yes, it did.

9 MR. SHREVE: I have no further questions.

10 MR. GARRETT: Give me just a second, Judge.

11 (Pause)

12

13

14

15

CROSS EXAMINATION

16 BY MR. GARRETT:

17 Q Mr. Henderson, I don't have many questions
18 either.

19 The reference that you were given to check on
20 was on January the fourth.

21 Is that correct?

22 A Yes, sir.

23 Q And that would be 1994?

24 A That's correct.

25 Q All right. And that was Myrick Construction.

1 Is that correct?

2 A Yes.

3 Q And you checked on Tuesday, January 4th,
4 ninety-four.

5 Is that correct?

6 A That's correct.

7 Q Okay. And the way that you are certain of that
8 is because of the fact that you have a -- some kind of
9 computerized calender.

10 Is that right?

11 A That's correct.

12 Q Okay. And at your deposition you gave us a
13 copy of that.

14 Is that correct?

15 A That's correct. Yes.

16 Q All right.

17 MR. GARRETT: I would like to have that as an
18 exhibit.

19 The only thing I added is his name down in the
20 corner when it was handed to me at the deposition.

21 Do you want me to substitute the copy?

22 MR. SHREVE: No. That's all right.

23

24 BY MR. GARRETT: (Continuing)

25 Q I want you to look at this, Mr. Henderson. The

1 only thing that I think I've added is your name down here.

2 Is all the rest of it in that either from your
3 computer or in your handwriting?

4 A This is in my handwriting, yes.

5 Q Okay.

6 A And that's from my computer.

7 MR. GARRETT: We would just make that a defense
8 exhibit.

9

10 BY MR. GARRETT: (Continuing)

11 Q And his references checked out and they said
12 they were using him and still using him.

13 Is that correct?

14 A That is correct.

15 Q And were well satisfied with him?

16 A That's correct.

17 MR. GARRETT: No further questions.

18 THE COURT: It will be Defendant's Exhibit "D".

19 All right. Anymore questions for this witness?

20 MR. SHREVE: None, Your Honor, and may he be
21 excused?

22 He is occupied at Blair working on another bid
23 now.

24 THE COURT: Any objection, Mr. Garrett?

25 MR. GARRETT: I don't think so, Judge.

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Laboratories?

A I am the construction site manager.

Q Okay. Do you, also, have a job title down there now?

A Yes. I'm, also, now the senior plant engineer.

Q Now, what does the senior plant engineer do?

A I'm in charge of the entire facilities and utilities work that all goes on at the plant.

Q All right, sir. How long have you been employed with Abbott?

A For four years.

Q Did you come down to do this warehouse project and end up staying?

A That's correct.

Q Okay. I want to talk to you just a little about your background.

Where were you educated?

A Illinois State University.

Q And what were your degrees or degree or degrees in from Illinois State University?

A I have two degrees. I have a degree in construction management and architecture.

Q So, you have a degree in each of those?

A Yes.

Q What is your background in construction

* this witness as an expert in these areas the court
merely ruled that he may testify, may give an opinion
within the areas of his expertise.

Not withstanding that you still have the duty
to evaluate the testimony of this witness just in the
same way you would any other witness, whether it's a
lay witness or whether it's an expert witness. You
need to evaluate this testimony on the same basis.

All the court has done is said that he may give
his opinion in certain areas that lay persons cannot.

Okay. Go ahead.

MR. SHREVE: Thank you, Your Honor.

BY MR. SHREVE: (Continuing)

Q Mr. Grady, are you familiar with the book I'm
holding in my hand, which is called Occupational Safety
and Health Standards for the construction industry?

A Yes, I am.

Q And this revision -- if you would look at it
and tell me what the revision date of that is.

A The revision date of this is November 1st,
1993.

Q Now, is this the revision of the OSHA standards
that was in effect at the time the warehouse or
distribution center for Abbott was built by Blair?

1 A Yes, it is.

2 Q Have there been revisions to this manual since
3 the warehouse was built?

4 A Yes, there has.

5 Q Specifically, with respect to fall protection
6 and steel erection have there been revisions since this
7 manual?

8 A Yes, there has.

9 Q Okay. Without going into the substance of
10 those revisions were the standards, the OSHA standards
11 that applied to this job the standards as outlined in this
12 November 1, 1993, document?

13 A Yes.

14 Q Okay. Are you, also, familiar with the --

15 MR. SHREVE: Your Honor, may I approach?

16 THE COURT: Yes.

17

18 BY MR. SHREVE: (Continuing)

19 Q Are you, also, familiar with the Abbott Labs --

20 THE COURT: Those are all exhibits there.

21 What are you looking for?

22 MR. SHREVE: The Abbott Labs Contractors'

23 Safety Guide, which has been introduced as

24 Plaintiff's Exhibit Number 19.

25 THE WITNESS: Yes, I'm familiar with it.

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BY MR. SHREVE: (Continuing)

Q Okay. Mr. Grady, have you had occasion to go through the Abbott Labs Contractors' Safety Guide and the Occupational Safety and Health Administration regulations for steel erection that were in effect at the time that this building was built?

A Yes, we reviewed them.

Q Have you compared those two documents?

A Yes, uh-huh.

Q Does the Abbott Laboratories Contractors' Safety Guide require anything more than what is in the Occupational Safety and Health Standards for construction?

A Yes. The -- the Abbott Contractors' Safety Guide contains the Abbott Laboratories -- certain policies and standards that we put on there that may not be found in the OSHA guidebook.

Q And can you outline those for the jury?

A Basically, those are policies that we put in there that we ask for, such as, no smoking. We allow no smoking on our premises. There's no eating or drinking. We have a certain badging system where they would have to wear a badge.

The biggest thing that we would require that's not in the OSHA manual is safety glasses. We require

1 contractors to wear safety glasses one hundred percent of
2 the time.

3 Q Okay. And I believe that there's, also, a
4 requirement that the contractors attend a seminar -- a one
5 time safety seminar?

6 A That's correct. Before they come on site they
7 have to review our Abbott -- like a thirty minute film.
8 They see a film and then they are given a small
9 presentation with slides just, basically, going over the
10 policies about no smoking, no tobacco, where to eat, where
11 to drink, where to park and then after they do it they
12 receive a badge on -- which we know they've been through
13 that program.

14 Q Other than those requirements is there anything
15 in the Abbott manual that's not already in the OSHA
16 standards that applied to this job at the time this job
17 was done?

18 A No. As far as safety and safety procedures --
19 everything as far as what's in here is -- is tailored
20 after the OSHA manual.

21 Q And nothing more restriction or burdensome in
22 the Abbott manual than is in the OSHA manual.

23 Is that correct?

24 A No, sir.

25 Q Okay. I'm going to direct your attention to a

1 document called Contractors' Safety Agreement that's been
2 introduced as Defendant's Exhibit "B" and ask you if
3 that's, actually, a part of the manual that's given to
4 people.

5 A Yes, it is.

6 Q Now, that Contractors' Safety Agreement on this
7 particular job was to be signed by who?

8 A By Blair Construction.

9 Q Anybody else?

10 A No, because what we -- what we tell -- we have
11 what -- we breakup the different contractors. We don't
12 give just usually one contractor a contract and he go out
13 and hire subcontractors. Normally we make each one of our
14 subs what we call a prime contractor. They have their own
15 contract to do the job.

16 So, we then would make each one of those folks
17 review the manual and go over them with their people.

18 On this job Blair Construction was the only
19 contractor that had an actual contract with Abbott
20 Laboratories and Blair was responsible for hiring their
21 own subs.

22 So, in this case Blair would have been the only
23 person required to sign this document for us.

24 Q Mr. Grady, do you remember having a meeting
25 with Randy Weatherford on site with Ken BeCraft on April

1 the twenty-seventh, which was a Wednesday?

2 A Yes.

3 Q Do you remember where that meeting took place?

4 A It took place in the Blair Construction site
5 office.

6 Q Who was present?

7 A Ken BeCraft, Mr. Weatherford, and myself.

8 Q All right. At that meeting tell the jury what
9 was discussed.

10 A At the -- it was the first time -- it was an
11 introductory type of meeting for me to meet Mr.
12 Weatherford. The main topic of conversation was safety.
13 Mr. Weatherford wanted to know what Ross was going to
14 require for safety and --

15 Q Let me stop you.

16 When you say "Ross" -- is Ross and Abbott the
17 same thing?

18 A Excuse me. Abbott Laboratories, Ross Products
19 Division. Ross is a division of Abbott Laboratories.

20 Q I'm sorry. Go ahead.

21 A He had asked what Ross would require more than
22 what, typically, OSHA was looking for. I asked him to
23 explain and what he had told me was he had heard that
24 Abbott - Ross was a very hard place to work at and that we
25 required more in the lines of safety than what, typically,

1 would be required of OSHA and I told him, no, that that
2 would not be the case.

3 Q All right.

4 A He still questioned me, whether or not -- he
5 honestly did not believe me.

6 He had asked me a question as far as an example
7 of what's called a hundred percent tie off. These are
8 regulations as far as what OSHA has -- OSHA has certain
9 regulations of heights on tying off. It's like a form of
10 fall protection and what it means is you tie off to
11 something or -- well, in this case tie off is a means of
12 fall protection so the fall -- so you don't fall certain
13 feet. It will keep you from falling.

14 We did not. We did not have that requirement
15 of a hundred percent tie off.

16 That means when you step one foot off the
17 ground you tie off. All right.

18 Our regulations as far as what we are looking
19 for is what was set by the minimum standards in OSHA and
20 at that time it was for -- for an iron worker it was
21 twenty-five feet.

22 So, we discussed it a little further about
23 safety and what was said during that time was -- he asked
24 me then about netting, what about netting. I said -- I
25 had told him that it could be used. It was an acceptable

1 means of fall protection.

2 There are several different means of fall
3 protection within the OSHA guidelines, but we would
4 require whatever they asked for.

5 Q Did you tell Mr. Weatherford that netting would
6 be required on this job?

7 A No, I did not.

8 It's very important for us not to tell the
9 contractor what to do. Our job or our role is to sit
10 there and say this is what we're looking for. This is the
11 way the building is designed. This is what the -- the end
12 product of what we want. Our job is to make sure that's
13 what we get, the end product.

14 It's very important for our group and my
15 engineers who work for me not to tell the contractor how
16 to do his job. We just want to make sure that he's safe
17 and that we get the end product. If we start telling the
18 contractor how to do the work, then you can see where we
19 put ourselves in certain liabilities. If it wasn't put
20 together correctly, he could say, well, you told me to do
21 it this way.

22 So, we make sure we don't do that.

23 Q And it's correct that you avoid telling them
24 how to do safety as well?

25 A Yes.

1 Q Is it your testimony that -- well, you just
2 answered that question. I'll move on.

3 During that meeting was any money discussed at
4 all?

5 A No, sir.

6 Q Did Mr. Weatherford say it's going to cost more
7 money to comply with your standards or anything of that
8 nature?

9 A No, sir, because at that time all we were
10 looking for was -- which is the minimum guidelines by
11 OSHA, which is law. They have to provide that.

12 Q And is that all you ever looked for on this
13 job?

14 A That's all we ever looked for and -- and our
15 policies.

16 Q And your policies being the safety seminar one
17 time, safety glasses, wearing a badge, eating in the right
18 place, and not smoking or using tobacco?

19 A That's correct.

20 Q And that's all that you require that's not in
21 OSHA?

22 A That's right.

23 Q After this meeting on the twenty-ninth when did
24 you become aware that Mr. Weatherford was not going to be
25 doing the steel erection subcontracting?

1 A I believe it was two or three days after we
2 met.

3 Q And how did you become aware of that?

4 A Ken BeCraft phoned me.

5 Q Okay. And what did Mr. BeCraft tell you?

6 A Mr. BeCraft had told me that Mr. Weatherford
7 was looking for additional money to do the job based on
8 the -- based on safety and I didn't really have much of a
9 response to that, because we're -- our -- like we said, we
10 have a contract with Blair Construction and we're looking
11 to have the job done.

12 A certain minimum level of safety has to be
13 provided. That's the law and that's based on the OSHA
14 guidelines and that's what we told him.

15 So, I can't see where he was looking for any
16 extra money based on what is a minimum standard.

17 Q And that is the OSHA guideline?

18 A That is correct.

19 Q Mr. Grady, given your expertise in the area of
20 fall protection, roofing, and OSHA guidelines let me ask
21 you if the fall protection standards for doing built up
22 roofing contained in this OSHA manual are applicable to
23 steel erection?

24 A The section -- the section in there on the
25 built up roofing was not applicable to that job site,

roofing in that application would have fell under or should fall under steel erection versus the roofing section.

Q Now, what is required for fall protection under the steel erection sections of this manual?

A The section under seven hundred fifty -- the requirements for steel erection under that particular case is netting.

Q And -- so, was that required by OSHA regulations?

A That was required by OSHA regulations.

Q And, if you would, just for the record, so that we'll have it, I would like you to read just what sub part steel erection falls under and what section in the OSHA manual, November 1, 1993.

A Uh-huh.

(Pause)

A It says here that under -- under temporary flooring and -- and construction of a tiered building, which this was, on buildings or structures not applicable on temporary flooring where scaffolds are not used safety nets shall be installed and maintained whenever the potential fall distance exceeds two stories or twenty-five feet. The net shall be hung in a sufficient clearance to prevent contact of the surface or structures below.

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1 couldn't put a net eight feet past it. There's nothing
2 for it to hold on.

3 So, you have to go to different applications.
4 This where they use a crane or a lift is acceptable for
5 the start of the job.

6 Q Then once the job gets going I take it then
7 OSHA requires that you do the netting?

8 A Right.

9 Q All right, sir. Did Mr. Weatherford ever
10 contact you after the meeting on April the twenty-ninth
11 to -- I'm sorry, on April the twenty-seventh to ask you
12 anything more about safety?

13 A No. I've only met him the one time.

14 Q Did you offer to put in writing at Mr.
15 Weatherford's request your statement that only OSHA
16 guidelines would apply to this job?

17 A Yes. Mr. Weatherford had asked me if I would
18 give him a letter stating that Abbott or Ross would not
19 require him any greater standards than what the OSHA
20 guidelines called for and I told him I would write him a
21 letter.

22 Q When did you tell him that you would write him
23 that letter?

24 A The day that -- that Wednesday meeting just
25 before we had left.

1 Q And were you willing to write that letter?

2 A Yes.

3 Q Are you still willing to write that letter?

4 A Still willing to write the letter.

5 Q During the course of construction of this job
6 was anything required of anybody other than what's in the
7 OSHA manual?

8 A No.

9 Q You never I take it wrote that letter to Mr.
10 Weatherford?

11 A No, I didn't.

12 Q Why not?

13 A I believe at the time we met, like I said, it
14 was on a Wednesday and I had heard back from Ken just a
15 few days later saying that Mr. Weatherford requests some
16 money and they were -- had to look to see what they were
17 going to do.

18 In that length of time I just wasn't able to
19 write that letter.

20 At the time I had two construction sites going
21 on, over about sixty million dollars, several hundred
22 contractors, and I have nine engineers that work for me.
23 I just wasn't able to get around to writing the letter,
24 but I had every intention to write it.

25 Q All right.

1 you see netting being used.



2 A (The witness complies.)

3 (Pause)

4 A Yes, there's nets in this one.

5 Q Show me where.

6 A It's the yellow nets there draped.

7 Q You're saying it's on Exhibit 6.

8 Is that what you're saying?

9 A Yes, sir.

10 Q Okay. Netting was not used through the entire
11 roof, was it?

12 A No, it was not.

13 Q So, apparently, your opinion is OSHA
14 regulations changed in progress somewhere, didn't it?

15 A Yes. Our opinion -- not that the OSHA
16 guidelines changed but the matter of providing fall
17 protection changed.

18 Q Your interpretation of those guidelines changed
19 during the interim, didn't it?

20 A It was -- my interpretation -- no, my
21 interpretation did not change.

22 Q Well, if your interpretation did not change,
23 how did they get a third to half to two-thirds of the roof
24 on before you required nets?

25 A Because it was in the way that they were trying

1 to go about fall protection.

2 With the first third to two-thirds of the
3 roofing they were trying to provide a static line or
4 warning lines around the perimeter of the building and
5 with the rapid moving of the -- of the roofing panel
6 without being able to keep up with the lines we had a
7 problem with that method of fall protection.

8 Q Well, my understanding of your testimony was
9 that nets were required. Now, you're saying that the
10 lines could be used, that it just made it easier to do the
11 job because of the nets.

12 A No. Netting -- see netting can be required on
13 certain types of application. At that time we felt that
14 providing lines was a suitable form of fall protection.

15 Q Well, who requested the nets on the job? Did
16 you or did the contractor?

17 A No. Actually, we -- we had a safety audit done
18 by the corporation where I had my safety person from
19 Chicago come down. He came down a couple times on the job
20 site.

21 On one of the walk throughs is when he was one
22 of the ones that had the problems with the way we were
23 providing fall protection and had recommended possibly
24 using netting.

25 Q So, you didn't have any problem when it started

1 off with monitoring and when you told him you didn't --

2 A No. There's different -- I have a problem with
3 monitoring. The guide ropes -- the ropes and monitoring
4 is two separate systems.

5 Q All right. You're aware that the monitoring
6 was used on this, weren't you?

7 A Monitoring was not used. Monitoring -- we had
8 the -- the cabling.

9 Q So, you're saying cabling was an acceptable
10 method?

11 A That's correct.

12 Q Now, my question was were nets something that
13 you required or were they at the option of the contractor?

14 A They were at the option of the contractor.

15 Q Okay. But you made it very clear after talking
16 with your supervisor after he told you, apparently, that
17 he thought there was additional protection needed -- you
18 then, of course, passed that on to Abbott -- I mean to
19 Blair Construction, correct?

20 A Yes.

21 Q And, of course, you had the safety manual that
22 required them, basically, to do anything and everything
23 you told them to do or you could discharge them, correct?

24 A Uh-huh.

25 Q And wasn't that the threat behind the nets,

1 that if they didn't do it that you were going to, you
2 know, require them to do it?

3 A No. We would just require whatever OSHA
4 guidelines called for.

5 Q Well, once again -- my point is, you know, you
6 testified as an expert.

7 A Yes.

8 Q And you were not saying that nets were required
9 at first. Then your supervisor comes in and then you
10 decide that maybe nets are required.

11 A No. It's recommended.

12 Q Well, doesn't that mean there's some discretion
13 involved?

14 A For who?

15 Q Well, in the application of the OSHA guidelines
16 as to what is required.

17 A Yes. There are several different ways people
18 interpret those guidelines.

19 Q And you interpreted it as requiring nets?

20 A I interpreted it as being able to provide some
21 type of fall protection.

22 Q Which ended up being nets?

23 A Yes. That's one suitable way.

24 Q Okay. And it's the method that you required?

25 A No. Once again that's not what I -- I required

1 some suitable form of fall protection and that was the
2 easiest way to provide it.

3 Q Now, the safety manual that was signed in this
4 case by Blair Construction was part of the contract.

5 Is that right?

6 A Yes. It's one of the things that we require.

7 Q All right.

8 A In our office.

9 Q And if it's not signed, you don't enter into
10 the contract, correct?

11 A Yes.

12 Q And the contract for safety agreement -- if
13 that's not signed, you don't enter into a contract with
14 Blair Construction?

15 A That's right.

16 Q It's a required matter?

17 A It's a required matter for us.

18 Q And this was your first design/build job,
19 correct?

20 A That's correct.

21 Q And I think you testified before that you would
22 have done initial contracts with all the subs, for
23 example, the erection people? You would have had a
24 contract with them, correct?

25 A That's correct.

*

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One of the things we said -- I think it was asked if the other subcontractors had to sign it and we asked -- we told them, no, they would not. Blair was the only one, but if they wanted to, we didn't have any problem with them signing it.

You can never stress the importance of safety and if we have it, at least we know they read it.

Q Did Blair Construction through Ken BeCraft, ultimately, raise the issue in some kind of form of being reimbursed for the cost of nets?

A No. I think they had let us know what the cost of the netting was, but they never formally asked to be reimbursed for it.

Q They never filled out a formal request, but didn't they make it clear that they thought they should be reimbursed for the nets?

A No, I don't believe so.

Q You don't think so?

A No.

Q He just told you what it cost and you didn't make any response to it?

A That's correct.

Q Now, when you met with Mr. Weatherford for the first time and, in fact, it's the only time, the main topic of discussion was safety.

1 Is that correct?

2 A That is correct.

3 Q And he indicated that he had heard more or less
4 through the grapevine that Ross was more stringent than
5 most people and more stringent than OSHA.

6 Is that correct?

7 A That's what he had heard.

8 Q And that's what he was telling you his concern
9 was?

10 A That's correct.

11 Q Okay. And he asked you quite a few questions
12 concerning that.

13 Is that correct?

14 A A few.

15 Q And didn't you all go through some of the OSHA
16 regulations and discuss them there at the site?

17 A We talked about some of the scenarios, yes.

18 Q Did you all talk about the ten foot rule?

19 A Yes.

20 Q What's the ten foot rule?

21 A Abbott -- excuse me, OSHA had just implemented
22 a new policy that was called the ten foot rule and what it
23 was saying is anybody that came off the ground ten feet or
24 higher once again had to have these different types of
25 fall protection to keep them from falling.

1 the industry recognized requirements for wearing PPE are
2 still being enforced by the agency by utilizing specific
3 standards or the general duty clause.

4 Q What is a PPE?

5 A Personal protection equipment.

6 Q Okay. So, we're talking about, basically, the
7 same thing, fall protection, right?

8 A That's correct.

9 Q Well, you know, this is a cancellation notice
10 up at the top. In fact, that's the subject of this
11 notice, cancellation of OSHA instruction, etc., correct?

12 (Pause)

13 A Let me look at something here.

14 Q You're saying you need to refer to something
15 else?

16 A I want to look at this.

17 (Pause)

18 A Okay.

19 Q All right.

20 A I just wanted to make --

21 Q Okay. I'm not playing games.

22 A No.

23 (Pause)

24 A Yeah. What this must be from -- this is from
25 the cancellation from the office on . . .

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* standard that was set, again, by the ten and twenty-five
* foot rule. At this time this would have pertained to that
* job site.

Q So, is it canceled, curtailed, or what?

I'm not trying to be difficult. I'm just
trying to figure out an answer.

A Okay. What -- what OSHA -- what OSHA was
saying -- this -- this, once again -- this pertains back
with, once again, the different heights.

Q We agree that this is confusing?

A Yes, it's very confusing.

Q Okay.

A It's even confusing for an expert.

Q Even confusing for people who deal with it all
the time?

A That's right. You have to read it very
thoroughly.

Q Okay.

A Once again, what this is saying is it's -- they
are back to the ten and twenty-five foot rules and what
this was saying was, once again, once you get to the
twenty-five foot rule you're going to have to have some
type of fall protection.

What our note was saying is even though it was
being curtailed that we -- that it still recommended

1 strongly that the OSHA evaluates the different methods of
2 fall protection.

3 It's not saying you don't have to have fall
4 protection. It's just saying that you still need to obey
5 what -- the different forms and means of fall protection
6 and one of the ways is with the use of PPE, which is
7 personal protection equipment, which is like full body
8 harnesses or safety type belts.

9 Q Is PPE -- is it a word of the trade or is it
10 just known to Ross Abbott?

11 A No. That's in the OSHA manual. There's a
12 definition in there.

13 Q Now, you, apparently, indicated to Mr.
14 Weatherford had some concern about what was really going
15 to be required of him?

16 A That's correct. He had some concern.

17 Q And I think you've already said the main topic
18 of discussion was safety and you've already referred to
19 this letter that you, apparently, agreed to send him.

20 What was to be the contents of this letter?

21 A He had asked me to send him a letter saying
22 that Abbott Laboratories would not require him any greater
23 safety standards than what was already set forth by the
24 OSHA guidelines.

25 Q All right. And you told him you would send him

1 we were looking for what the OSHA guidelines called for.
2 It's a federal law. You have to provide it and if he was
3 looking for anything other than what was in OSHA then I
4 don't understand why.

5 Q Well, what I'm asking you is what your response
6 was to seventy-five thousand dollars.

7 A I -- it's not my job to tell him whether he can
8 or cannot have the seventy-five thousand dollars. I don't
9 handle the finances on that job.

10 Q Okay. And previously you just testified you
11 had no response to that request.

12 Isn't that what you testified to before?

13 A Basically, yes. I had no response, because I
14 can't -- you know, his response -- he was asking me for
15 the money and I can't respond to that, because I don't
16 have the financial ends of that.

17 Q And you were planning on sending him the
18 letter.

19 Is that correct?

20 A That's correct.

21 Q And the only reason you didn't send him the
22 letter is you were contacted by Ken BeCraft on what May
23 the fifth or so?

24 A I don't recall. It was -- it was after that
25 week, yes.

1 Q Well, the twenty-ninth was a Friday. So, it
2 would have to be after the weekend.

3 Sometime the next week you were contacted and
4 told that he wasn't going to be doing the job?

5 A Okay.

6 Q Well, what exactly were you told as far as why
7 he would not be doing the job?

8 A I don't recall. I just remember being told he
9 would not do the job.

10 Q Okay. And you never sent the letter out,
11 correct?

12 A That's correct. I did not.

13 Q All right. Now, when you were talking with
14 him, and this was on direct examination, you said that you
15 did not have a hundred percent tie off.

16 What's the difference between not having a
17 hundred percent tie off and requiring nets?

18 A Okay. Once again, a hundred percent tie off is
19 when you take one foot off the ground you tie off to
20 something.

21 All right. That means you have fall protection
22 at that point.

23 That's not required by OSHA for ironworkers.
24 Once again, --

25 Q It's not required, period, for ironworkers up

* 1

* Q

Did Mr. Weatherford ever call you and ask for any clarification about any portion of page forty-five or any other portion of this book?

A Never heard from him again.

Q Did you leave him with instructions that if he had any questions give me a holler?

A Uh-huh. I, also, you know, -- I thought we had it clear that -- that we made it understood that we didn't require anything more than OSHA and I would send him the letter.

Q Okay. And he never contacted you for clarification or anything of that nature?

A No, sir.

Q Although you told him that he could?

A Yes, sir.

Q Okay. And insofar as this business of nets is concerned since it was brought up by counsel I think you said that your corporate person from Chicago, Abbott Park came down and walked through the job and it was, actually, his interpretation of the OSHA regs that nets are required?

A Yes, sir.

Q Was that directed to OSHA?

A Yes, it was.

Q And OSHA, actually, came down on this job thou

1 was before OSHA came into effect.

2 Q Okay.



3 A This was, primarily, to make sure that these
4 industrial plants met the requirements of the National
5 Fire Protection Association.

6 Q Okay. After that job working in fire safety
7 what did you do?

8 A I went to work with the Travelers Insurance
9 Association in 1966.

10 Q And what did you do with Travelers?

11 A I was, also, a safety inspector and during the
12 course of working with the travelers while we were
13 required to work with our customers in the area of safety
14 and fire protection and we had to take courses to make
15 sure that we knew what the safety requirements were.

16 Q All right. How long did you work for
17 Travelers?

18 A Until 1972.

19 Q What did you do in 1972?

20 A Came to work -- came to -- transferred from
21 Orlando, Florida to Roanoke to set up the loss control
22 department for Allstate Insurance Company.

23 Q And did you run the loss control department for
24 Allstate?

25 A Yes.

- 1 Q Okay. And after that what did you do?
- 2 A I went to work for a construction company --
- 3 no, I'm sorry.
- 4 I went to work for another insurance company,
- 5 Aetna.
- 6 Q How long did you work for Aetna?
- 7 A For about five years.
- 8 Q And after that?
- 9 A They merged with the INA and became known as
- 10 the CIGNA Corporation.
- 11 Q Did you continue working for CIGNA?
- 12 A No, I did not.
- 13 Q What did you do then?
- 14 A I went to work for a construction company
- 15 called Contracting Enterprises, Incorporated.
- 16 Q And how long did you work for them and in what
- 17 capacity?
- 18 A I was their safety director for a period of two
- 19 years.
- 20 Q And after that?
- 21 A We put together Safety Consulting Services.
- 22 Q And that's the company that you presently run?
- 23 A Yes.
- 24 Q When did you put together that company?
- 25 A 1988.

1 A No, I did not.

2 Q Why did you not have occasion to become
3 involved in that project?

4 A Because Abbott had their own safety director
5 that was going to oversee the job.

6 That was my understanding.

7 Q All right sir. Now, were you asked by me at
8 some point to provide an opinion on whether the Abbott
9 contractors' safety guidelines and their requirements --
10 how they interacted with the OSHA requirements in effect
11 at the time this building was constructed?

12 A Yes. I did review the safety manual that I was
13 given by you and it pretty much followed the OSHA
14 guidelines.

15 Q All right.

16 A I did not find that it was a little over
17 bearing. I found that it was -- in meeting the OSHA
18 guidelines.

19 Q What were you given to review in forming your
20 opinion?

21 A The construction safety manual.

22 Q Okay. Were you given anything else to review?

23 A Let me refer to it.

24 (Pause)

25 A There was a sign off sheet that I was given to

1 review, also, which was given to contractors for them to
2 sign that they understood the safety rules and would abide
3 by the Abbott Laboratory rules including all their
4 employees as well.

5 Q About how much time did you spend in reviewing
6 the Abbott Contractors' Safety Guide for compliance with
7 OSHA regulations?

8 A Well, since the original review I've gone back
9 and reviewed it again.

10 Approximately, thirty minutes I guess I spent
11 to review the safety manual.

12 Q How much total time have you spent on it?

13 A The safety agreement?

14 Q Not the safety agreement but the whole manual.

15 A Approximately, thirty minutes.

16 Q Okay. And that's since your deposition?

17 A Yes.

18 Q Okay. And prior to your deposition in this
19 case how much time did you spend on it?

20 A I looked it over the morning of the deposition.
21 I guess maybe I spent probably a half hour at that time,
22 also.

23 Q Okay. Is that sufficient time in which for you
24 to formulate an opinion?

25 MR. GARRETT: Judge, I'm going to object to

1 that question.

2 He's spending an hour looking over a manual
3 that can't be read and we spent fifteen minutes,
4 you know, talking about certain paragraphs.

5 I think he can make conclusions as to law or,
6 you know, applications to law but that's not
7 sufficient time to go through the entire manual and
8 give a complete and comprehensive --

9 THE COURT: Objection overruled.

10

11 BY MR. SHREVE: (Continuing)

12 Q Is that sufficient time for you to go through
13 the manual and formulate an opinion with respect to
14 whether or not it complies with OSHA guidelines or exceeds
15 OSHA guidelines?

16 A Yes, it is.

17 Q All right. And, Mr. Stader, based on your
18 review of the contract or safety guide, that portion of it
19 that deals with steel erection, and based on your
20 knowledge of the OSHA regulations insofar as steel
21 erection are concerned does the Abbott contractors' safety
22 guidelines require anything more stringent or burdensome
23 or anything greater than what's already in the OSHA
24 manual?

25 A No, it does not.

* 1

* A

* Q

Sixty dollars an hour.

2

Q

Okay. And what is, basically, your job function for them?

4

Is it to provide advice? What exactly is it?

5

A

Well, we do job site inspections and anything that we find wrong we talk to the foreman about it and make sure that they get it corrected at the time that we're at the job site and then I, also, confirm a letter to Blair people as to what occurred at the inspection.

10

We do training through showing of safety films and videos and, also, we'll put together any program that is required to meet either the new OSHA standards.

13

Q

All right. Now, did you have occasion to inspect the Huber job that was being done by Pro-Erectors and being supervised by Mr. Bailey Henderson?

16

MR. SHREVE: Your Honor, that's outside the scope of direct examination.

17

18

I would object.

19

THE COURT: What's that being offered for?

20

MR. GARRETT: Judge, it's being offered for the fact that we believe that it's a larger building, a taller building. This is a man who inspected it and nets were not required at that building.

21

22

23

24

THE COURT: All right. Objection sustained.

25

1 Q All right. Were you ever asked to review this
2 manual back in April or May of 1994?

3 A Which manual are you referring to?

4 Q The Abbott safety manual that I was talking
5 about.

6 A No, I was not.

7 Q Okay. Were you asked to render any kind of
8 opinion back in either April or May of 1994?

9 A No, I was not.

10 Q At that time were you working for Blair
11 Construction?

12 A Yes, I was.

13 Q Charging them sixty dollars an hour for
14 whatever you did.

15 Is that correct?

16 A That's correct.

17 Q And you say you spent maybe an hour and a half,
18 two hours now reviewing this manual including --

19 MR. SHREVE: Your Honor, this question has been
20 asked and answered I don't know how many times.

21 If he wants to go into something new, that's
22 fine, but at some point this has got to end.

23 MR. GARRETT: Well, Judge, --

24 THE COURT: Go ahead. I'll let you ask the
25 question.



1

A No.

2

Q Okay. And how long have you been involved in the business of erecting steel buildings?

4

A About twenty years.

5

Q Okay. Did you, initially, put in a bid on the Abbott Laboratories' warehouse job for Blair Construction?

7

A Yes, sir.

8

Q All right, sir. If you will, I would like for you to tell the jury how you went about putting together your bid to Blair Construction.

10

11

What happened? How did you do it?

12

A Well, Ken BeCraft called me about the job and give me the -- the size and the height and the -- the type roof, the walls, the insulation, and all the particulars and -- and taking all that I bid the job.

14

15

16

Q All right. Now, how long did you talk to Ken BeCraft on the telephone to get the information necessary for you to bid this job?

18

19

A I don't know for sure.

20

Not too long, ten minutes or so probably.

21

Q Is that all it, generally, takes?

22

A Generally, yes, unless it's real complicated.

23

Q And what information, again, did you say that Ken gave you about the building?

24

25

MR. GARRETT: Judge, I'm going to have to

1 express the objection of asked and answered already
2 as well.

3 THE COURT: Let him answer.

4 Go ahead.

5

6 BY MR. SHREVE: (Continuing)

7 Q If you can be specific, what information did
8 Ken give you about the building that you had to have in
9 order to build it?

10 A The size, the height, the -- the type building,
11 the bay spacings, the -- the type outer walls, inner
12 walls, insulation thickness, personnel doors, overhead
13 doors, windows, roof penetrations.

14 Q All right. And you say this took about ten
15 minutes or so?

16 A Yes, sir.

17 Q All right, sir. Did you have any written
18 documentation, any plans, drawings, anything like that,
19 before you bid this job?

20 A No, I didn't.

21 Q Is that necessary to bid a job of this type?

22 A No, not as long as I know everything that's in
23 it and the type building and everything, the size, of
24 course.

25 Q All right, sir. Did you submit a written bid

Goliher - direct

1 to Ken BeCraft?

2 A I don't think I did. I think it was by the
3 telephone.

4 Q All right. And why did you not submit a
5 written bid?

6 A He didn't ask me to. If he had wanted that, I
7 would have. I just gave it back to him over the
8 telephone.

9 Q Did you do some calculations and then call him
10 back?

11 A Yes.

12 Q Okay, sir. How much was your bid for this job?

13 A Three hundred and -- three hundred and -- or
14 four hundred and -- four hundred and thirty-eight thousand
15 four hundred dollars.

16 Q And would you have erected this building
17 completely for that price?

18 A Yes, sir.

19 Q Did there come a time when you were made aware
20 of the fact that you did not get the job?

21 A Yes. I was told that I was under bid on it.

22 Q All right.

23 A Someone under bid it.

24 Q I'm sorry. And were you told who under bid
25 you?

1 with you?

2 (Pause)



3 A No.

4 Q For a set price?

5 A No, no, sir.

6 Q And who did you talk with?

7 A Ken BeCraft.

8 Q When did you first talk with him and find out
9 that the job was, again, available or available to you?
10 Do you recall that?

11 A I think that was early May.

12 Q I'm not trying to put words in your mouth.

13 What do you really mean by early May? Do you
14 mean the first few days or the first half of the month or
15 what?

16 A First few days.

17 Q First few days. All right.

18 Now, how many jobs have you performed in the
19 steel erection business?

20 A Hundreds I'm sure.

21 Q To what heights have you, you know, put up
22 metal, steel?

23 A I have been up towards one hundred feet.

24 Q Have you ever used nets on any of those jobs?

25 A No, I haven't.



CONTINUED CROSS EXAMINATION

BY MR. GARRETT:

Q Mr. Golliher, if you knew that netting was going to be required on the job, would you factor that into your price?

(Pause)

A I think I probably would if it was, but I hadn't really -- I've never run into that.

Q All right.

A That's something I would really have to think about.

Q It's something you would have to think about? You don't have an answer definite right now?

A Right.

MR. GARRETT: No further questions.

THE COURT: Any other questions?

MR. SHREVE: No questions.

THE COURT: All right. You may step down and you're excused.

(The witness stood aside.)

MR. SHREVE: Your Honor, we don't have any other witnesses here today.

1 meeting with Everett Grady at the job site?

2 A. Yes; I did.

3 Q. Can you describe the purpose of that
4 meeting?

5 A. Just to get everybody familiar with
6 Ross's -- with their rules, what they expect.

7 Q. Were you given the Abbott Contractors'
8 Safety Guide at that meeting?

9 A. Yes; I was.

10 Q. Okay. Are you familiar, in your own mind,
11 with the OSHA requirements for steel erection that
12 were in effect at the time you started this job?

13 A. Yes.

14 Q. Was there anything in your mind in the
15 Abbott manual that required anything greater than what
16 was in OSHA?

17 A. No.

18 Q. Okay. During the job, did you have any
19 problems complying with the OSHA requirements?

20 A. No; I didn't.

21 Q. Did Abbott require anything other than
22 what was in the OSHA requirements?

23 A. No.

24 Q. Okay. Was netting used for fall
25 protection at some point in this job?

1 A. Yes; it was.

2 Q. Okay. Who found the netting?

3 A. I found it -- found the nets.

4 Q. Can you describe how you found them? What
5 did you do?

6 A. Just got on the telephone, started calling
7 different steel erection companies, and finally found
8 out where I could rent them at.

9 Q. And so the nets were rented?

10 A. Yes.

11 Q. Did you actually do the rental of the
12 nets?

13 A. I paid for the first month's rental and
14 the shipping when they came in.

15 Q. Were you reimbursed for that by Blair?

16 A. Yes.

17 Q. What was the monthly rental on those nets?

18 A. Nine hundred dollars, I think.

19 Q. Okay. And they were rented for how long?

20 A. Probably about two and a half, three
21 months.

22 Q. So twenty-seven hundred bucks total, or
23 less?

24 A. Right.

25 Q. Okay. And I think you said Blair did pay



1 THE COURT: Be admitted.

2

3 (Plaintiff's Exhibit Number 22 was admitted.)

4

5 MR. SHREVE: Thank you, Your Honor.

6

7 BY MR. SHREVE: (Continuing)

8 Q. Mr. Ferris, during the course of this job
9 after you started work, did you have occasion to speak
10 with Randy Weatherford about the job?

11 A. Yes.

12 Q. How many times did you speak with him?

13 A. Mr. Weatherford called me on two different
14 occasions.

15 Q. When was the first time that
16 Mr. Weatherford called you?

17 A. Somewhere around the 1st of June.

18 Q. Did he say anything to you about why he
19 did not perform this work?

20 A. He told me he had done some research on
21 Ross Laboratories, and he realized that he hadn't
22 figured as much in as he should for safety reasons.
23 And I think he had asked Blair to throw an extra
24 amount of money to do the job, and they just couldn't
25 come up with an agreement.

1 Q. Did he mention anything about OSHA
2 regulations?

3 A. Asked me how the job was going as far as
4 safety goes. And, you know, I told him I didn't have
5 any problem with it, I mean, as far as it wasn't any
6 different, Ross wasn't any different than what OSHA
7 requires, anyway.

8 Q. Did Mr. Weatherford tell you anything
9 about working for Abbott that he had found out?

10 A. Other than they were real tight on safety,
11 that's --

12 Q. All right. Did you have another occasion
13 to talk to him after that?

14 A. Yes. He called me probably a month after
15 the first conversation.

16 Q. Okay. What, if anything, did he tell you
17 about this matter at that time?

18 A. It was something mentioned about the nets
19 that we were hanging. And he wanted to know how we
20 were moving them; how it was going; kind of how the
21 job was going. That's when he told me that Blair
22 Construction was suing him.

23 Q. What, if anything, did he say about that?

24 A. He said he had been through it before;
25 that he really wasn't worried about it.

1 Q. Okay. Did he say anything else relating
2 to this job in either one of those conversations?

3 A. Other than he had done research on Ross,
4 and he didn't feel comfortable without getting some
5 more money for safety.

6 Q. Okay. When you were giving your
7 deposition back in, I think it was September in this,
8 case you estimated that the cost of the job, the cost
9 of the netting on the job, was a figure; I think you
10 said thirty or forty thousand dollars, something like
11 that?

12 A. Yes.

13 Q. Was that correct or incorrect?

14 A. That was incorrect. That was --

15 Q. Which --

16 A. That was really off the top of my head.

17 Q. What do you compute the cost of the nets
18 on this job to be?

19 A. It would probably be half that; no more
20 than twenty thousand.

21 Q. Okay. And have you done any actual
22 computations? Or is that, as well, off the top of
23 your head?

24 A. Just basically, you know, as far as
25 figuring out how many square feet per how many nets we



1 A. Probably this morning.

2 Q. Okay. Now, you remember me asking you
3 these very same questions when I asked you questions
4 on September the 20th, or approximately the same
5 questions; you recall that, don't you?

6 A. Yes.

7 Q. And, in fact, the question I directly
8 asked you was: To the best of your knowledge and
9 recollection tell me exactly what Ken BeCraft told you
10 five or six days prior to.

11 Do you remember that question?

12 A. Yes.

13 Q. Now, if you would, read your answer?

14 A. Ken told me --

15 Q. No; no. Start with the first word. I'm
16 not giving you a hard time. I just want to make sure
17 we get everything in the record.

18 A. Ken told me they were having a problem
19 with Weatherford Steel Erection; that he wouldn't
20 commit to a contract.

21 Q. That's one sentence.

22 Now, read the next sentence.

23 A. They had sent him the contract; and he had
24 the contract a week, possibly longer, and would not
25 return the contract.

1 Q. And my question was: Okay. And then, is
2 that what Ken told you?

3 A. Yes.

4 Q. And then I asked you: Is there any doubt
5 in your mind that he told you that in the initial
6 conversation.

7 Your answer?

8 A. No.

9 Q. Okay. Now, also we addressed it again on
10 page ten when I asked you the question, this would be
11 on line two: What do you mean? What did he convey to
12 you? Or what did he tell you that led you to believe
13 that he needed to make a decision he had to go
14 somewhere?

15 And read me your answer to that, the whole
16 answer, if you want, would be fine.

17 A. Because the steel was arriving Monday.
18 And he said Weatherford would not return his calls.
19 He wouldn't sign the contract, so --

20 Q. Okay. And when you were talking about,
21 "he wouldn't sign the contract," who were you
22 referring to?

23 A. Weatherford.

24 Q. Now, the first meeting that you all -- or
25 maybe not meeting is the word -- first time that you



1 conversation when you all were talking about the fact
2 that Randy wouldn't sign the contract; is that right?

3 A. Right.

4 Q. Same conversation.

5 And right after, I asked you if there was
6 any doubt in your mind that he told you that in your
7 initial conversation.

8 You said: No.

9 As I'm prone to do, I said: Okay.

10 And then, I asked a question: What else
11 did he tell you in reference to Randy Weatherford and
12 the erection or a contract that you can recall?

13 And read me your answer, if you would.

14 A. Well, we really didn't -- we really -- the
15 first time we got to talking about it, we didn't talk
16 dollar figures, we talked schedules. And, you know,
17 he still didn't know if Weatherford was going to do
18 it. He was trying to make a decision.

19 Q. So you testified at your deposition that
20 you all didn't talk dollar figures. You talked about
21 schedules, which was the timing of doing the job, is
22 that right, and fast tract schedules for doing the
23 job?

24 A. Well, that's usually always the first
25 question that you ask: How much money do you have



1 know if they are getting within five or six feet and
2 to warn them to back off; is that right?

3 A. Yes.

4 Q. Was it your understanding that monitoring
5 was an approved OSHA method of fall protection when
6 this contract was done?

7 A. Yes; I had used it before.

8 Q. Okay. Had you -- how many projects do you
9 think you had done before either as an employee or as
10 an erector yourself?

11 A. At least a hundred or so.

12 Q. Okay. And you say you had used monitoring
13 before; is that correct?

14 A. Yes.

15 Q. Had you ever used nets before?

16 A. No; I hadn't.

17 Q. All right. Did you own any nets?

18 A. No; I didn't.

19 Q. Have you -- did you, even when the issue
20 came up, did you even know where to get the nets?

21 A. No.

22 Q. I mean, not your own personal knowledge.
23 You knew probably how to find it, but not
24 yourself; is that right?

25 A. Right.

1 Q. Do you know what it cost to purchase nets?

2 A. I have no idea.

3 Q. Okay. Have you bought a set of nets since
4 that time?

5 A. No; I have not.

6 Q. You have not?

7 A. No.

8 Q. Have you netted a job since this time?

9 A. No; I haven't.

10 Q. Are you still doing steel erection?

11 A. Yes.

12 Q. And roofs?

13 A. Yes.

14 Q. Above twenty-five feet?

15 A. Yes.

16 Q. Do you believe you're in compliance with
17 OSHA?

18 A. Yes.

19 Q. Now, you actually started the roof with
20 either a monitoring system or a tie-off system, or
21 something other than nets; is that right?

22 A. Yes. We started off with a monitoring
23 system.

24 Q. Started off with a monitoring system.
25 And how long did you proceed with the

1 monitoring system?

2 A. Probably two weeks.

3 Q. Okay. And approximately as far as
4 completion, how far was that into the completion of
5 the roof, the two weeks; is that a third, two-thirds?

6 A. That's probably about fifty thousand
7 square feet.

8 Q. But we are talking about a three hundred
9 thousand foot building; is that right?

10 A. Right.

11 Q. So what percentage do you view that as?
12 About a sixth?

13 A. Yeah. That's what it sounds like; yeah.

14 Q. Okay. Now, who brought to your attention
15 that you had to use nets?

16 A. I think it was something that was agreed
17 to from Ken BeCraft and Everett Grady.

18 Q. Okay. Well, do you remember telling me,
19 on page twenty-six of your deposition, that I think it
20 was Ross's idea to put the nets up?

21 A. I think it was mentioned by them, yes,
22 first.

23 Q. Okay. I want you to feel comfortable with
24 what I just said, and confirm that that's what you
25 said: I think it was Ross's idea to put the nets up?

1 A. Yes, sir.

2 Q. And then you dropped down when I asked:
3 Who at Ross came up with the idea of putting the nets
4 up?

5 And you said: I believe it was --

6 A. Everett.

7 Q. And you meant Everett Grady; is that
8 right?

9 A. Yes.

10 Q. In fact, you went on to say that he almost
11 told us that we had to get the nets.

12 Is that a correct statement?

13 A. Yes.

14 Q. He made it very clear you weren't going to
15 continue the job without netting it; is that right?

16 A. Without netting or being tied off a
17 hundred percent.

18 Q. Well, in your answer, you said: He almost
19 told us that we had to get the nets.

20 A. I guess that was the fact that the roofers
21 would not stay tied on to what I had up there for them
22 to tie off to.

23 Q. Okay. Now, before when I asked you to
24 compute the figure for figuring out what part of the
25 job cost to net, you gave me the figure of thirty to

1 now, I don't mean to be jumping around -- initially,
2 were you presented a copy of this Abbott Laboratories
3 Contractor Safety Guide?

4 This is not the one that -- let me use the
5 one that's an exhibit.

6 Were you presented a copy of this
7 Contractors' Safety Guide at that time?

8 A. Yes, sir.

9 Q. Okay. Were you also asked to sign this
10 Contractors' Safety Agreement right here?

11 A. Yes; I signed that.

12 Q. Okay. No doubt in your mind that you did
13 sign that?

14 A. No.

15 Q. Okay. And does it provide for termination
16 if you don't follow the policies and procedures in
17 this manual?

18 A. Yes.

19 Q. Were you asked to sign anything else,
20 other than this agreement in this manual?

21 A. I do not think so; no.

22 Q. Okay. So as far as you know, it's the
23 only thing you ever signed with Ross Laboratories or
24 Abbott; is that right?

25 A. Yes.



1 A. He had researched Abbott.

2 Q. And that was the reason he wasn't going to
3 do the job?

4 A. Basically; yes.

5 MR. SHREVE: No further questions.

6 MR. GARRETT: Just a couple, Judge.

7

8 RECROSS-EXAMINATION

9 BY MR. GARRETT:

10 Q. Didn't he say he had researched safety and
11 Abbott?

12 A. Best I can recall, it was just he had
13 researched Ross Laboratories, which is Abbott.

14 Q. Well, you testified on direct examination
15 the first time, and I wrote it down as a quote:
16 Researched safety, and they were real tight.

17 Which is correct?

18 A. Well, I mean, I guess, that's -- I mean
19 that as the same thing. I mean, I don't know what
20 other reason he would have to research Ross, other
21 than --

22 Q. Okay.

23 A. -- safety.

24 Q. Okay. Now, if you had bid this job
25 yourself, and someone then came in and told you, you

1 had to do netting; and you had the responsibility of
2 locating the nets and renting the nets, would you have
3 wanted to be compensated for that?

4 A. Yes, sir.

5 Q. Would you have thought it was a part of
6 your ordinary contract for erection?

7 A. Not unless it was figured up-front.

8 Q. And you think that it was something that
9 would have been figured up-front, is a custom in your
10 business, the erecting business, if netting was going
11 to required?

12 A. In my experiences, the owners are usually
13 the ones that require a-hundred-percent fall
14 protection when it comes to roofing.

15 Q. And is it your position that if they
16 require it and it cost additional money, they should
17 pay for it?

18 A. Yes.

19 MR. GARRETT: No further questions.

20

21 FURTHER REDIRECT EXAMINATION

22 BY MR. SHREVE:

23 Q. And did Blair pay for it in this case?

24 A. Yes.

25 MR. SHREVE: No further questions.



1 A. Blair Construction.

2 Q. How long have you been working for Blair
3 Construction?

4 A. Ten and a half years.

5 Q. What do you do for Blair Construction?

6 A. I'm a supervisor for the construction of
7 pre-engineered metal buildings and structural steel.

8 Q. How long had you been doing that; the
9 whole ten and a half years you've been employed there?

10 A. Whole ten and a half.

11 Q. Prior to coming with Blair what did you
12 do?

13 A. I worked for a company by the name of
14 Frazier Construction for twelve and a half years
15 putting up pre-engineered buildings and structural
16 steel.

17 Q. Is that all you did for Frazier as well?

18 A. I have done that for about twenty-two and
19 a half years?

20 Q. Is that your total, basic total work
21 experience?

22 A. Right.

23 Q. All being in pre-engineered buildings and
24 structural steel?

25 A. Right.



1 A. At this time, I can't recall. I'm not
2 sure which month it was.

3 Q. Okay. Do you know what job you were
4 working on?

5 A. I was a work on the Faith Christian
6 Academy at Altavista.

7 Q. You were called off that job to go to work
8 at Abbott?

9 A. Right.

10 Q. What did you do at Abbott?

11 A. We put up about four-hundred-linear-foot
12 of wall panel.

13 Q. Did you have any problems in complying
14 with the safety regulations, the OSHA regulations?

15 A. No. I did not.

16 Q. Did Abbott require anything of you beyond
17 what was required by OSHA?

18 A. No.

19 MR. SHREVE: Okay. I have no further
20 questions of Mr. Parsons, Your Honor.

21 Thank you.

22 MR. GARRETT: I don't think I've many,
23 Judge.
24
25

1 CROSS-EXAMINATION

2 BY MR. GARRETT:

3 Q. Mr. Parsons, how long did you say that
4 you've been doing steel erection?

5 A. Approximately twenty-two years, twenty-two
6 and a half.

7 Q. And you know Mr. Weatherford; is that
8 correct?

9 A. Briefly.

10 Q. Okay. How many jobs do you think you have
11 done over this twenty, twenty-two years in steel
12 erection?

13 A. I have no idea; it's been many.

14 Q. Okay. Have you ever used nets on any of
15 those jobs?

16 A. No.

17 Q. The part that you were doing on this job,
18 did you have to use nets?

19 A. No.

20 Q. You did a job that didn't require nets?

21 A. Right.

22 Q. But you saw nets being used on this job;
23 is that correct?

24 A. Yes; I did.

25 Q. Now, you saw the contractors' safety



1 would like to make a couple of different
2 motions to strike.

3 THE COURT: All right. Go ahead.

4 MR. GARRETT: The first one I would like
5 to make is, of course, this is founded on two
6 different grounds; founded on both contract and
7 constructive fraud. There's been no evidence
8 whatsoever of any kind of constructive fraud,
9 other than Mr. Shreve's opening argument.

10 I mean, I directly asked what they were
11 relying on in their interrogatories for
12 constructive fraud. And they gave me answers
13 that had nothing to do with fraud, just things
14 being mailed. There's been no evidence today
15 of any constructive fraud, absolutely no
16 evidence whatsoever. And it should not go, we
17 suggest, to the jury. Even in the evidence
18 taken most favorably to the plaintiff, we
19 suggest it should not go to the jury.

20 Furthermore, I have some serious concerns
21 on the actual contract issue. They're alleging
22 that they had a contract as of the day and I've
23 asked both Ken BeCraft and Mr. Blair, and if
24 they had a contract either on January 3 or
25 January 4. You can't have a contract until

1 there's, you know, the ability to do the work.
2 They didn't have the ability to do the work
3 until a later time. But they have testified
4 unequivocally there was a contract on January 3
5 or January 4. That's clearly not the evidence,
6 and, of course, an acceptance must mirror the
7 offer.

8 Also they have the additional problem on
9 their contract case, which is why we suggest it
10 is subject to a motion to strike, even more so,
11 that Ken BeCraft testified that he added this
12 when he sent this, quote, acceptance, which of
13 course was never signed by Mr. Weatherford,
14 that he didn't even consult Mr. Weatherford on
15 computing his figures. He did it just by
16 square footage and added it on.

17 And just on pure basic law school, you
18 know, contract law, that is a confirmation
19 which they're calling it; but it's still in an
20 acceptance form that doesn't mirror the offer.
21 And, therefore, it's a counteroffer. And they
22 have no proof whatsoever that it was ever
23 accepted.

24 Quite the contrary, they have Mr. Ferris
25 who has testified that, you know, there was no

1 signed contract. He was their witness who
2 testified at deposition, and then admitted
3 today that there was, in fact, no contract.
4 And that's the reason -- they couldn't get him
5 to sign it. And he had it over a week.

6 That was what apparently Ken BeCraft told
7 Mr. Ferris. And we suggest even in the light
8 most favorable to the plaintiff, they don't
9 have any proof of a simple contract of this,
10 not even an oral contract for the scope of the
11 job. It jumps from two fifty-three to two
12 sixty plus, plus any potential add-ons.

13 And if you note -- and another reason we
14 suggested it's not even proof of simple --

15 THE COURT: Now, you're speaking -- when
16 you speak of the additional square footage,
17 you're talking about extending this, I call it
18 one-story portion, on the back; is that right?

19 MR. GARRETT: That's correct, Judge.

20 And even their alleged confirmation or
21 acceptance that they sent out added additional
22 terms. It said safety manual available, you
23 know, drawings coming, things of this nature.
24 And then, you know, then that's when they
25 scheduled the meeting to go meet out there at

1 Abbott Laboratories and talk with Everett
2 Grady.

3 He's told you that, you know, basically
4 the substance was safety and complying with the
5 safety requirements. And that he thought he
6 needed a letter to clarify their position. And
7 they never sent the letter.

8 I think there's not a written contract.
9 We suggest that there's not an oral contract;
10 there's not promissory estoppel; and there's
11 certainly not constructive fraud here. And we
12 in good faith allege that both counts, at this
13 point, should be dismissed.

14 MR. SHREVE: If it please the Court, with
15 respect to the contract, Your Honor --

16 THE COURT: Now, we're talking about
17 constructive fraud. Are we agreed that what
18 we're talking about, basically, is
19 misrepresentation?

20 MR. SHREVE: Yes, sir; innocent
21 misrepresentation of material fact.

22 THE COURT: That's relied upon on material
23 misrepresentation.

24 MR. SHREVE: Yes, sir.

25 THE COURT: Yes; relied upon to --

1 MR. SHREVE: Yes, sir.

2 THE COURT: Okay.

3 MR. SHREVE: Yes. With respect to the
4 issue of a contract, the contract is, as we all
5 know, can be either oral or it can be written.
6 There's got to be a meeting of the minds of the
7 parties on all material elements of that
8 contract.

9 Mr. BeCraft's testimony was that on
10 January 3 when he received the fax from
11 Mr. Weatherford, which was a written offer, he
12 called Mr. Weatherford and he said: Are you
13 sure that you can do it for this price?

14 Mr. Weatherford assured that he was.

15 And Mr. BeCraft's testimony, again, was
16 that he called him from Ashland on January 4,
17 and said: I have your proposal in hand. Are
18 you okay with your price? Can you do it for
19 this?

20 And he said: Yes.

21 And he said: Okay. I'm using this price
22 and submitting this to Abbott Laboratories.

23 His testimony with respect to the contract
24 further was that he did compute a unit price
25 based on seven thousand -- based on the number

1 of square feet in that corner of the building
2 to which we're referring; that unit price came
3 to seventy-one hundred and fifty dollars. That
4 was later put in the confirmation that was sent
5 to Mr. Weatherford.

6 But his testimony, and this is
7 significant, was that after he computed that
8 unit price, he talked to Mr. Weatherford on a
9 number of occasions and said to
10 Mr. Weatherford: You say you're okay with that
11 price?

12 And Mr. Weatherford said: Yes. That's a
13 good price, seventy-one hundred and fifty
14 dollars, for moving those two walls out and
15 creating, what we called earlier, the
16 pallatized area.

17 So I do think at this stage of the
18 proceedings, the evidence is that there was a
19 meeting of the minds of the parties on all
20 material elements of the contract that was to
21 be performed. Much has been said about safety.
22 But the plaintiff's evidence in regards to
23 safety is that it was not anything over and
24 above what was required by OSHA regulations, of
25 which the Court, I think, can take notice and

1 the Court can take notice that OSHA regulations
2 are required by everybody who is doing any work
3 out there in the workplace.

4 And the testimony in this plaintiff's case
5 is that there was nothing further than OSHA
6 regulations required by the Abbott Contractors'
7 Safety Guide. So I think clearly on January
8 the 4th and then thereafter when Mr. BeCraft
9 and Mr. Weatherford talked about the small
10 additional amount of money, there was a meeting
11 of the minds of the parties.

12 On the issue of constructive fraud, the
13 jury instruction reads constructive fraud is a
14 misrepresentation of a material fact innocently
15 or negligently made with the intent that a
16 person relied upon it and on which person
17 relied with the result that he was damaged by
18 it. There was a material misrepresentation
19 here in that Mr. Weatherford said that he would
20 do this job for the amount of money stated in
21 his bid.

22 That is a representation of an existing
23 fact; that existing fact being
24 Mr. Weatherford's state of mind and his
25 intention at the time that that

1 misrepresentation was made. It was made with
2 the intention that it be relied on. He knew
3 that Blair was putting together a bid for
4 Abbott. It was, in fact, relied on.

5 The plaintiff's evidence is that his
6 figure was used in putting the two hundred and
7 seventy thousand dollar figure it was in the
8 bid to Abbott; so it was relied on. And Blair
9 was damaged by that. And Blair has shown the
10 amount of damages.

11 So we think that the case goes forward at
12 this point both on the constructive fraud and
13 on the contract theories.

14 Thank you.

15 THE COURT: Do you have anything more?

16 MR. GARRETT: Just in summary, Your Honor.

17 I still don't see a material
18 misrepresentation of material fact here. This
19 is, at most, a contract case, whether they had
20 a contract. I suggest taking evidence in the
21 light most favorable to the plaintiff to this
22 point, they haven't even shown even an oral
23 contract; but that's for you to decide.

24 What alarms me is, and this is not the
25 first time I've seen it, is the issue of fraud

1 which, is basically what's being represented to
2 the Court, we can call it, you know,
3 misrepresentation of material fact,
4 constructive fraud, it has a bad connotation to
5 a jury. And that's the reason it's brought in
6 this type of case is to give that, "fraud"; you
7 know, it sounds awful.

8 THE COURT: What's the burden of proof?

9 MR. GARRETT: Clear and convincing
10 evidence, I think as well, Your Honor. And
11 there's absolutely no clear and convincing
12 evidence at this point, even from the part of
13 the plaintiff that would support that.

14 And I realize there's a different burden
15 of proof as far as contract plane. But the
16 constructive fraud has bothered me from the
17 very beginning. I've heard no evidence. I've
18 tried to elicit from them, you know, on the
19 interrogatories what they were relying on for
20 constructive fraud. And, you know, all I got
21 was, you know, we mailed letters to him on, I
22 think it was, April 8 and telefaxed to him on
23 April 19.

24 And now they're saying we didn't telefax
25 on April 19th. So they're saying just because

1 they sent out this confirmation, which was an
2 acceptance that had been changed, and it was
3 not returned in April when the job cranked up,
4 you know, less than a month later, that's
5 constructive fraud. I suggest it's not. It's
6 not even by the lower burden of proof; but it's
7 certainly not by clear and convincing evidence.

8 And I'd ask, most respectfully, that the
9 motion to strike certainly be granted on that,
10 but on the other issue as well.

11 THE COURT: Well, on the contract claim, I
12 overrule the motion to strike. I think
13 there's, at this point, there's been a jury
14 issue on that. I feel certain that there will
15 be evidence that disputes some of the
16 testimony. But Mr. BeCraft did say he'd gone
17 back with Mr. Weatherford after this agreement
18 of April 8 was faxed. And at least under his
19 testimony, it's enough to proceed at this
20 point, particularly with all the inference in
21 favor of the plaintiff at this point.

22 On the constructive fraud count, I'm going
23 to think about that for a few minutes; and I'll
24 rule on it when I come back out after we take a
25 break.

1 MR. GARRETT: Okay.

2 THE COURT: All right.

3 MR. GARRETT: Thank you.

4 THE COURT: Let's take a recess.

5

6 (Recess taken.)

7

8 THE COURT: Okay. As far as -- let me
9 take up the constructive fraud count. I'm
10 going to grant the motion to strike on that.
11 The reason is: In my mind, in order for there
12 to be constructive fraud, there has to be a
13 misrepresentation of a material fact. Well,
14 there's no issue that WS Construction made this
15 proposal. It's another exhibit, but it's part
16 of the Defendant's Exhibit A for twenty-nine --
17 excuse me -- two hundred twenty-nine thousand
18 dollars adjusted to two hundred and fifty-three
19 thousand dollars. It came in. And that's what
20 they submitted.

21 Now, whether there was a contract or not
22 is another issue. But that wasn't a
23 misrepresentation of fact. Now, when they
24 didn't go through with this proposal, then what
25 we have is simply a contract issue; whether, it

1 was an agreement made, and WS Construction
2 breached it or whether there was no offer on
3 this.

4 So for those reasons, I'm going to grant
5 the motion to strike; and this case will
6 proceed on contract.

7 MR. SHREVE: May I note my --

8 THE COURT: Yes, sir. Your exception is
9 noted.

10 MR. SHREVE: May I just briefly respond on
11 the record?

12 THE COURT: Yeah.

13 MR. SHREVE: For the record, the material
14 representation is of Mr. Weatherford's state of
15 mind at the time the proposal was made on
16 January the 3rd, 1994. And I think there's
17 abundant case law in Virginia that one's state
18 of mind can, in fact, be material
19 misrepresentation.

20 The state of mind is something from which
21 the jury -- something the jury has to infer
22 from circumstantial evidence. And I think
23 there's ample circumstantial evidence in this
24 case from which the jury could infer,
25 particularly, from Mr. Weatherford's statements

1 to Mr. Ferris later that it was his state of
2 mind at the time that he made that
3 representation; that he had no intention of
4 following through with it.

5 So for those reasons, we respectfully take
6 exception to the ruling of the Court.

7 THE COURT: Your exception is noted.

8 MR. SHREVE: Thank you, Your Honor.

9 THE COURT: Now, I'm not going to admit
10 Plaintiff's Number 26. The reason is, is that
11 this exhibit is not evidence. It's -- what it
12 is, is a lawyer's summary of the evidence,
13 which is more appropriately set forth in
14 closing argument to the jury. This just
15 highlights what has already come in either by
16 oral testimony or by other exhibits.

17 And the Supreme Court of Virginia has
18 frowned on this. And although I didn't go find
19 the decision, there has been a recent decision
20 where there is a reversal when this type of
21 blackboard exhibit was admitted into evidence.

22 MR. SHREVE: Your Honor, we do not except.
23 I think I've read that case as well in Lawyer's
24 Weekly a couple of weeks ago; and that's,
25 frankly, the reason I prepared it for use in --



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF CAMPBELL

BLAIR CONSTRUCTION, INC.,
A Virginia Corporation,

Plaintiff,

v.

CASE NUMBER: 031CL94000285-00

RANDY WEATHERFORD,
t/a W. S. CONSTRUCTION,

Defendant.

FINAL ORDER

WHEREAS, this matter was set for trial on Monday, January 29, 1996; and

WHEREAS, a jury was properly impaneled to hear the evidence; and

WHEREAS, evidence was presented by both the Plaintiff and the Defendant, which evidence was presented on Monday, January 29, 1996, and Tuesday, January 30, 1996; and

WHEREAS, at the close of the Plaintiff's evidence, the Defendant moved to strike the constructive fraud count in the Motion for Judgment, the ^{Plaintiff} ~~Defendant~~ opposed that action of the Court; however, the Court sustained the Defendant's motion, to which action of the Court the ^{Plaintiff} ~~Defendant~~ took exception and noted its objections, which were duly noted and preserved for the record throughout the course of this proceeding; and

WHEREAS, the matter was submitted to a jury along with exhibits and the instructions of the Court, with the constructive

fraud instructions being tendered by the Plaintiff, being refused by the Court; and

WHEREAS, CARL LIPSCOMB was elected foreman of the jury and returned a jury's verdict in favor of the Defendant, RANDY WEATHERFORD t/a W. S. CONSTRUCTION; and

WHEREAS, the jury was polled and each juror indicated that their verdict was for the Defendant; *the verdict of jury is affirmed*

WHEREFORE, it is, accordingly, ORDERED that ^{is} this matter ~~be~~ dismissed and removed from the docket and placed among the ended causes, the Plaintiff's objections to the action of the Court in sustaining the Defendant's motion to strike the constructive fraud claim having been duly noted and preserved.

ENTER:

2129195

[Signature]
Judge

I ASK FOR THIS:

[Signature]
JOE GARRETT, Esquire
Counsel for the Defendant

SEEN AND OBJECTED FOR REASONS STATED
ON THE RECORD:

[Signature]
DAVID W. SHREVE, Esquire
Counsel for the Plaintiff

A COPY TESTE:
DEBORAH E. HUGHES
Circuit Court Clerk
Campbell County, Virginia
By: *[Signature]*
Deputy Clerk

CC: GARRETT, SHREVE

ASSIGNMENT OF ERROR

**THE TRIAL COURT ERRED IN SUSTAINING DEFENDANT'S MOTION
TO STRIKE PLAINTIFF'S EVIDENCE OF CONSTRUCTIVE FRAUD AT THE
CONCLUSION OF PLAINTIFF'S CASE IN CHIEF.**

W. S. Construction

P.O. Box 418
Blairs, VA 24527
804-724-2127 FAX 724-2129
January 3, 1994

RANDY
WEATHERS RD

PLAINTIFF'S
EXHIBIT

PROPOSAL

14 8

ABBOTT LABS

We are pleased to quote the sum of \$ 229,000⁰⁰
to erect the above project. The following are included:

- 1-time mobilization.
- No materials, labor only.
- No reworking of material or field fabricating.
- Siding to be 3' wide w/exposed or semi-concealed screws.
- If walls are 16" wide w/concealed screws and friction fit insulation, add \$24,000⁰⁰.
- Connection of down spouts to other construction by others.
- No touch up painting or priming. If WSC damages any priming, we will correct.
- All common walls open.
- Wall penetrations will cost \$ 75⁰⁰ ea.
- Roof penetrations or smoke dooms will cost \$100⁰⁰ ea.
- Roof pipe flashings will cost \$35⁰⁰ ea.
- Insulation to be of max width.
- No bad weather days.
- No cleaning of materials. Stage area is to be close to building site, w/proper blocking for storage of material and in a state to min. dirt or mud.
- Must have good access to site and building.
- Not responsible for damage to site by our equipment.
- Unloading to be done @ mobilization and erect to start immediately after.

253,000

• COMMERCIAL BUILDING

VARCO-PRUDEN
metal building systems

Gretna (804) 656-6243
Danville (804) 432-0977

**PLAINTIFF'S
EXHIBIT**

15 *[Signature]*

PROPOSAL FOR

ALTAVISTA DISTRIBUTION WAREHOUSE

DESIGN / BUILD CONTRACT

6460A

**ALTAVISTA, VA
ROSS PRODUCTS DIVISION
ABBOTT LABORATORIES**

**ENGINEER: RUSS HAGER
ABBOTT**

BLAIR CONSTRUCTION, Inc.

P. O. BOX 612 GRETNA, VA 24557

• COMMERCIAL BUILDING



Gretna (804) 656-6243
Danville (804) 432-0977

January 4, 1994

Ross Products Division Abbott Laboratories
Contracts Administration
6480 Busch Boulevard
Columbus, Ohio 43229

Attention: Mr. Robert E. Reid

Re: Altavista Distribution Center
Project No. 6460A

Gentlemen:

Blair Construction Inc., in response to Ross Laboratories' Request for Design dated November 30, 1993, is pleased to offer a proposal for the subject project with components as follows:

<u>Component</u>	<u>Pages</u>
Fee Proposal	3
Alternates	1
Architect-Engineering Drawing Summary	3
Confidential Agreement	1
Exhibit A1	1
Exhibit B	1
Exhibit C	1
Exhibit D	1
Exhibit E	1
Exhibit F	1
Cost Breakdown	1
McKinney & Company, L.P. Qualifications	22
Design Outline	20
Concrete Curing/Sealing Spec	6
Schnabel Preliminary Geotechnical Report	15
Project Schedule Outline	1

Drawings

C-1	Preliminary Site Plan
A-1	Floor Plan
A-2	Elevations

Page 2

Drawings (continued)

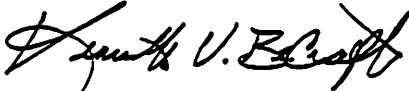
A-3	Wall Sections, Foundation and Slab Details
SP-1	Office and Details, Sprinkler
SP-2	Part. Plan, Sprinkler
SP-3	Part. Plan, Sprinkler
SP-4	Rack Plan, Sprinkler

As identified in the qualification interview, McKinney & Company, L.P. has teamed with Blair in preparing the design, (qualification package is included in this submittal).

We appreciate the opportunity to provide this proposal and will be available for discussion at your convenience.

Sincerely,

BLAIR CONSTRUCTION INC.



Kenneth V. BeCraft
Vice President

KVB/lhw

Enclosures

cc: Abbott Laboratories (with enclosures)
Contracts Administration
Attention: Mr. John Bell
Dept.: 54W AP34
Corporate Engineering
1 Abbott Park Road
Abbott Park, Illinois 60064-3500

SUBCONTRACTOR SCHEDULE

rev. aug.1993

**MUST BE
SUBMITTED WITH
BID PROPOSAL**

COST BREAKDOWN

SITE

Excavation	\$ 170,000
Concrete Paving	92,000
Asphalt Paving	129,000
Storm Drain	143,000
Potable Water	8,000
Sanitary Sewer	9,400
Fencing	29,000
Fire Line	98,000
Geotechnical/Concrete Testing	70,000

BUILDING

Concrete Foundation/Walls/Floors	960,000
Pre-engineered Metal Building	1,119,000
Pre-engineered Metal Building Erection	270,000
Dock Shelters/Doors	52,000
Fire Protection In-Rack	450,000
Fire Protection Ceiling, etc.	450,000
Office Area Complete	150,000
Warehouse Lighting	133,000
Office HVAC	30,000
Air Rotation System	134,000
Warehouse Ventilation	53,000
Electrical Design	15,000
Mechanical Design	7,200

BLAIR CONSTRUCTION, INC.

P.O. BOX 6880 • LYNCHBURG, VA 24505
Phone: (804) 847-1011 • Fax: (804) 847-8834

PLAINTIFF'S
EXHIBIT

April 8, 1994

16 *EX*

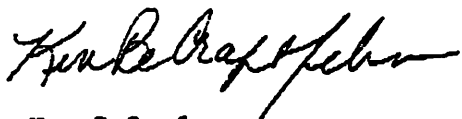
W. S. Construction
P. O. Box 416
Blairs, Va. 24527

Re: Abbott Labs, Altavista, Va.

Dear sir,

Please find enclosed our confirmation of your written quotation for the above referenced project. Please sign and return one copy to me for my file.

Sincerely,



Ken BeCraft

Enclosure

BLAIR CONST. CONSTRUCTION, INC.
P.O. Box 6880
Scott and Stringfellow Bldg., Suite 201
810 Main Street
LYNCHBURG, VIRGINIA 24505

(804) 847-1011
FAX (804) 847-8834

AGREEMENT

DATE: April 8, 1994

TO: W. S. Construction
P. O. Box 416
Blaine, Va. 24527

***NOTE: NO TOBACCO PRODUCTS ON PREMISES.
DESIGNATED EATING AREA.
SAFETY GLASSES/HARD HATS REQUIRED.
SAFETY MANUAL FOR EACH SUB AVAILABLE.
MANDATORY (ALL WORKERS) SAFETY SEMINAR
AVAILABLE EACH DAY FROM 2-3 P.M.
MANDATORY PROJECT MEETING EACH WED. 11

JCB: Abbott Labs
Alcavista, Va.

confirmation
This is our ~~acceptance~~ of your written/verbal quotation dated 01/03/94 for the following
accordance with plans and specifications.

Complete installation of/furnishing the following materials:

Erection of Varco-Pruden Metal Building including
Spanloc (concealed fasteners), insulation & liner panel.

Base proposal	229,000 + 24,000=	\$ 253,000
Added frame/roof (10,900 S.F.)	=	7,150

Wall penetrations	-----	\$ 75 ea.
Roof penetrations	-----	100 ea.
Roof pipe flashing	-----	35 ea.

The above for the sum of See above

Sales tax is / is not included.

Metal building delivery schedule: First week May

Date of installation/schedule to follow. Building to be "Closed In" 12 weeks after above delivery.

Please submit. N/A copies of shop drawings or manufacturer's literature for approval.

Please send to our office a certificate of insurance with full coverage of worker's compensation and general liability.

NOTE: Varco-Pruden drawings are expected
week 4/11.

BLAIR CONSTRUCTION, INC.

BY: *[Signature]*

Please return one signed copy to our office for our files.

228

EXHIBIT B

ACCEPTED BY: _____

TITLE: _____

BLAIR CONSTRUCTION, INC.

P.O. Box 6880
Scott and Stringfellow Bldg., Suite 201
810 Main Street
LYNCHBURG, VIRGINIA 24505

(804) 847-1011
FAX (804) 847-8834

LETTER OF TRANSMITTAL

TO W S Construction Inc.

136 Austin Circle

Danville, Va. 24540

**PLAINTIFF'S
EXHIBIT**

17 *[initials]*

DATE	04/19/94	JOB NO.	
ATTENTION	Randy Weatherford		
RE:	Ross Babs, Phase I		

WE ARE SENDING YOU ☒ Attached ☐ Under separate cover via _____ the following items:

- ☐ Shop drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ Phase I dwgs.

COPIES	DATE	NO.	DESCRIPTION

THESE ARE TRANSMITTED as checked below:

- ☐ For approval ☐ Approved as submitted ☐ Resubmit _____ copies for approval
☒ For your use ☐ Approved as noted ☐ Submit _____ copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return _____ corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ 19 _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS _____

COPY TO _____

RECYCLED PAPER:
Contains: 40% Pre-Consumer • 10% Post-Consumer

229

SIGNED: *[Signature]*

If enclosures are not as noted, kindly notify us at once

• COMMERCIAL BUILDING



Gretna (804) 656-6243
Danville (804) 432-0977

WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
MARCH 2, 1994
CONSTRUCTION SITE OFFICE

PLAINTIFF'S
EXHIBIT

NEXT MEETING: MARCH 9, 1994

CONTRACTORS

*BLAIR CONSTRUCTION/KEN BECRAFT, WILLIAM WILLIS
*ENGLISH CONSTRUCTION/EMMITT HOLDREN
*PLUMB RITE PLUMBING/PAUL MATTOX
HOLLEY FENCE
HURT & PROFFITT
SCHNABEL ENGINEERING
W.S. CONSTRUCTION
VA SPRINKLER

ABBOTT ENGINEERING

*EVERETT GRADY
*WADE OSBORNE

*IN ATTENDANCE

OUTSTANDING ISSUES/RESOLUTIONS
NONE

MEETING MINUTES FOR
MARCH 2, 1994

1. Safety & Housekeeping

- A. A safety inspection will be conducted once a week with a safety evaluation check list.
- B. One day badges will issued at the site trailer with the stipulation that:
 - A. Everett Grady be notified of any new person on site.
 - B. that person be in attendance at the 2:00pm safety classes that day.
- C. Everett Grady stated that safety glasses will be worn at all locations at all times on job site.

2. Clarifications

- A. English stated that they needed additional burn area. (Resolution: Everett Grady met with the safety council who approved the additional burn area with the stipulation that one man be there at all times the fire is burning.)
- B. English discussed the need for an extended ditch for water drainage. (Resolution: Ken BeCraft will contact McKinney & Co. for an answer.)

BLAIR BUILDS BETTER SINCE 1911

• COMMERCIAL BUILDING



Gretna (804) 656-6243
Danville (804) 432-0977

- C. Paul Mattox (Plumb Rite Plumbing) needs Abbott to specify where to stop with the stone regarding the pond. (Resolution: Everett Grady stated that he should stop at the toe of the slope.)
3. Contract Administration
A. Ken BeCraft received the project contract on March 1, 1994 and will be returning it on March 3, 1994.
4. Submittals
A. Ken BeCraft will be receiving a fax about the specifications of the final storm drain which he will then fax to Paul Mattox.
5. Material Control
A. Pipe for Plumb Rite Plumbing will be delivered to the job site this week.
B. The site trailer was delivered and set up this week.
6. Job Progress/Manpower
A. Some grading has been done this week along with some burning.
B. It may be a week or two before the phone lines are straight.
7. Project Schedule/Logistics
A. Ken BeCraft will let Frank Wilson know about new settlement trap to be put in for drainage.
B. Ken BeCraft will talk to Frank Wilson about the stone under the pipe in the pond.
C. Two week look ahead
1. The fireline will be relocated
2. The pipe will be put in for the pond.
3. The retaining wall will be about finished.
4. Pond construction will be going on.
5. The construction entrance will be complete. (Phone Co. should be present)
6. The Ross entrance to the job site will be barricaded.
7. A silt fence will be installed.
8. Digging the footings will begin around the 15th or the 18th.
9. Plumb Rite Plumbing will be starting approximately March 20.

BLAIR CONSTRUCTION, INC.

P.O. BOX 6880 • LYNCHBURG, VA 24505
Phone: (804) 847-1011 • Fax: (804) 847-8834

WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
MARCH 9, 1994
CONSTRUCTION SITE OFFICE

NEXT MEETING: MARCH 16, 1994/11:00AM

CONTRACTORS

- *BLAIR CONSTRUCTION/KEN BECRAFT, WILLIAM WILLIS
- *ENGLISH CONSTRUCTION/EMMITT HOLDREN"
- *PLUMB RITE PLUMBING/PAUL MATTOX
- HOLLEY FENCE
- HURT & PROFFITT
- SCHNABEL ENGINEERING
- WEATHERFORD STEEL ERECTORS
- VA SPRINKLER
- MCKINNEY & CO.

ABBOTT ENGINEERING

- *WADE OSBORNE
- EVERETT GRADY/Bob Hubbard

*IN ATTENDANCE

OUTSTANDING ISSUES/RESOLUTIONS FROM MARCH 2, 1994

CLARIFICATIONS

A. English discussed the need for an extended ditch for water drainage. (Resolution: McKinney & Co. approved the ditch for water drainage and it has been completed.)

CONTRACT ADMINISTRATION

A. Ken BeCraft has reviewed and returned the project contract.

SUBMITTALS

A. The final drawings for the storm drain system, as discussed in the last meeting, should reach Ken BeCraft March 10, 1994. He will then send a copy to Salem and wait for approval from Abbott before releasing Salem to begin building the structure.

MATERIAL CONTROL

A. Plumb Rite Plumbing received most of the material they were expecting.

PROJECT SCHEDULE/LOGISTICS

A. Ken BeCraft discussed the new sediment trap put in for drainage.

BLAIR CONSTRUCTION, INC.

P.O. BOX 6880 • LYNCHBURG, VA 24505
Phone: (804) 847-1011 • Fax: (804) 847-8834

MEETING MINUTES FOR MARCH 9, 1994

SAFETY AND HOUSEKEEPING

- A. A safety inspection of the site was not done last week.
- B. Ross personnel was sited on the construction site eating without proper safety gear.
- C. There was a discussion about excavation permits. It will be clarified with Everett Grady whether there will be a daily permit or a job permit.
- D. A fourty-eight hour notice of any shutdown of the fire line needs to be confirmed.
- E. Each sub-contractor is required to have a safety meeting with their people each week using the guideline in the Safety Guide Manual. They will be required to fill out the safety form supplied to them. They can pick up the forms at the site trailer.

CLARIFICATION

- A. A new ordinance went into effect March 1, 1994 concerning the burning of brush. The ordinance stated that brush burning would be done only from 4pm-12Midnight. Ken BeCraft will get with Stan Goldsmith about written permission to continue burning outside of ordinance hours.
- B. A VIP tour of the Abbott plant, including the constuction site will be conducted on March 24 & 25. Abbott is requesting that by that time the following things will be done:
 - 1. The area is to be secured.
 - 2. The required signs should be in place.
- C. Everett Grady gave verbal permission to move the picnic tables to the job site trailer area. This will be done this week.
- D. Questions were raised about the fuel tank English has on site. Abbott will get a copy of the EPA Regulations that govern the requirements of the fuel tank. Until that time, English is to carry on as they are.
- E. The Abbott corporate office has instructed Blair to stop clearing trees.

CONTRACT ADMINISTRATION

NONE

SUBMITTALS

- A. A meeting will be held with Va Sprinkler, Bob Hubbard, Wade Osborn and Ken BeCraft today, March 9, 1994, to clarify fire lines and go over storm drain reports.

MATERIAL CONTROL

- A. Paul Mattox stated that 33" pipe will take longer than 36" pipe to receive. Ken BeCraft will get with McKinney & Co. to discuss the possibility of using 33" pipe.

JOB PROGRESS/MANPOWER

- A. Stripping top soil is still going on.

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P.O. BOX 6880 • LYNCHBURG, VA 24505
Phone: (804) 847-1011 • Fax: (804) 847-8834

- B. Grading will be going on approximately five more weeks.
- C. The fire line is in the works.

PROJECT SCHEDULE/LOGISTICS

TWO WEEK LOOK AHEAD

1. The retaining wall will be started.
2. The fire line will be relocated.
3. Pond construction still going on.
4. The construction entrance will be started.
5. The Ross entrance to the job site will be barricaded.
6. The silt fence will be installed.
7. Digging the footings will begin.
8. Plumb Rite Plumbing will be starting the piping for the pond around the 21st of March.

BLAIR CONSTRUCTION, INC.

P.O. BOX 6880 • LYNCHBURG, VA 24505
Phone: (804) 847-1011 • Fax: (804) 847-8834

WAREHOUSE DISTRIBUTION CENTER
PROJECT # 6460A

MARCH 16, 1994/11:00AM
CONSTRUCTION SITE OFFICE

NEXT MEETING: MARCH 23, 1994

CONTRACTORS

- *BLAIR CONSTRUCTION/KEN BECRAFT. WILLIAM WILLIS
- *ENGLISH CONSTRUCTION/EMMITT HOLDREN
- *PLUMB RITE PLUMBING/PAUL MATTOX
- *SCHNABEL ENGINEERING/GEORGE BECKER
- *FROEHLING & ROBERTSON/JIM LEWIS
- HOLLEY FENCE
- W.S. CONSTRUCTION
- VA SPRINKLER
- MCKINNEY & COMPANY
- SOUTHERN AIR

ABBOTT ENGINEERING

- *EVERETT GRADY
- *WADE OSBORNE

*IN ATTENDANCE

OUTSTANDING ISSUES AND RESOLUTIONS FROM MARCH 9, 1994

SAFETY AND HOUSEKEEPING

A. Everett Grady clarified that an excavation permit was issued and daily excavation permits will not be necessary.

CLARIFICATION

A. English will be able to burn at all times as long as the brush is more than 300 feet from the woods. Any brush closer than 300 feet, will only be burned between the hours of 4:00pm and 12:00am.

SUBMITTALS

A. Fire lines have been clarified and the storm drain reports have been reviewed.

MATERIAL CONTROL

- A. McKinney & Co. approved the use of 36" pipe in lue of 33" pipe for the storm drain.

MEETING MINUTES FOR MARCH 16,1994

SAFETY AND HOUSEKEEPING

- A. The safety inspection conducted by Abbott last week showed no violations.
- B. Heavy smoke was coming from English's fire March 15. Everett stressed that extreme caution and notice of wind direction should be used when burning.

CLARIFICATION

- A. A discussion was heid about the backfilling around the pipes. Everett Grady will get with Russ Hager to clarify the meaning of the word cohesionless fill as it is used in the specs. (Resolution: Everett Grady verified that cohesionless fill means #68 stone.)
- B. Abbott is requesting layout coordinates for the sprinkler system that has been rerouted. William Willis will get with Hurt & Proffitt on this.
- C. Emmitt Holdren discussed his concern about the need for more land to stockpile on. Evertt Grady will get with Russ Hager about this.
- D. Emmitt Holdren proposed that if any work not covered in English's contract comes up during the job, he would like written verification by all concerned parties.
- E. VA Sprinkler needs an answer on whether Abbott wants three additional lead-ins. Everett is waiting for a decision from Russ Hager on this.

SUBMITTALS

- A. Ken BeCraft submitted the final report from Schnabel Engineering to Bill Dobos and Russ Hager.
- B. Ken Becraft hopes to have the building reactions from Varco-Pruden by Friday.

MATERIAL CONTROL

- A. Everett raised some concerns about the coordination of the major concrete pours. He stressed that at no time should concrete trucks be lined up on Clarion Road or washing out concrete trucks on Abbott property.
- B. Jim Lewis will be watching concrete pours at all times. He will sign the slip to sign off on for permission to pour everyday.

JOB PROGRESS/MANPOWER

- A. Fire lines have been rerouted.
- B. The Ross entrance to the job site has been barricaded.
- C. The silt fence has been installed.
- D. The piping for the pond has been started.

TWO WEEK LOOK AHEAD

- A. The temporary power should be installed.
- B. The phone lines should be relocated.
- C. The new entrance should be started.
- D. Pond construction should be complete.
- E. Digging the footings should be in progress.
- F. The retaining wall should be near completion.

BLAIR CONSTRUCTION, INC.

P.O. BOX 6880 • LYNCHBURG, VA 24505
Phone: (804) 847-1011 • Fax: (804) 847-8834

WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
MARCH 23, 1994/10:00AM
CONSTRUCTION SITE OFFICE

NEXT MEETING: MARCH 30, 1994/10:00AM

CONTRACTORS

*BLAIR CONSTRUCTION/FRED BLAIR, KEN BECRAFT, WILLIAM WILLIS
*ENGLISH CONSTRUCTION/JIM JONES
*FROEHLING & ROBERTSON/JIM LEWIS
*SCHNABEL ENGINEERING/GEORGE BECKER
HOLLEY FENCE
W.S. CONSTRUCTION
VA SPRINKLER
MCKINNEY & COMPANY
SOUTHERN AIR

ABBOTT ENGINEERING

*EVERETT GRADY
*WADE OSBORNE
*KEN TRAPINO

IN ATTENDANCE

OUTSTANDING ISSUES AND RESOLUTIONS FROM MARCH 16, 1994

CLARIFICATION

A. Va Sprinkler questioned whether Abbott wanted three additional lead-ins.
(Resolution: Everett got a "yes" answer from Russ Hager on this.)

MEETING MINUTES FOR MARCH 23, 1994

SAFETY AND HOUSEKEEPING

A. The safety inspection conducted by Abbott March 17, showed a good report.

CLARIFICATIONS

- A. It has been decided that some excess material will be removed from the site, which will alleviate the problem of room for stockpiling material.
- B. Everett Grady would like to be copied with the erosion control plans.
- C. One hundred-seventy cubic yards were undercut last week.

SUBMITTALS

- A. The report from Schnabel was received and signed off by Abbott. The report clarified two more settlement plates were added to plans.
- . Ken BeCraft stated that the full set of architectural and structural plans are approximately one week away from being approved.
- C. Everett Grady pointed out that an After Hours permit should be filled out each Friday, if any weekend work will be going on.

MATERIAL CONTROL

- A. The 42" pipe should be delivered this week.
- B. The 36" pipe should be delivered next Tuesday.

JOB PROGRESS/MANPOWER

- A. The downstream side of pond is in place.
- B. All subgrades have been stripped.

TWO WEEK LOOK AHEAD

- A. Phone lines will be relocated.
- B. The new entrance should be completed.
- C. Telephone poles will be relocated.
- D. Footings on the retaining wall will be completed.
- E. Forming the retaining wall should be in progress.
- F. The footings on the North end of the site should be in place by April 11th.

Minutes recorded by Martha M. Ma
Martha M. Ma

BLAIR CONSTRUCTION, INC.

P.O. BOX 6880 • LYNCHBURG, VA 24505
Phone: (804) 847-1011 • Fax: (804) 847-8834

WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
MARCH 30, 1994/10:00AM
CONSTRUCTION SITE OFFICE

****NEXT MEETING: APRIL 6, 1994/11:00AM**

CONTRACTORS

*BLAIR CONSTRUCTION/KEN BECRAFT, WILLIAM WILLIS
*ENGLISH CONSTRUCTION/EMMETT HOLDREN
*FROEHLING & ROBERTSON/JIM LEWIS
SCHNABEL ENGINEERING
HOLLEY FENCE
PLUMB RITE PLUMBING
W.S. CONSTRUCTION
VA SPRINKLER
MCKINNEY & CO.
SOUTHERN AIR

ABBOTT ENGINEERING

*EVERETT GRADY
*WADE OSBORNE
*DAVID MCDANIEL

****NOTE CHANGE IN MEETING TIME
*IN ATTENDANCE**

OUTSTANDING ISSUES AND RESOLUTIONS FROM MARCH 23, 1994

SUBMITTALS

- A. The civil, structural, and architectural drawings have been submitted to Abbott. The civil drawings are being reviewed by Robb Wojtysiak. The architectural drawings are being reviewed by David Chicoine.
- B. The structural drawings have been reviewed by Robb Wojtysiak, and Blair is now incorporating his comments into the drawings.

MEETING MINUTES FOR MARCH 30, 1994

SAFETY AND HOUSEKEEPING

- A. The safety inspection conducted by Abbott March 24, resulted in a good report.

CLARIFICATIONS

- A. Robb Wojtysiak and Russ Hager have verbally stated that cohesionless fill can be sand.
- B. A question was raised by Wade Osborne about headwalls on exposed pipe coming from the pond. Ken BeCraft will get an answer for this.
- C. A six foot piece of pipe that Plumb Rite Plumbing put in the pond last week came out of the ground due to the excess rain we had. It is believed that the pipe did not hold because the last piece was only six foot long. McKinney & Co. is devising a concrete tie-down design to hold the pipe.

... SINCE 1911 ...

SUBMITTALS

- A. Russ Hager should receive the revised drawings of the change in the floor plans for the building, today, March 30, 1994.
- B. Ken BeCraft should also receive the revised drawings of the change in the floor plans today. He will submit a copy to Southern Air.
- C. A turning lane into the job site has been added to the drawings. We are now waiting for the drawings to be approved.
- D. The design mix was approved on the footings.

MATERIAL CONTROL

- A. A load of re-bar was delivered to the job site today.
- B. 170 foot of the 42 inch pipe has been delivered to the job site.
- C. The 36 inch pipe coming back towards the East side of the building is available for delivery.

JOB PROGRESS/MANPOWER

- A. As of March 24, no work has been done on the job site, due to an excessive amount of rain.
- B. The phone lines have been relocated.
- C. The power lines are in the process of being relocated.

TWO WEEK LOOK AHEAD

- A. The new entrance should be completed by April 4.
- B. The power lines should be relocated by April 8.
- C. Footings on the retaining wall should be completed.
- D. Forming the retaining wall should be in progress.
- E. The footings on the North end of site should be started by April 11th in order to start the erection of the building on May 1st.

MINUTES RECORDED BY Martha M. Mattox
MARTHA M. MATTOX

BLAIR CONSTRUCTION, INC.

P.O. BOX 6880 • LYNCHBURG, VA 24505
Phone: (804) 847-1011 • Fax: (804) 847-8834

WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
APRIL 6, 1994/11:00AM
CONSTRUCTION SITE OFFICE

NEXT MEETING: APRIL 13, 1994/11:00AM

CONTRACTORS

*BLAIR CONSTRUCTION/KEN BECRAFT, WILLIAM WILLIS
*ENGLISH CONSTRUCTION/JIM JONES
*SCHNABEL ENGINEERING/GEORGE BECKER
*FROEHLING & ROBERTSON/STEPHEN WILES
*PLUMB RITE PLUMBING/PAUL MATTOX
*SOUTHERN AIR/GREG NEWMAN, DAVE FISHER
HOLLEY FENCE
W.S. CONSTRUCTION
VA SPRINKLER
MCKINNEY & CO.

*IN ATTENDANCE

OUTSTANDING ISSUES AND RESOLUTIONS FROM MARCH 30, 1994

CLARIFICATIONS

- A. A question was raised last week about the headwalls on exposed pipe coming from the pond. We are still waiting for clarification on this.
- B. We are waiting for clarification on a tie-down design for the piece of pipe that came out of the ground last week. McKinney & Co. are working on this.

SUBMITTALS

- A. The civil, structural, and architectural drawings have been reviewed, corrected and sent back to Abbott.
- B. All mix design has been approved.

MEETING MINUTES FOR APRIL 6, 1994

SAFETY AND HOUSEKEEPING

- A. The safety inspection conducted by Abbott March 31, 1994 resulted in a good report.
- B. Everett Grady brought up concerns about workers eating in their vehicles on the job site. They will be allowed to do so only if they are parked in the office trailer area.

CLARIFICATIONS

- A. Ken BeCRAFT stated that any phone calls made from the site trailer by sub-contractors should be business related. A pay phone will be installed for personal calls.
- B. Everett Grady emphasized concern over the first lift (2-3 foot lift) placed in the parking area. Due to an overdig by English and moisture content, Schnabel realizes that there will be areas that may need to be reworked once the proof-rolling is done. This is acceptable to Blair.
- C. Paul Mattox submitted Schnabel Engineering a sample of sand which is termed as cohesionless fill. Schnabel approved the use of this sand.

- D. Southern Air and David McDaniel have agreed that they will re-wire the tamper switches to their original capacity.
- E. Everett Grady gave verbal permission to bring one Marshall Concrete truck through Abbott parking lot for the retaining wall footing.
- F. Abbott needs a twenty-four hour notice on all concrete pours.
- G. Before any concrete pours, a concrete pour slip must be obtained and signed off on by either Everett Grady or Froehling & Robertson.

SUBMITTALS

- A. Va Sprinkler is now revising their drawings, due to changes made by Abbott.

MATERIAL CONTROL

- A. A load of re-bar should be at the job site tomorrow morning, April 7.
- B. Ten inch sprinkler main pipe should be delivered to job site April 8.

JOB PROGRESS/MANPOWER

- A. Phone lines have been lowered.
- B. The power lines are in the process of being relocated.
- C. The new entrance to the construction site has been completed.
- D. The footings on the retaining wall have been started. (Note: Wet/muddy site conditions are holding the footings up)

TWO WEEK LOOK AHEAD

- A. The power lines should be completely relocated by April 12.
- B. Weather permitting, the footings on the retaining wall should be completed by April 15.
- C. Forming the retaining wall should be in progress.
- D. The footings on the North end of the job site should be started by April 11th, in order to start the erection of the building on May 1st.

MINUTES TAKEN BY Martha M. Mattox
MARTHA M MATTOX

BLAIR CONSTRUCTION, INC.

P.O. BOX 6880 • LYNCHBURG, VA 24505
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WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
APRIL 13, 1994/11:00AM
CONSTRUCTION SITE OFFICE

NEXT MEETING: APRIL 20, 1994/11:00AM

CONTRACTORS

*BLAIR CONSTRUCTION/KEN BECRAFT, WILLIAM WILLIS
*ENGLISH CONSTRUCTION/EMMETT HOLDREN
*FROEHLING & ROBERTSON
*SCHNABEL ENGINEERING/GEORGE BECKER
*SOUTHERN AIR/GREG NEWMAN, DAVE FISHER
HOLLEY FENCE
W.S. CONSTRUCTION
VA SPRINKLER
MCKINNEY & CO.

ABBOTT ENGINEERING

*EVERETT GRADY
*WADE OSBORNE
*DAVID MCDANIEL
*WILLIAM DOBOS

*IN ATTENDANCE

OUTSTANDING ISSUES AND RESOLUTIONS FROM APRIL 6, 1994

CLARIFICATIONS

- A. The question raised pertaining to the headwalls on exposed pipe coming from the pond has been noted in the civil plans. We are waiting for the plans to be approved.
- B. The tie-down plan has been constructed for the pipe that came out of the pond.
- C. The cohesionless fill (sand) has been tested by Schnabel and has been approved.
- D. David McDaniel has stated that the statement that appeared in last weeks minutes was worded wrong. It should read: Southern Air and David McDaniel have agreed that they will re-wire the tamper switches to their original "design".
- E. Schnabel wants to clarify that they did not agree to a 2'-3' lift in the parking area as stated in last weeks minutes. They agreed that the first lift in the parking area is a 2' lift. Everett Grady is concerned with compactin in the parking area. Schnabel has stated that tests taken with Froehling & Robertson meet the project specifications. Jim Lewis will supply all concerned with a copy of the test results.
- F. The footing and retaining wall mix design has been approved. The floor mix is being resubmitted per Abbott's comments.

MEETING MINUTES FOR APRIL 16, 1994

SAFETY AND HOUSEKEEPING

- A. The safety inspection conducted by Abbott on April 8, 1994 resulted in a good report.

- B. There has been some misunderstanding concerning the definition of safety glasses on the job site. Abbott has specified that anyone on the job site should be wearing ANSIV.87 approved safety glasses. Approved prescription glasses are acceptable.

CLARIFICATIONS

- A. A question was raised concerning the exhaust system required for the battery changing area. Ken BeCraft will look into this.
- B. It was clarified that there was approximately 800 yards of undercut in the south center of the building, due to type 2 soil.
- C. The settlement plates installed on April 5, 1994 are currently being monitored. So far there has been no settlement noted.
- D. Abbott has requested a separate entrance to the employee parking area. The request is being reviewed by McKinney & Co.
- E. It has been determined that the Northwest power pole is in the way and will have to be lowered. Ken BeCraft has sent a letter to Virginia Power concerning this.

SUBMITTALS

- A. Preliminary electrical drawings are currently being reviewed by Abbott.
- B. Mechanical drawings should be submitted for review by Friday.

MATERIAL CONTROL

- A. It was stated that the sewer line sleeve is on the job site.
- B. All fire line material and hydrants have been delivered to job site.
- C. The rebar for the balance of the footings and the retaining wall will be here April 14th.
- D. The building steel will be delivered to the job site approximately May 5th.

JOB PROGRESS

- A. Plumb Rite Plumbing is ready to tap into the town supply of water. He is coordinating with the town on this due to the need to cut the water off during the tap.
- B. The first retaining wall footings (Southeast corner) were poured on April 12th.
- C. Storm drain piping is complete from the pond to manhole 4 on the west side and from the pond approximately manhole 11 on the east side. Over the next two weeks all structures should be received and balance of west side (dock and parking area) completed.
- D. Blair will get started on the interior column footings tomorrow, April 14th.
- E. English will be finished with the grading in approximately seven to ten working days (weather permitting) excluding the turning lane.

TWO WEEK LOOD AHEAD

- A. The underground fire main should start approximately April 25th.
- B. Plumb Rite Plumbing should be on the west side of the building installing pipe in approximately two weeks.
- C. Forming the retaining wall should be in progress.
- D. Work should be in progress on the building foundation (Northside).

MEETING MINUTES TAKEN BY Martina M.
MARTHA M

BLAIR CONSTRUCTION, INC.

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WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
APRIL 20, 1994/11:00AM
CONSTRUCTION SITE OFFICE

NEXT MEETING: APRIL 27, 1994/11:00AM

CONTRACTORS

*BLAIR CONSTRUCTION/WILLIAM WILLIS
*SOUTHERN AIR/GREG NEWMAN, DAVE FISHER
*SCHNABEL ENGINEERING/GEORGE BECKER
*FROEHLING & ROBERTSON/JIM LEWIS
ENGLISH CONSTRUCTION
HOLLEY FENCE
W.S. CONSTRUCTION
VA SPRINKLER
MCKINNEY & CO.

ABBOTT ENGINEERING

*WADE OSBORNE
*DAVID MCDANIEL
EVERETT GRADY

*IN ATTENDANCE

OUTSTANDING ISSUES AND RESOLUTIONS FROM APRIL 13, 1994

CLARIFICATIONS

- A. The question raised pertaining to the headwalls on exposed pipe coming from the pond has been noted in the civil plans. We are waiting for the plans to be approved. (Resolution: The plans have not been released yet.)
- B. The tie-down plan has been designed for the pipe that came out of the pond and the plan has been approved by Abbott.
- C. Everett Grady is concerned with compaction in the parking area. Schnabel has stated that tests taken with Froehling & Robertson meet the project specifications. Jim Lewis will supply all concerned with a copy of the test results. (Resolution: Everett Grady has received a copy of the test results.)
- D. The footing and retaining wall mix design has been approved. The floor mix is being resubmitted per Abbott's comments. (Resolution: Flex tests from the floor mix has been submitted to Abbott; approval pending.)
- E. A question was raised concerning the exhaust system required for the battery charging area. Ken BeCraft will look into this. (Update: Southern Air is persuing a resolution with Joe Wergrezn.)
- F. Schnabel wants to clarify a statement from last week's minutes. It was clarified that there was approximately 800 yards of undercut in the south center of the building, due to existing fill soil and top soil.
- G. The settlement plates installed on April 5, 1994 are currently being monitored. As of April 20, 1994, no settlement has been noted.
- H. Abbott has requested a separate entrance to the employee parking area. The request is being reviewed by McKinney & Co. (Update: The request is pending.)
- I. It has been determined that the Northwest power pole is in the way and will have to be moved. Ken BeCraft has sent a letter to Virginia Power concerning this. (Resolution still pending)

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SUBMITTALS

- A. Preliminary electrical drawings are currently being reviewed by Abbott.
(Resolution: Southern Air has received the drawings back marked "as noted". Resubmittal not required. Changes to be made on the construction drawings.)
- B. Mechanical drawings should be submitted for review by Friday. (Resolution: The plumbing drawings were submitted to Ken BeCraft on Friday the 15th. The submittal of HVAC mechanical drawings are pending due to information needed on the battery charging area and the controlled environment area.

MEETING MINUTES FOR APRIL 20, 1994

CLARIFICATIONS

- A. Clarifications for the routing of the fresh water service is pending.

MATERIAL CONTROL

- A. Concrete structures for storm sewer system will arrive on site April 21, 1994.

JOB PROGRESS

- A. Seven column footings were poured Friday April 15th. Five column footings were poured Monday April 18th.
- B. Two more sections of the retaining wall have been formed and are ready for concrete pour.
- C. The fresh water service is 90% installed and pending approval.
- D. English is nearing completion of grading. The building pad is on rough grade and English is cutting back manpower.
- E. Plumb Rite Plumbing has installed 24" pipe from manholes 4-5, 5-6, 6-7, 7-8 and backfilled areas.
- F. Southern Air is continuing to bring post indicator tamper switches into service on existing fire loop.
- G. Plumb Rite Plumbing has tapped into the town supply of water.

TWO WEEK LOOK AHEAD

- A. Continuing to excavate and place concrete in column footings.
- B. Will start to form retaining wall in Southeast corner and continue retaining wall footings.
- C. There is a possibility of Southern Air starting on the sanitary drain (interior of building) before backfilling of retaining wall.
- D. Sanitary sewer manhole and piping installation starting on April 25th.
- E. The storm sewer piping should be completed.
- F. English should complete the preparation of slab subgrades.
- G. Southern Air should start on duct band installation for electrical service.
- H. Southern Air should start underground conduit rough-ins.
- I. Should complete the fire protection post indicator valve tamper switch installation to plant proper.
- J. The underground fire main should start approximately April 25th.

MINUTES TAKEN BY

Martha M. Mattox
MARTHA M MATTOX

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WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
APRIL 27, 1994/11:00AM
CONSTRUCTION SITE OFFICE

NEXT MEETING: MAY 4, 1994/11:00AM

CONTRACTORS

*BLAIR CONSTRUCTION/KEN BECRAFT, WILLIAM WILLIS
*ENGLISH CONSTRUCTION/EMMETT HOLDREN
*SCHNABEL ENGINEERING/GEORGE BECKER
*SOUTHERN AIR/GREG NEWMAN, DAVE FISHER
*FROEHLING & ROBERTSON/JIM LEWIS
HOLLEY FENCE
W.S. CONSTRUCTION
VA SPRINKLER
MCKINNEY & COMPANY

ABBOTT ENGINEERING

*EVERETT GRADY
*WADE OSBORNE
*DAVID MCDANIEL
*BOB HUBBARD

*IN ATTENDANCE

OUTSTANDING ISSUES AND RESOLUTIONS FROM APRIL 20, 1994

CLARIFICATIONS

- A. The floor mix is being resubmitted per Abbott's comments. (Resolution: Flex tests from the floor mix has been submitted to Abbott; approval pending. Twenty-eight day beam and compressive breaks have been done and the results have been submitted to Abbott.)
- B. The separate entrance, requested by Abbott, to the employee parking area has been shown on the latest drawings. (Resolution: The entrance has been approved by the Town of Altavista.)
- C. It has been determined that the northeast power pole is in the way and will have to be moved. Ken BeCraft has sent a letter to Virginia Power concerning this. (Resolution: Still pending.)
- D. Clarification for the routing of the fresh water service is pending. (Resolution: Accepted as the routing was originally installed.)

SUBMITTALS

- A. The plumbing and electrical drawings have been submitted to Abbott and have been returned with changes noted on drawings. Southern Air will resubmit drawings.
- B. The HVAC drawings are being submitted to Abbott today.

SAFETY AND HOUSEKEEPING

- A. The safety inspection conducted by Abbott on April 20th resulted with a good report.

CLARIFICATIONS

- A. Because of cuts on the north side of building, along Clarion Road, Abbott is requesting that guardrails be installed with Frank Wilson's approval.
- B. Blair will be using the 4000 mix on some footings, due to some inconsistency in the 3000 mix. Abbott would like to clarify that the 4000 mix has not been approved yet and Blair will be responsible for any problems with that mix.
- C. Due to a PIV interfering with the placement of the sanitary tie-in, Frank Wilson has suggested relocating the tie-in above the PIV. This has been accepted by Abbott and will be noted and changed on the as-built drawings.
- D. Ken BeCraft will meet with the town on the turning lane this week. Drawings were submitted to the town for review approximately three weeks ago.
- E. Southern Air has indicated that they need proper identification of electrical requirements for dock levelers, overhead doors, and dock locks.
- F. Everett Grady has specified that he will personally look at the retaining wall prior to concrete pour.
- G. Greg Newman expressed concern over the conveyor system interfering with the electrical room. (Resolution: Everett Grady stated that he did not believe this would be the case.)

SUBMITTALS

- A. A formal submittal of electrical and plumbing drawings with preliminary review comments incorporated, will be submitted within a week.

MATERIAL CONTROL

- A. It has been clarified that the building steel will begin delivery May 9th.

JOB PROGRESS

- A. Column footings are still being formed and poured.
- B. Starting to form retaining wall.
- C. Installing four inches of 21B on grade slab.
- D. Plumb Rite Plumbing is installing structures in parking area.

TWO WEEK LOOK AHEAD

- A. The north half of the building steel will be coming May 9th.
- B. The underground fire main should start approximately May 9th.
- C. The erection of the steel will begin May 9th.
- D. The sewer line will be completed approximately April 29th.
- E. The footings will be completed on the north end of building approximately May 11th.
- F. Southern Air will be starting the underslab sewer and the underground electrical May 2nd.
- G. Southern Air will be starting the duct bank approximately May 11th.

MINUTES TAKEN BY Martha M. Matt
MARTHA M MATT

BLAIR CONSTRUCTION, INC.

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WAREHOUSE DISTRIBUTION CENTER
PROJECT #6460A
MAY 4, 1994/11:00AM
CONSTRUCTION SITE OFFICE

NEXT MEETING: MAY 11, 1994/11:00AM

CONTRACTORS

*BLAIR CONSTRUCTION/KEN BECRAFT, WILLIAM WILLIS
*ENGLISH CONSTRUCTION/EMMETT HOLDREN, JIM JONES
*SOUTHERN AIR/GREG NEWMAN, DAVE FISHER, RONNIE BAILLESS
*SCHNABEL ENGINEERING/GEORGE BECKER
*FROEHLING & ROBERTSON/JIM LEWIS
*PLUMB RITE PLUMBING/PAUL MATTOX
HOLLEY FENCE
W.S. CONSTRUCTION
VA SPRINKLER
MCKINNEY & COMPANY

ABBOTT ENGINEERING

*EVERETT GRADY
*WADE OSBORNE
*DAVID MCDANIEL

*IN ATTENDANCE

OUTSTANDING ISSUES AND RESOLUTIONS FROM APRIL 27, 1994

CLARIFICATIONS

- A. The floor mix has been resubmitted per Abbott's comments. (Resolution: Still pending.)
- B. The separate entrance, requested by Abbott, to the new employee parking area has been shown on the latest drawings. (Resolution: Pending approval.)
- C. The relocation of the northeast power pole is pending due to a decision needed from Avoca as to exactly what they want concerning the new entrance.

MEETING MINUTES FOR MAY 4, 1994

SAFETY AND HOUSEKEEPING

- A. The safety inspection conducted by Abbott April 27th resulted in some minor housekeeping violations. These violations have been corrected.
- B. Abbott clarified that, effective immediately, there will be a plant policy that to be considered a "competant person" you must be OSHA trained. Everett Grady will meet with the company owners that do not have an OSHA trained competant person to determine whether the person they have on site is competant enough to remain on site until they are able to be OSHA trained.
- C. A question was raised about to what depth you can excavate without being OSHA trained. Everett Grady stated that Abbott will clarify this with a memo.

CLARIFICATIONS

- A. The Town of Altavista has advised Blair to hold off installing the guardrails until they can install a sewer system along Clarion Road.
- B. Abbott is waiting for a decision from Avoca concerning their new parking area before any definite decision can be made concerning the turning lane and the new employee parking area
- C. Southern Air has indicated that they need proper identification of electrical requirements for dock levelers, overhead doors, and dock locks. (Resolution: Southern Air has received the proper identification for these things.)

SUBMITTALS

- A. The electrical and plumbing drawings, with preliminary review comments incorporated, have been submitted. (Resolution: Pending Abbott approval.)
- B. Southern Air will submit gear drawings to Ken BeCraft May 4th.
- C. Southern Air will submit lighting and motor control drawings to Ken BeCraft Friday May 6th.
- D. McKinney & Company are redrawing the turning lane clarifications due to the Town of Altavista wanting to install a sewer system along Clarion Road and not wanting to relocate water line.

MATERIAL CONTROL

- A. The first half of the building steel delivery will begin May 9th.
- B. Southern Air will be receiving a delivery of conduit May 5th.

JOB PROGRESS

- A. Start forming the perimeter curb wall this week.
- B. Column footings are still being formed and poured.
- C. Still forming retaining wall.
- D. Installing four inches of 21B on grade slab.
- E. The sewer line is completed.

TWO WEEK LOOK AHEAD

- A. The underground fire main should start approximately May 9th.
- B. The erection of the steel will start approximately May 9th.
- C. The footings will be completed on the north end of building approximately May 11th.
- D. Southern Air will be starting the duct bank approximately May 11th.

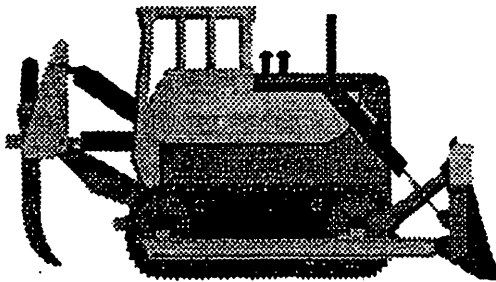
MINUTES TAKEN BY Martha M. M.
MARTHA M. MAT.

CONTRACTORS'

SAFETY

GUIDE

**Abbott Laboratories
Ross Products Division**



CONTRACTOR SAFETY AGREEMENT

_____ certifies that I fully understand and am familiar with the policies and procedures set forth in the Abbott Laboratories - Ross Products Division Contractors' Safety Manual. I agree to communicate these policies and procedures to all contractor employees working for my firm. I understand that I am responsible for the actions of my employees, and that violations of these policies and procedures can result in termination of the contract and or permanent removal of my employees from Abbott property.

Date: _____

Contractor Signature: _____

Please send a copy of this certification to:

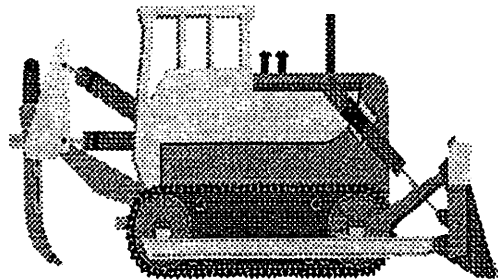
Abbott Laboratories - Ross Products Division
Attn: Plant Safety Dept.
P.O. Box 479
Altavista, VA 24517-0479

CONTRACTORS'

SAFETY

GUIDE

**Abbott Laboratories
Ross Products Division**



EMERGENCY PROCEDURES

IN THE EVENT OF ANY EMERGENCY

DIAL

EXT. 53555

AND REPORT THE FOLLOWING:

- 1. NAME**
- 2. LOCATION OF EMERGENCY**
- 3. NATURE OF INJURIES, IF ANY**

IF YOU NEED TO LEAVE THE CONSTRUCTION AREA BECAUSE OF AN EVACUATION, YOU MAY DO SO BY USING THE MAIN CONSTRUCTION ENTRANCE OR THE DESIGNATED EMERGENCY EXIT ONLY.

CONTRACTORS' SAFETY GUIDE

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GENERAL SAFETY REQUIREMENTS

INTRODUCTION

Abbott Laboratories recognizes that there are many hazards inherent in the construction industry. However, through sound and reasonable safety practices, injuries can be reduced and, in many cases, eliminated. There is no doubt that working safely has great humanitarian value and enhances employee morale. Furthermore, accident-free work is more profitable not only for Abbott, but for the contractor, as well. We therefore urge you to give particular attention to your employees' welfare in the work place. The safety of your personnel is ultimately your responsibility.

This booklet is for the use of contractors and subcontractors who perform work at Abbott Laboratories. It contains information and instructions regarding safe conduct by you and your employees while on Abbott property. Its purpose is to amplify the Safety Clause that appears in the General Conditions of your contract and sets forth certain guidelines and rules for your operations on Abbott sites. It obviously cannot cover every situation and is not intended to do so. Therefore, Abbott urges each contractor to supplement these provisions with instructions and work practices, which will decrease the likelihood of injury to employees and to others.

The handbook is issued to you at the time you are awarded your bid so that you will be fully aware of the safety requirements before beginning any work. All costs of abiding by these requirements and OSHA regulations must be included in your contract price.

Finally, the provisions of this handbook are intended to supplement but not replace the provisions of the Occupational Safety and Health Act of 1970, especially those contained in 29 CFR 1926, standards on construction safety.

VIOLATION OF POLICIES AND/OR PROCEDURES DETAILED IN THIS HANDBOOK ARE TAKEN SERIOUSLY. THE FIRST OFFENSE WILL RESULT IN A WRITTEN NOTICE OF THE VIOLATION SUBMITTED TO THE CONTRACTOR. SECOND OFFENSES WILL RESULT IN TERMINATION OF THE CONTRACT AND/OR PERMANENT REMOVAL OF THE OFFENDER FROM THE SITE.

DEFINITIONS

Abbott Representative: The Abbott site engineer or site manager representing the construction project.

Qualified Person: An experienced supervisor designated by the contractor as the firm's representative for the inspection of tools, equipment, and methods, and the carrying out of contractor's statutory and contractual safety obligations.

Competent Person: A designate who has been trained to supervise excavation, trenching, and shoring projects and can identify hazards associated with those projects.

GENERAL SAFETY INFORMATION

WORK ATTIRE

Shirts which cover the shoulders and long pants should be worn at all times. Sleeveless shirts and shorts are not allowed at any time. Complete arm protection will be required on some operating sites.

TOBACCO USE

Abbott Laboratories is a tobacco-free corporation. Tobacco use is not allowed anywhere on Abbott property at any time.

PEDESTRIANS

Use designated walkways provided for construction personnel. Do not take shortcuts through production areas or buildings. Enter and exit each day by the main construction entrance only. Use designated emergency exits to exit the construction site in the event of an emergency ONLY.

VEHICLES

Observe all plant parking and traffic regulations. Park in areas designated for construction personnel. (See "Parking and Layout")

PROFESSIONAL CONDUCT

Horseplay, fighting, gambling, smoking, possession of firearms, drinking alcoholic beverages, or using unauthorized drugs can result in termination of contract or permanent removal of employees from the site.

EQUIPMENT

The contractor shall provide the equipment necessary for the safe performance of work. All tools and equipment brought onto the site for use are subject to inspection and approval by the Abbott Site Engineer or designate. Abbott equipment

or tools may be used only with written approval from the Abbott Site Engineer. (See "Hold Harmless")

Powder-actuated tools must only be operated by those employees who have been trained to operate them. These tools must be inspected daily to ensure that they are in safe working condition. POWDER ACTUATED TOOLS PRODUCE SPARKS, AND REQUIRE A "HOT WORK" PERMIT FOR OPERATIONS WITHIN RESTRICTED AREAS. (See "Hot Work")

PERSONAL PROTECTIVE EQUIPMENT

Personal protective equipment is a must on all jobs. Approved hard hats are required for contractors and their employees at all construction sites. ANSI approved safety glasses are the minimum requirement for eye protection for all construction areas. Additional eye protection, such as face shields, goggles, or side shields on safety glasses may be required for jobs such as grinding or cutting. Industrial work shoes or boots suitable for the exposure situation are required. Abbott supervision may require contract personnel to wear rubber gloves while working with or around hazardous chemicals.

PERMISSION TO START WORK

Construction employees must complete the construction safety training session before they are allowed to begin work. Contractors must ensure that their employees are familiar with federal and state regulations and Abbott policies, and can locate designated break room and toilet facilities, entrances and exits, and parking areas.

Upon completion of the contractor safety training program, construction employees will be issued an I.D. badge that must be worn at all times while on Abbott property.

SAFETY TRAINING

Employees must be kept informed of current construction safety issues as they relate to the site and the work being performed. Regular safety meetings remind employees of the importance of safety on the job. The contractor is required to provide weekly "Toolbox" safety talks for employees. Examples of safety topics that can be used include personal protective equipment, proper trenching and excavation, and proper storage of flammable or combustible liquids. These examples and more can be found in the section on "Top 25 OSHA Violations".

A record of each "Toolbox" talk must be submitted to the Abbott Site Engineer. This record must include the date, time, and topic discussed, and must also have the signatures of all employees who attended. A "Toolbox Training Record Sheet" is located in the "Forms and Permits" section of this manual.

HOUSEKEEPING

The construction area must be kept in a neat and orderly condition. Scrap, trash, and other wastes must be disposed of in designated containers. Work areas must be cleaned up continually as a job progresses. Cords and hoses must be routed across walkways in a manner that will not present a tripping hazard. Storage space for building materials, bricks, lumber, pipes, sand, cement and other supplies should be arranged with the site engineer before delivery so supplies may be kept in a neat and orderly fashion. All materials, tools, and equipment must be stored in a stable position (tied, stacked, or chocked) to prevent rolling or falling. A safe access-way to all work areas must be maintained. Roadways must be kept clear at all times. Passageways must be clear of stumbling hazards. Materials must not block fire doors, fire fighting equipment, fire alarms, electrical switches, or exit doors. Loose lumber shall be piled in an orderly fashion with nails removed or bent over. Flammable and combustible materials must be kept in designated storage areas.

The contractor is responsible for removing and disposing of any liquid wastes generated on Abbott property. The disposal method must be reviewed by the Site Engineer.

The contractor is responsible for ensuring that his/her work area is neatly maintained. Designating personnel for general cleanup and housekeeping is one way to ensure that housekeeping guidelines are being followed.

WORK AREA SAFETY INSPECTIONS

A work area inspection is to be made daily to ensure that the safest possible working conditions are maintained for all construction employees. The contractor is required to complete a daily inspection checklist and retain it in his/her files when completed. Any substandard conditions must be documented with the appropriate corrective actions taken. The "Contractor Daily Inspection Checklist" is located in the "Forms and Permits" section of this manual.

Any trenching or excavation must be inspected by the contractor on a daily basis. (See "Trenching and Excavation")

A weekly inspection of all work sites will be conducted by the Abbott Site Engineer and the Plant Safety Representative. Safety violations found during the weekly inspection will be documented and a written notice detailing the corrective action required will be given to the contractor(s) affected. Second offenses of any violation may potentially result in the termination of the contract or permanent removal of the offender from the premises.

FIRE-PROTECTION/PREVENTION

The contractor is responsible for providing an adequate number of fire extinguishers for the work site, unless this requirement is specifically excluded by the contract documents.

The Contractor and his/her employees must know the location of fire alarm pull boxes, fire extinguishers, and telephones for emergency use. See the section on "Emergency Procedures" for additional information.

Flammable liquids, such as gasoline and cleaning solvents, and flammable gases shall not be stored inside the buildings. Flammable liquids must be transported to the job site in safety cans approved by U.L. or F.M.. The cans must be visibly labeled to identify the contents.

All safety cans containing flammables or combustibles must be stored in flammable liquid cabinets. The vent openings in the cabinets must be sealed with the bungs supplied by the manufacturer. Materials such as paper towels, cloth, or reactive/corrosive chemicals should not be stored inside the cabinets.

UTILITIES

The contractor must obtain permission from the Abbott Site Engineer for the use of any of the site's utilities. Any primary valving or switching from pipe headers or power sources shall be done by Abbott employees only.

FIRST AID

Contractors are expected to provide first aid equipment and trained personnel for their employees. The names of the personnel responsible for administering basic first aid must be posted at the site trailer or main toolbox.

DIAL EXT. 53555 FOR ANY INJURY THAT REQUIRES MEDICAL ATTENTION BEYOND BASIC FIRST AID.

"AFTER HOURS" PASSES

If construction work needs to be performed after the normal business hours, an "After Hours" pass must be filled out by the Abbott Site Engineer and given to the Site Manager for approval. Only those personnel listed on the pass will be allowed access to the work site.

The pass must be filled out and all work approved at least 24 hours in advance of when the work is scheduled.

OSHA INSPECTIONS

OSHA compliance officers that wish to inspect the work site must first be directed to the Abbott Site Engineer. Under no circumstances must the inspector be allowed on the work site until this has been done.

VISITORS

All visitors to the construction site, such as vendors or salespersons, must complete the construction safety training program and adhere to the policies and procedures outlined in this manual.

SPECIAL WORK PERMITS

Properly written and authorized permits are required BEFORE beginning any of the following activities. Permits are available from the site office. They authorize work only for the task, location, time, and personnel specified by the permit:

HOT WORK PERMIT (See "Hot Work")

Required when any cutting, burning, welding, open flames, or spark producing work is performed. Tools that may require a "Hot Work" permit include grinders, chisels, drills, etc. Hot Work permits must be approved by the Site Engineer.

CONFINED SPACE ENTRY PERMIT (See "Confined Spaces")

Required when work is to be performed inside of a confined space, such as manholes, sumps, ductwork, tanks, etc.) Permit requires testing of the atmosphere for oxygen content and presence of flammable vapors or toxic airborne contaminants. Confined Space permits must be approved by the Site Engineer and a Plant Safety designate.

CORE DRILLING, SURFACE PENETRATION, AND EXCAVATION PERMIT (See "Core Drilling/ Excavation")

Required when performing any drilling or surface penetration of walls, floors, etc. or excavating and trenching. Permit must be submitted to the Abbott Site Engineer at least 24 hours before work is scheduled to begin to allow for adequate review of work area drawings. Core Drilling permits must be approved by the Site Manager.

PROCESS LINE DISASSEMBLY PERMIT (See "Process Line Disassembly")

Required before any work is done on an active plant process line to ensure that the line has been cleaned and purged, and appropriate valves and electrical sources have been locked and tagged. Process Line Disassembly permits must be approved by the Site Manager and the Plant Safety Manager.

ALL PERMITS MUST BE CONSPICUOUSLY POSTED AT OR NEAR THE LOCATION WHERE THE WORK IS BEING PERFORMED.

SPECIAL SAFETY INSTRUCTIONS

GUARDRAILS

Guardrails are required on open-sided platforms or floors 6 feet or more above ground level, except where there is an entrance to a ramp, stairway, or fixed ladder. Guardrails must be 42 inches in height, have a midrail constructed of wood or other suitable material, and toeboards at least 4 inches in height. Guardrails not only prevent personnel from falling off platforms, but will also prevent any materials from getting inadvertently pushed over the edge where they may strike persons or machinery below.

Erection of guardrails is the responsibility of the contractor performing the work on the platform. When the work is complete, the contractor must remove the guardrails from the work site.

FLOOR OPENINGS

All openings measuring 12 inches square or more in any floor roof or platform must be protected by a standard guard rail or cover. Floor covers must be able to support the maximum intended load and must be cleated, wired, or otherwise secured so it can't be inadvertently removed from the hole.

SCAFFOLDS

Scaffolds shall be built of sound material and properly supported on a firm footing. All scaffolds must meet or exceed the OSHA requirements of 29 CFR 1926.451, "Scaffolding". Scaffold platforms 10 feet or greater in height must be equipped with standard guardrails and toeboards on all open sides and on the ends.

Scaffolds must be equipped with ladders or other means of safe access. Workers must not be allowed to climb the end frames of any scaffolds.

Scaffolds must be tied off or stabilized with outriggers when the height is more than three times the smaller base dimension. Scaffolds shall be tied to an adjacent wall if over two lifts high (and every other lift vertically) and for each 25 feet horizontally.

Use of suspended scaffolding (swinging stages, toothpicks, boatswain chairs, floats, and needle beams) must be agreed to by the Abbott Site Engineer and inspected by the safety representative before use. However, the contractor is ultimately responsible for ensuring that the scaffolding is safe for his/her employees.

Suspended scaffolds do not require guardrails and toeboards, however, it is required that personnel working on these types of scaffolds wear safety belts and life lines

SAFETY BELTS AND HARNESES

Construction employees must wear safety belts and harnesses when working on or around the following:

Sloping roofs

Flat roofs without handrails when within 6 feet of the edge or roof opening.

Any suspended scaffolds.

Ladders near edges of roofs and floor openings.

Any elevated work above 4 feet in height that cannot be equipped with adequate guardrails.

Workers must be tied off to an immovable object overhead, or to a safety line attached to an overhead immovable object. The maximum fall distance shall not exceed 6 feet.

LADDERS

Ladders used on the construction site must meet the OSHA standard. They must be secured at the top to prevent movement. Ladders must be inspected regularly to check for defects. No aluminum ladders will be allowed on the work site.

COMPRESSED GAS CYLINDERS

Compressed gas cylinders must be stored and transported in an upright position and secured in place to prevent them from falling. The valve cap shall be in place when the cylinder is not in use. Store cylinders away from sources of heat and electrical energy and from the direct rays of the sun.

Oxygen cylinders must be separated from flammable gas cylinders by at least 20 feet or by a 5 foot high partition having a 1/2 hour fire resistive rating. Other combustible materials such as oil or grease must be stored at least 20 feet from oxygen cylinders.

CRANES, HOISTS, AND EXCAVATION EQUIPMENT

Using material cranes or hoists for lifting of personnel is strictly prohibited. Only certified and/or qualified operators will be allowed to operate this equipment. Barricades should be used to prevent personnel from entering areas where cranes and hoists are being used.

Please refer to the section on "Trenching and Excavation" for more information regarding this topic.

5.0 GUIDE FOR THE ABATEMENT OF THE TOP 25 MOST CITED PHYSICAL HAZARDS

The GUIDE consists of the following: 1) Section 5.1 contains the top 25 most frequently cited physical standards or hazards from the 100 Physical List presented in TABLE 3-1 (see page 18), each GUIDE is presented as an individual information/data source for each standard; 2) Section 5.2 consists of two tables related to construction specifications for guardrails and toeboards that are common for five of the individual GUIDE Sheets; and 3) Section 5.3 contains a list of additional sources of further OSHA and industry information.

5.1 THE TOP 25 GUIDE SHEETS

The following section presents individual GUIDE Sheets to help employers, employees and OSHA personnel identify and abate the 25 most frequently cited physical hazards on construction sites.

#1

500(d)(1)

GUARDBAILS NOT PROVIDED
FOR OPEN-SIDED FLOORS
OR PLATFORMS

RULE: Every open-sided floor or platform 6 feet or more above adjacent floor or ground level shall be guarded by a standard railing, or the equivalent, as specified in paragraph (f)(1) of this section, on all open sides, except where there is an entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a standard toeboard wherever, beneath the open sides, persons can pass, or there is moving machinery, or there is equipment with which falling materials could create a hazard.

INTENT:

Falls from elevations are the leading cause of fatalities in the construction industry. From 1985-1989, 33% of all construction fatalities [10] resulted from a fall from an elevation. One hundred-seventeen fatalities occurred when employees fell from open-sided floors and through floor openings. This standard specifies that guarding must be provided for all open-sided floors and platforms 6 feet or more in height. It also specifies minimum requirements for the type of guarding. Paragraph (f) of the same section specifies the requirements of a standard guardrail system. TABLE 5.2-1 lists guardrail specifications for various materials. Where there is an open-sided floor/platform and there is a potential for a person to pass or a hazard is presented by machinery, toeboards are required. The intent is to contain any materials near the edge from inadvertently getting pushed over the edge where they may strike persons or machinery below. TABLE 5.2-2 lists specifications for toeboards.

HAZARDS:

- Falls from elevations: probable injuries range from death to fractures; Falls from lower elevations such as 4-6 feet have caused serious lost-time accidents and occasionally have been the cause of fatalities.
- Struck by: the lack of material containment (toeboards) has caused both fatalities and lost-time accidents when falling materials have struck employees below.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Whenever an employee must work at any elevated location, ask the questions: 1) Are they protected from a fall? and 2) What measures must be taken to protect the employee at the elevated work location?
- Fall prevention systems such as standard guardrail systems provide more positive means of protection than fall protection systems such as a bodybelt/harness-lanyard-lifeline combination, except when workers are suspended, i.e. working on suspended scaffolds, work platforms, etc.
- Construct/maintain all guardrail systems according to OSHA requirements.
- An acceptable method to preclude the use of toeboards, would be to determine the fall radius of materials on an open-sided floor/platform. Place positive physical barriers outside the potential fall radius to keep workers and machines outside the danger zone.

SELECTED CASE HISTORIES:

An employee taking measurements was killed when he fell backwards from an unguarded balcony to the concrete 9'6" below.

COMMENTS:

- Falls from elevations accounted for 14% of all lost-time accidents[6].
- This standard was cited in 103 fatality/catastrophe inspections conducted by OSHA over a 4-year period.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Section 500 & Steel Erection - 750 & 752(k); [11]; [12]; [13]; [26] Part 701(f)(2) - Concrete and Masonry Const.

OSHA COMPLIANCE LETTER

Date 5/22/84; From-Directorate of Field Operations to Regional Administrators; Synopsis - Clarification of 1926.750(b)(1)(iii) stating that ½" wire rope or equivalent safety railing must be used around temporary planked or temporary metal-decked floors during steel erection operations. Railing also must be provided at leading edge if spreading stops for any significant time period. ½" synthetic or fiber rope would not be acceptable as a required safety railing for steel erection operations.

OSHA COMPLIANCE LETTER

Date 1/13/81; From-Assistant Secretary to Int. Union of Bricklayers & Allied Craftsmen; Synopsis - Standards 1926.28, 1926.104, 1926.105 & 1926.500(d)(1) do not apply to overhand bricklaying operations.

OSHA COMPLIANCE LETTER

Date 2/13/86; From-Directorate of Field Operations to Individual Company; Synopsis - When structural steel assembly including decking has been completed and other trades are working on the deck while concrete is being poured on the deck, the floor must be guarded in accordance with 1926.500(d)(1).



☒ VIOLATION ☐ IN-COMPLIANCE

Exposure to open-sided floor



☐ VIOLATION ☒ IN-COMPLIANCE

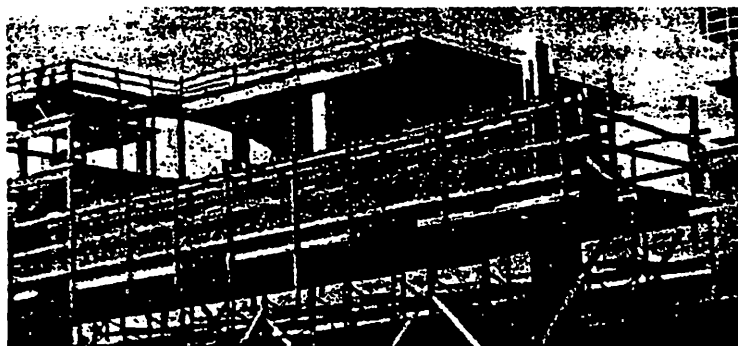
Properly erected wire rope perimeter guard rail system.

NOTE: The high visibility tape on wire rope (arrow) on top floor makes the guardrail easier for the employees to see.



☒ VIOLATION ☐ IN-COMPLIANCE

Too much sag in the wire rope (arrows) guard rails.



☐ VIOLATION ☒ IN-COMPLIANCE

Properly erected wooden guardrail system for platform.

NOTE: The top erection floor has a properly erected wire rope guardrail system.

#2

100(a)

HEAD PROTECTION FROM
IMPACT, FALLING OR FLYING
OBJECTS AND ELECTRICAL
BURNS

RULE: *Employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns shall be protected by protective helmets.*

INTENT

Thousands of head injuries each year occur in the construction industry. This standard requires employees to wear "hard hats" to mitigate or lessen the effects of being struck by an object, accidentally striking their head against an object or making contact with an energized electrical line. It needs to be emphasized that this standard is not just for employees that work at sites where there is a possibility of falling objects striking them in the head, i.e. workers on lower levels of a multi-story building project which are exposed to falling materials such as hand tool, bolts, nuts, etc. But it is also intended for employees who work in the vicinity of an operation or other workers that create the potential for objects to become accidentally airborne. These flying objects are sometimes the result of an unintended energy release while using power tools, pushing, pulling, prying or almost any typical operation that is found on a construction site. These type of energy releases are common to almost all construction operation and are not predictable. Almost all construction operations involve the potential of falling and flying objects, and, therefore, employees must wear head protection. Additionally, many impact hazards exist. For instance, iron workers are constantly exposed to striking their heads on structural steel during erection, carpenters strike their heads on temporary framing lumber as they move through a building, etc. Employees that work in the vicinity of electrical conductors are exposed to potential shocks and burns to the head should they contact an uninsulated conductor.

HAZARDS

Struck by: injuries ranging from death to major concussion or trauma to minor abrasions; electrocution.

(AMONG OTHER) SUGGESTED ABATEMENT(S):

- Emphasize that the wearing of hard hats is not only for those employees that are exposed to falling objects, but it is also for employees exposed to the other types of hazards.
- Focus on the wearing of hard hats during site inspections. Check hard hats to insure their integrity is not compromised. Metal hard hats are electrical conductors and do not meet the requirements of OSHA and ANSI.
- A formal management discipline program may need to be utilized for those employees who after repeated warnings either refuse or "forget" to wear their hard hats where required.

SELECTED CASE HISTORIES

- An employee was standing under a suspended scaffold that was hoisting a workman and 3 sections of ladder. Sections of the ladder became unlashd and fell ~ 50 feet striking the employee in the skull. The employee, who was not wearing any head protection, died from injuries received.
- Two employees were using a wire rope to winch a wooden tool shed onto a flat bed trailer. The wire rope broke, snapped back struck one of the employees in the top of the head, killing him. The employee was not wearing a hard hat.
- Employees were using a 5-ton winch to pull a 10-foot section of a 600 lb. grain spout through a vent hole when the spout became wedged. Employees were attempting to use pry bars to free the spout that was still under tension from the winch when the spout popped free, striking an employee in the head. No head protection was provided.

COMMENTS

1. OSHA [6] found that in a four year period from 1985 to 1988, 3.2% (11,685) of all construction lost time accidents in 10 states were related to head injuries.
2. All lost-time accidents involving head injuries do not result from being struck by falling and flying objects. OSHA [6] found that the head was the "Part of Body" injured in 9% (7125) of the "Struck By" (falling and flying objects) type injuries. This compared to 5% (1440) for "Struck Against", (impact) type injuries; in other words, impacts are the cause of about 17% of all lost time head injuries.
3. This standard was cited in 142 fatality/catastrophe inspections by OSHA in a five year period.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE

[1] Section 100 (b)&(c); [7]⁶; [8]⁷; [9], [25].

- Referenced in 29 CFR 1926 - Construction Standards

OSHA CLARIFICATION LETTER

Date 8/23/83 - Synopsis - The employer must determine which employees face possible head injuries and must wear appropriate head protection. OSHA has no exhaustive guidelines for determining when head protection must be worn. A case-by-case analysis must be performed by the employer.

OSHA CLARIFICATION LETTER

Date 7/22/92; From Directorate of Compliance to IBEW Business Manager - Synopsis - Wearing of hard hats with bill to the rear would not meet 1926.100(a) & (b) unless manufacturer certifies that this practice meets ANSI Z89.1-1969. ANSI tests and certifies hard hats with bills facing forward.

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS



☐ VIOLATION ☒ IN-COMPLIANCE

Hardhat meets OSHA and ANSI Z89.1-1969, Safety Requirements for Industrial Head Protection.

☒ VIOLATION ☐ IN-COMPLIANCE

Work is in progress on top of scaffold. The workers drilling below scaffold are exposed to being struck by falling materials. There is a need for head protection which is not provided by the soft hats shown.



☒ VIOLATION ☐ IN-COMPLIANCE

The inspector on the ground (arrow) is exposed to falling materials. Therefore, head protection is required for him. The carpenters would most likely not be exposed to falling materials in this situation. However, a flying material hazard may exist and the operation must be evaluated to determine if head protection is required. NOTE: Fall hazards do exist at the perimeter and at the floor openings. Also, an improperly constructed ladder is being used.



#3

404(b)(1)(i)

GROUND FAULT
PROTECTION NOT PROVIDED

RULE: *General. The employer shall use either ground fault circuit interrupters as specified in paragraph (b)(1)(ii) of this section or an assured equipment grounding conductor program as specified in paragraph (b)(1)(iii) of this section to protect employees on construction sites. These requirements are in addition to any other requirements for equipment grounding conductors.*

INTENT:

Due to the dynamic, rugged nature of a typical construction site, electrical equipment, especially tools and extension cords are much more susceptible to deterioration due to "normal" use and sometimes abuse. When the deterioration occurs, sometimes insulation cracks or breaks exposing bare energized conductors, stress and strain may cause terminal screws to loosen resulting in one conductor short-circuiting another, etc.. The result can be that fault current is generated which may be directed through an employee's body to ground. Wet conditions often found at construction sites, greatly increase this hazard. This standard offers the employer two additional methods beyond the required equipment grounding conductor, to reduce and/or eliminate electrical fault current which might be generated in any electrical system or tool during use. One means is to provide ground fault circuit interrupters (GFCIs) in all temporary receptacle outlets rated 120 volt, single phase, 15&20 amps. This is essentially a hardware requirement. The GFCI continually monitors and compares the amount of current going to an electrical tool or piece of equipment against the amount of current returning along the "grounded neutral". If the differential in current (amount going to the tool vs. amount coming from tool) is more than 5 milliamps, the GFCI is designed to trip in about 1/40 of a second. The other option is to establish and fully implement an Assured Equipment Grounding Conductor Program (AEGCP). This program relies on daily visual inspections and periodic (three months maximum for temporary cords and cords exposed to damage, six months for fixed cords not exposed) test inspections. Additionally, the AEGCP requires a written description, a competent person to implement the program and a record of the periodic tests.

HAZARDS:

Fatal electrocutions; Electrical burns ranging from critical to minor; Fire; Explosion; Electric shock has been the initiator of other type hazards, i.e. electrical shocks have been the initiating cause of employees falling from elevated work surfaces, electrical shocks have caused employees to lose control of hand held equipment which in turn has struck and injured other employees in the immediate work area, etc.

(AMONG OTHER) SUGGESTED-ABATEMENTS:

- Instruct employees to visually inspect all electrical equipment prior to use. Any defects such as frayed cords, missing ground prongs, cracked tool casing, etc. should be corrected by taking the tool out-of-service. Apply a warning tag to the tool and do not allow it to be used until the problem has been corrected.
- Frequently trip GFCIs while test tool is operating to insure GFCI is operating correctly.
- Use double insulated tools. Double insulated tools protect the user from fault currents which might energize the case of the tool or equipment.

SELECTED CASE HISTORIES:

A journeyman HVAC worker was installing metal duct work using a double insulated drill connected to a drop light cord. Power was supplied through two extension cords from a nearby residence. The individual's wet clothing/body contacted bare exposed conductors on one of the cords causing an electrocution. No GFCIs were used. Additionally, the ground prongs were missing from the 2 cords.

COMMENTS:

1. Although it was suggested above to use double insulated tools, it does not relieve the employer from providing ground fault protection. Extension cords in use between a fixed electrical system (permanent outlet) and a tool can become worn with exposed energized conductors. Therefore, ground fault protection or an AEGCP would be required. See OSHA CLARIFICATION LETTER below.
2. According to OSHA ^[10] there were 48 fatalities in the years 1985 to 1989 related to 120 volt electrical systems.
3. Employers have attempted to skirt the requirements of providing ground fault protection by using 30 amp breakers in their 120 volt, single phase systems. This not only defeats the intent of the ground fault provisions it also introduces another set of hazards because the system is no longer rated for the actual over current protection (30 amp breaker) that is in place.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

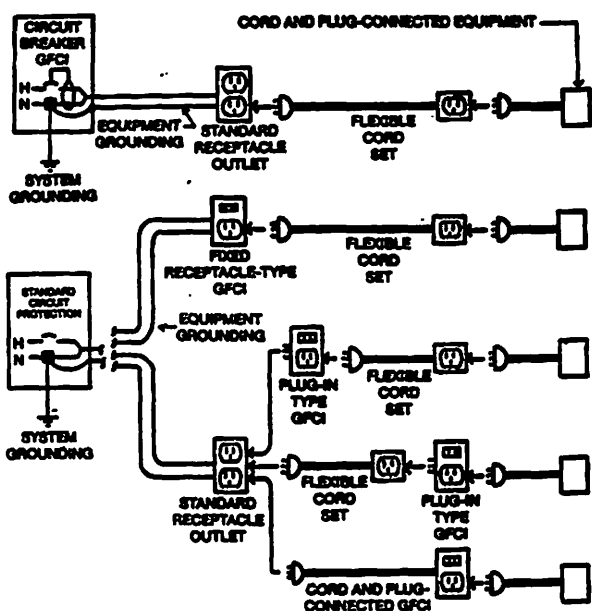
[1] Section 404(b); [3]; [4]; [5]

1990

1

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS

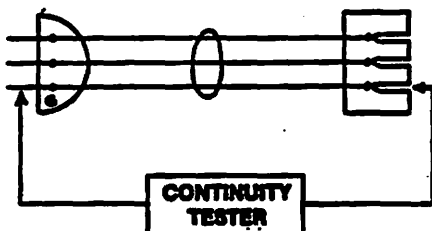
RECEPTACLES WHICH ARE IN USE BY EMPLOYEES SHALL HAVE GFCI'S FOR PERSONNEL PROTECTION OR THE ASSURED EQUIPMENT GROUNDING PROGRAM⁽¹⁾



RECEPTACLES WHICH ARE NOT A PART OF THE PERMANENT WIRING CAN BE PROTECTED IN ONE OF SEVERAL WAYS USING GFCT'S.



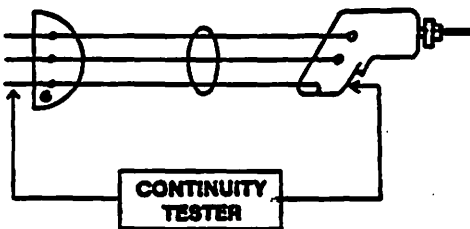
120 VOLT, SINGLE-PHASE, 15 OR 20 AMPERE FIXED RECEPTACLE OUTLET



**FLEXIBLE CORD SET FOR 120 VOLT
15 OR 20 AMPERE RECEPTACLE**

TEST FOR CORRECT CONNECTION AND ELECTRICAL CONTINUITY OF THE EQUIPMENT GROUNDING CONDUCTOR

**A DOCUMENTED TESTING PROCEDURE MAY
BE SUBSTITUTED FOR THE USE OF GFCI'S.**



120 VOLT CORD AND PLUG-CONNECTED EQUIPMENT

#4

404(f)(6)

ELECTRICAL PATH TO
GROUND MISSING OR
DISCONTINUOUS

RULE: *Grounding Path. The path to ground from circuits, equipment, and enclosures shall be permanent and continuous.*

INTENT:

Many times on construction sites due to the frequency and severity of use, electrical equipment that is originally designed and provided an electrical path to ground is not capable of physically transferring "fault" current to ground because the positive physical path has been accidentally or intentionally broken. The electrical path (a direct positive connection through the entire system usually terminating at a ground rod or cold water pipe) to ground, sometimes known as the "ground wire" or "equipment ground" is provided to transfer fault current to ground in the event that an exposed part of the piece of equipment were to be energized by the "hot" conductor or wire in the system, i.e. the case of an electric drill might be energized by fault current if the internal windings came in contact with the case, or contact is made with an exposed conductor. The "equipment ground" would, in the case of the drill, provide a favorable path of least resistance for the fault current to ground through the conductor. If the "equipment ground" was not continuous the path of least resistance from the drill might be through a persons body.

HAZARDS:

Electrical shock; Probable injuries range from death to minor burns; Fire; Explosion; Electric shock has been the initiator of other type hazards, i.e. electrical shocks have been the initiating cause of employees falling from elevated work surfaces, electrical shocks have caused employees to lose control of hand held equipment which in turn has struck and injured other employees in the immediate work area, etc.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Instruct employees to visually inspect all electrical equipment prior to use. Any defects such as frayed cords, missing ground prongs, cracked tool casing, etc. should be corrected by taking the tool out-of-service. Apply a warning tag to the tool and do not allow it to be used until the problem has been corrected.
- Frequently inspect electrical systems to insure the path to ground is continuous. A volt-ohm meter rated for the proper capacity could be used to check for ground in an electrical circuit. A receptacle circuit tester can be used to check the continuity of the grounding conductor from a 120 volt receptacle back to it's origin at the breaker box. This type tester depending on manufacturer usually has the ability to check for wiring configurations including correct wiring, reversed polarity, open neutral, open hot, etc. Additionally, it is relatively inexpensive - usually less than \$20 dollars and can be easily carried in a pants pocket. A pocket pen light continuity checker is an inexpensive piece of equipment that can be used to check the "equipment bonding" conductor of cord and plug connected equipment, i.e. drills, saws, sanders, etc.
- Use double insulated tools. Double insulated tools protect the user from fault currents which might energize the case of the tool or equipment. If electrical equipment is double insulated it must be distinctively marked.

SELECTED CASE HISTORIES

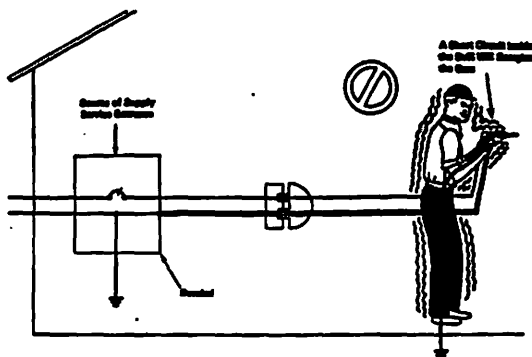
A fan connected to a 120-volt electrical system via an extension cord provided ventilation for an employee performing a chipping operation from an aluminum stepladder. The insulation on the extension cord was cut through and exposed bare energized conductors which made contact with the ladder. The ground wire was not attached on the male end of the cord's plug. When the energized conductor made contact with the ladder, the path to ground included the employee's body, resulting in death.

COMMENTS

1. A large majority (estimated from many compliance staff sources) of the citations under this standard are issued because ground prongs are missing from cord and plug connected equipment or extension cords.
2. Sometimes ground prongs are intentionally removed from tools and extension cords because, "it makes them easier and quicker to plug into and remove." Statements such as these heard from employees clearly indicate that they do not understand the importance of the components of the equipment grounding system.
3. For five years, citations were issued to the contractor who employed the deceased employee in 93 fatality/catastrophe investigations that OSHA conducted, where the absence of a required equipment grounding conductor or lack of continuity of the conductor were listed as a factor.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE

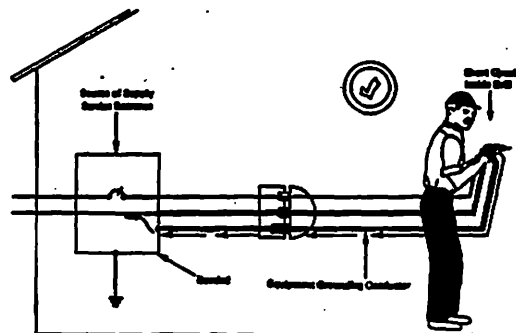
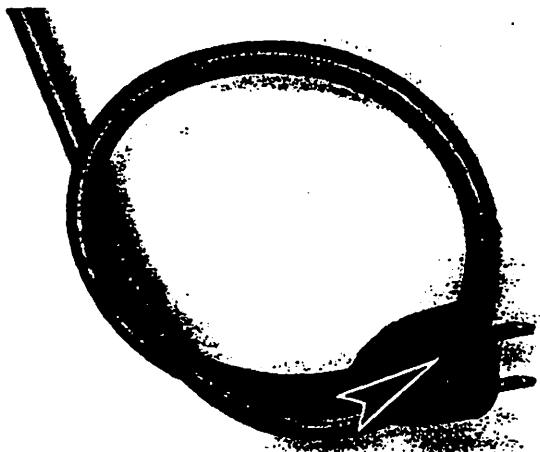
[1] Section 404(f); [2] pg. 5; [3] pgs. 35-58; [4]; [5] Art. 250



IF A FAULT OCCURS, THE CURRENT WILL FOLLOW THE PATH OF LEAST RESISTANCE TO GROUND. IF THE WORKER PROVIDES A PATH TO GROUND AS SHOWN, SOME PORTION OF THE CURRENT WILL FLOW AWAY FROM THE GROUNDED WHITE CONDUCTOR (NEUTRAL) AND RETURN TO THE GROUND THROUGH THE WORKER. THE SEVERITY OF THE SHOCK RECEIVED WILL DEPEND ON THE AMOUNT OF CURRENT THAT FLOWS THROUGH THE WORKER.

CORD AND PLUG CONNECTED EQUIPMENT WITHOUT A GROUNDING CONNECTOR.

☒ VIOLATION ☐ IN-COMPLIANCE



DANGEROUS FAULT CURRENT NOW IS REDIRECTED ALONG THE EQUIPMENT GROUNDING CONDUCTOR BACK TO THE SOURCE OF ELECTRICAL SUPPLY TO OPERATE OVERCURRENT DEVICE.

CORD AND PLUG CONNECTED EQUIPMENT WITH A GROUNDING CONNECTOR.

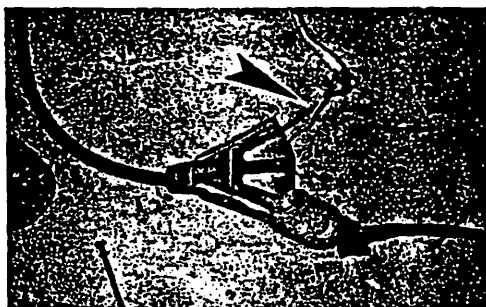
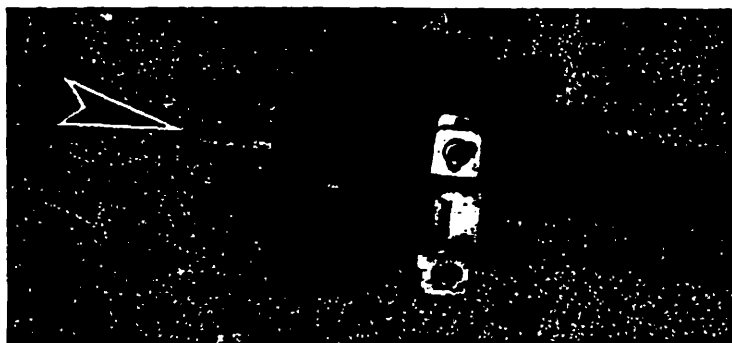
☐ VIOLATION ☒ IN-COMPLIANCE

☒ VIOLATION ☐ IN-COMPLIANCE

Equipment grounding conductor, i.e. ground prong, missing (arrow).

☐ VIOLATION ☒ IN-COMPLIANCE

Ground prong (arrow) in-place and conductor is continuous.



☒ VIOLATION ☐ IN-COMPLIANCE

2 conductors (arrow) from non-metallic (NM) sheath cable rigged to multi-receptacle extension cord. No grounding provided. NOTE: Other violations include using NM cable in a manner not prescribed and strain relief was not provided for the other attachment plug shown (see tape at base of plug).

#5

652(a)(1)

PROTECTIVE SYSTEMS FOR
TRENCHING/EXCAVATING

RULE: *Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section.*

INTENT:

Excavation accidents often result in serious injury or death. California reports a ratio of lost-time accidents to fatalities ^[14] for cave-ins equal to 14:1. In contrast that same ratio for all types industry in California is 250:1. From 1985-1989 OSHA investigated 239 excavation fatalities ^[10]. This rule is basically a general rule and its intent is to state that the employer will utilize some means of protection when employees are working in an excavation. This standard requires employers to protect employees from cave-ins. Later paragraphs, Paragraph (b) "Design of Sloping and Benching Systems" and Paragraph (c) "Design of Support System, Shield Systems and Other Protective Systems give specific alternatives and corresponding appendices to help the employer comply with the rule (NOTE: Appendices A - F provide valuable information for complying with the standard). The rule does not cover excavations in stable rock and excavations less than 5 feet deep - ONLY when the competent person evaluates the excavation and states there is no potential for cave-ins.

HAZARDS:

A cave-in is the greatest risk associated with excavations. Fatalities can be expected if a cave-in occurs. Other type hazards which are similar to confined space situations should be expected including asphyxiation due to lack of O₂, inhalation of toxic materials, fire, drowning, etc. Moving machinery near the edge of the excavation can cause a surcharge (overloading) of the excavation wall that can cause collapse. Plus, the same machinery and vehicular traffic can strike employees. Many accidents occur when workers contact or sever underground utility lines.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- o Pre-job planning is vitally important to this operation. The soil must be evaluated so the employer can select an appropriate protective system. Utilities must be contacted so they can identify their underground lines, traffic control may be an issue, an attempt to identify previous site history must be made, i.e. was the excavation previously backfilled?, etc.
- o Construct all protective systems in accordance with the standard.
- o Inspect the site daily at the start of each shift, following a rainstorm or after any other hazard increasing event.
- o Keep excavations open the minimum amount of time needed to complete operations.

SELECTED CASE HISTORIES:

- o Two employees were installing 6" PVC pipe in a 40' long x 9' x 2' wide trench. No means of protection was provided in the vertical wall trench. A cave-in occurred fatally injuring one employee and causing serious facial injuries to the second employee.
- o An inadequately protected trench wall collapsed killing one employee who had just gotten into the trench to check grade for installation of an 8" sewer line. The trench was = 20'-25' deep and had been benched = one bucket width (4') on each side. At the time of collapse the backhoe was extracting soil from the trench.
- o Four employees were in an excavation 9' wide x 32' long x 7' deep were boring a hole under a road. Eight foot steel plates used as shoring were placed against the side walls of the excavation at about 30 degree angles. No horizontal bracing was used. One of the plates tipped over crushing an employee.

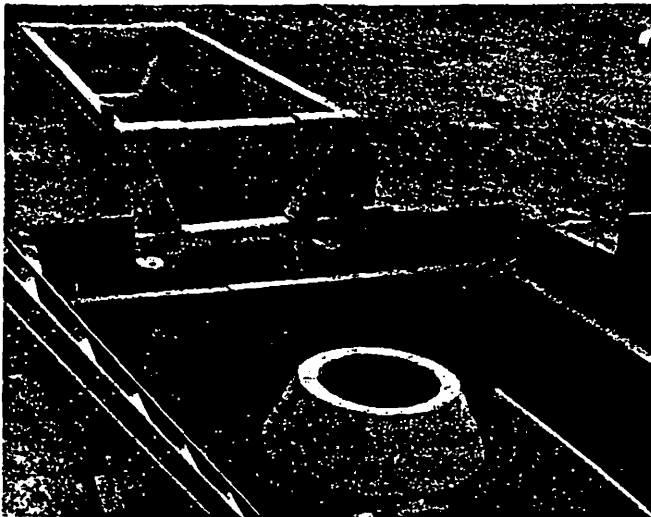
COMMENTS:

1. Of all the excavation standards, this one is cited the most often because it is the appropriate standard to cite when no protection at all is provided. Unfortunately, many employers engaged in this activity, still provide no protection for their employees.
2. This standard is written in a unique manner - "Each employee...", which gives OSHA the option to cite this particular standard for each exposed employee.
3. This standard was cited in 47 fatality/catastrophe inspections conducted by the Agency from March 1990 to January 1992.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[14], [20]

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS



☐ VIOLATION ☒ IN-COMPLIANCE

Properly constructed timber shoring and trench box (left).

NOTE: The plywood (bottom right) is not a structural member of the shoring system. It is to be used only to prevent the soil in the sidewalls from raveling.



☒ VIOLATION ☐ IN-COMPLIANCE

Employees in vertical wall trench with no sidewall protection (above).

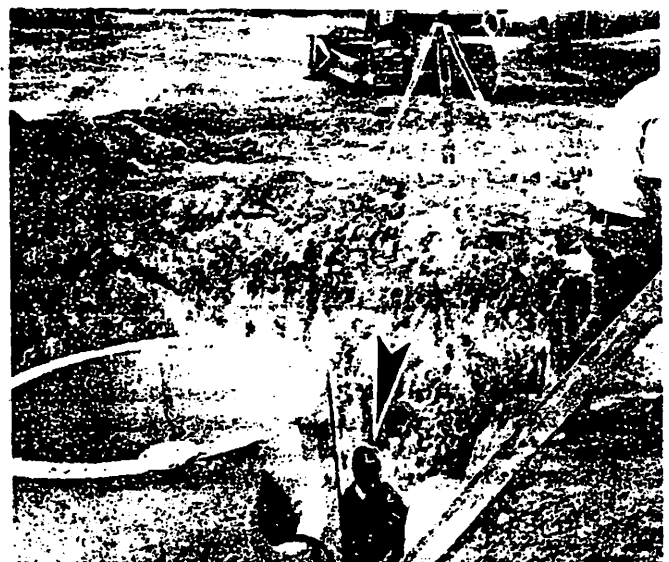


☒ VIOLATION ☐ IN-COMPLIANCE

Improper shoring including bracing is not secured (above)

☒ VIOLATION ☐ IN-COMPLIANCE

Employee is exposed (arrow) between concrete manhole and unprotected sidewall of excavation (right).



#6

451(d)(10)

GUARDRAIL SPECIFICATIONS
FOR TUBULAR WELDED
FRAME SCAFFOLDS

RULE: *Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), and approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a)(6) of this section.*

INTENT:

OSHA investigated 214 fatalities from 1985-1989 ^[10] related to falls from scaffolds. The intent of this standard is to provide specifications for a fall prevention system, i.e. standard guardrails and toeboards, on tubular welded frame scaffolds. Because this is a specification standard it only applies to tubular welded frame type scaffolds. Note: This standard requires both standard guardrails and toeboards at a height of 10'. The general scaffold requirement 1926.451(a)(4) which requires guardrails between 4'-10' when the minimum horizontal dimension of the scaffold is < 45°, does not include tubular welded frame scaffolds, see OSHA CLARIFICATION LETTER below. Other guardrail materials which would provide equivalent protection are listed in TABLE 5.2-1. When persons must work or pass under a tubular welded scaffold, wire mesh construction is required. This includes a minimum No. 18 gauge U.S. Standard wire ½-inch mesh or equivalent, extending along entire opening from toeboard to top rail. If persons are not required to work or pass under the scaffold only a toeboard is necessary (see TABLE 5.2-2 for acceptable toeboard specifications).

HAZARDS:

- Fall from elevation. Probable injuries range from death to severe sprains/strains.
- Struck by falling objects from scaffold platforms with insufficient material containment systems, i.e. wire mesh screen or toeboards. Probable injuries could include death or lost-time injuries due to head concussion, broken bones in the upper body areas, etc.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Whenever employees must work at any elevated location, ask: 1) Are they protected from a fall? and 2) What measures must be taken to protect the employee at the elevated work location?
- Fall prevention systems such as standard guardrail systems provide a more positive means of protection than fall protection systems such as the use of a bodybelt/harness-lanyard-lifeline combination.

SELECTED CASE HISTORIES:

- An employee preparing masonry facia for removal from a building fell from the third level of a tubular welded frame scaffold. No guarding system was provided for the scaffold. Further, the platform was coated with ice creating a slippery condition.
- A contract employee was taking measurements inside a reactor vessel from an unguarded tubular welded frame scaffold when he either lost balance or stepped backwards and fell ~ 14½', sustaining fatal injuries.

COMMENTS:

1. Many scaffolding guardrail violations are issued because no railings were provided on the ends of the scaffolds. Remember, a fall prevention system is not complete until the scaffolding is completely enclosed. Additionally, this is a specification standard, therefore, it is more easily identified and substantiated as a violation when the guarding is not provided.
2. Scaffold cross-bracing (X-braces) are not acceptable alternatives for guardrails.
3. Many times scaffold guardrails are provided for tubular welded frame scaffolds where only one or two 10" planks are provided for a 60" wide scaffold end frame. This is ineffective because there is a potential for an opening 40"-50" between the edge of the "platform" and the guardrail (if in-place). Instead of falling over the edge of the scaffold, employees are exposed to falling through the scaffold.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Section 451(a) & (d), [17]

OSHA DIRECTIVE #100-58 (STD 3-10.3)

Date 10/30/78 - Synopsis - Wire, chains, synthetic and fiber ropes may be used as guardrails as per equivalency requirements of 1926.451 (a)(5) provided, it meets the following guidelines: 1) it is secured to each support and taut at all times; 2) it is free of sharp edges; and 3) it has a maximum deflection of 3" in any direction when a 200 lb. load is applied.

Note: No size requirements of the ropes are listed in directive.

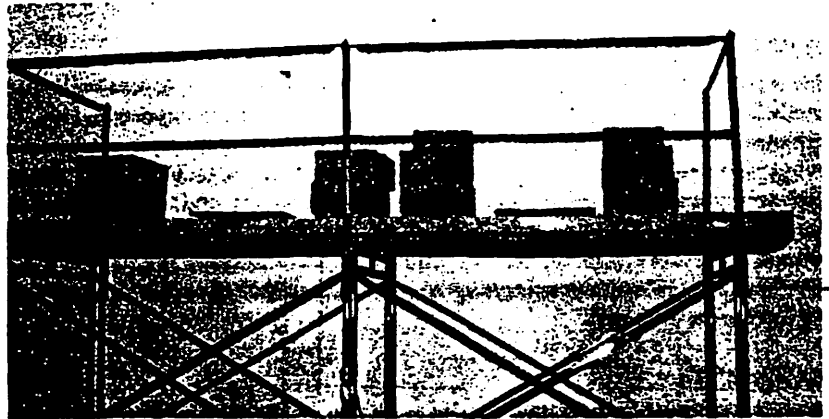
OSHA CLARIFICATION LETTER

Date 3/11/83; From Acting Regional Administrator Region III to Area Director; Synopsis - 1926.451(a)(4) - General Scaffold Requirements, guarding in particular - If a specific type scaffold is covered by a standard such as tubular welded frame guarding doesn't need to be provided as per 451(a)(4) from the 4'-10' level unless adjacent to dangerous equipment. NOTE: This position was reaffirmed in a letter dated August 7, 1992 from the Acting Assistant Secretary to an individual company.

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS

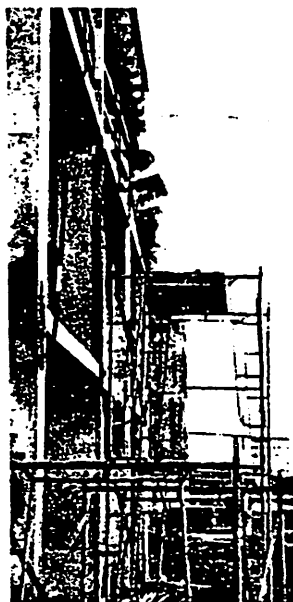


End frame not guarded.
NOTE: The hole between the scaffold planks is large enough to fall through (left).



☐ VIOLATION ☒ IN-COMPLIANCE

A properly erected guardrail system with top rail, mid rail and toeboard.



12 1/2 ft. tall scaffold (left) with no fall protection provided.



☒ VIOLATION ☐ IN-COMPLIANCE
(above left, left, immediately above)

4 buck high scaffold (above) with no guardrail system at any of the 4 working heights.

NOTE: The incomplete platforms and deficient erection of the structural members.

#7

28(a)

APPROPRIATE PPE USED
FOR SPECIFIC OPERATION

RULE: *The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employee.*

INTENT:

This rule gives the employer responsibility for insuring that employees wear appropriate PPE to reduce the exposure to hazardous conditions such as falling objects, toxic atmospheres, noise exposure, etc.. PPE is not only a right for the employee - it is a responsibility for the employer. This standard is part of Subpart C - General Safety and Health Provisions. Specific PPE and life saving equipment requirements are found in Subpart E, including: head protection; hearing protection; eye and face protection; respiratory protection; safety belts, lifelines, and lanyards; and safety nets. The Subpart E requirements are usually more specific than the Subpart C requirement 1926.28(a), therefore, the standards in Subpart E are utilized more often than 1926.28(a). For example 1926.100(a) is #2 on the 100 Most Cited Physical LIST, conversely 1926.28(a) is #7. The Subpart E standards give specifications/guidance for selecting, use and maintenance of appropriate types and levels of PPE depending on the types of hazards employees are exposed.

HAZARDS:

Hazards can range from falling objects or bodies to inhalation of toxic materials. The injuries related to this standard also vary widely, including instant death from the inhalation of a highly toxic substance to a minor burn.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Evaluate the operations, define the hazards. When it is not feasible to design out all hazards, it may be necessary for employees to wear PPE.
- Discipline workers who fail to wear PPE. Because PPE can be uncomfortable, cumbersome, hot, etc., employees sometimes don't wear it even though they know they may be risking injury. When an employee has been given repeated warnings about not wearing PPE, but still does not wear it, it may be prudent for the employer to impose appropriate penalties, leading to release if the employee persistently chooses not to follow company safety rules.
- Another system that has shown to work is to require employees, as a condition of employment, to wear PPE at all needed times.

SELECTED CASE HISTORIES:

An employee was working with a crew setting a metal elbow duct for a bag house when he fell ~ 50' to his death. The victim was wearing a safety belt with lanyard; however, the lanyard was not attached to any tie-off support.

COMMENTS:

1. Several United States Courts of Appeals have vacated citations relying on this standard as a requirement for fall protection. However, as can be seen by the numerous violations related to the standard the Agency was still enforcing it in 1991. In response to the courts, OSHA developed guidelines to use 1926.28(a) & 1926.105 for fall protection. Those guidelines were set forth in STD 3-3.1. See below for a synopsis of that STD. However, STD 3-3.1 has been canceled and is no longer in effect, See OSHA NOTICE CPL 2 below.
2. This standard was cited in 257 fatal/catastrophe inspections in 5 years by the Agency:

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

- [1] Sections 1926. 100, 101, 102, 103, 104, 105 & 106; [7], [8], [9], [12], [13], [15], [16]; [25]
 * - Referenced in 29 CFR 1926 - Construction Standards

OSHA INSTRUCTION STD 3-3.1

Date 7/18/83; Synopsis - Clarifies using 1926.28(a) & 1926.105(a) as fall protection requirements. Gives guidance as to how to apply the standards. General guidance is to provide safety belts-lanyards at heights > 10' and < 25'. Above 25' provide safety nets or other means of adequate fall protection. Other specific guidance is provided. Note - this STD has been canceled. OSHA Notice CPL 2 is currently in effect, see next page.

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS

OSHA Notice CPL 2

October 5, 1992

Office of Construction and
Maritime Compliance Assistance

Subject: Cancellation of OSHA Instruction STD 3-3.1

- A. Purpose. This notice cancels an OSHA Instruction based on court decisions that make the guidance given in the instruction inaccurate.
- B. Scope. This notice applies OSHA-wide.
- C. Cancellation. OSHA Instruction STD 3-3.1, July 18, 1983, "Fall Protection in Construction: 29 CFR 1926.28(a) and 29 CFR 1926.105(a)," is canceled.
- D. Expiration Date. This notice expires on October 30, 1992.
- E. Action. Users of the OSHA Directives System shall remove from their files and discard OSHA Instruction STD 3-3.1.
- F. Background. The Review Commission has held in the L.E. Meyers Company case, OSHRC Docket No. 82-1137, that the December 1972 revision to 1926.28(a) was invalid on the grounds that the change from "and" to "or" was substantive change that could not be accomplished without notice and comment rulemaking. This decision holds that, 29 CFR 1926.28(a) may not be cited unless there is exposure to a hazardous condition and the need for personal protective equipment is indicated elsewhere in the Part 1926/1910 Construction Industry Safety and Health Standards.

In view of this decision, use of 1926.28(a) is superfluous. If a hazard is addressed by another standard, such as 1926.105 for a fall greater than 25 feet, the other standard should be cited. Recognized falling hazards not covered by an existing standard shall be cited in appropriate cases under the general duty clause as indicated in Chapter IV of the Field Operations Manual.

Directorate of Compliance Programs

NOTE: Even though the use of this standard has been curtailed. It is strongly recommended by OSHA that the employer evaluate all operations employees are involved with at a worksite to determine what hazards might exist and the appropriate measures including PPE which can be utilized to eliminate or control the hazard. All other PPE requirements specifically addressed by OSHA as well as industry recognized requirements for wearing PPE are still being enforced by the Agency by utilizing specific standards or the General Duty Clause - 5(a)(1).

#8

1052(c)(1)

STAIR RAILS REQUIRED @30"
CHANGE OF ELEVATION OR 4
RISERS

RULE: Stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, shall be equipped with at least one handrail and one stairrail system along each unprotected side or edge. However, when the top edge of a stairrail system also serves as a handrail, paragraph (c)(7) of this section applies.

INTENT:

OSHA estimates that 4 fatalities, 5400 impact injuries and 1900 sprain/strain injuries occur annually on stairways^[18]. About 65% of those injured required medical treatment. The intent of this standard is to require the use of stairrail systems and handrails when a set of stairs is > 30" in height or it has ≥ 4 risers and an unprotected edge. Walls or stairrail systems (vertical barrier consisting of a handrail, mid rails and constructed similarly to guardrail systems [See TABLE 5.2-1]) can guard an unprotected edge. Note: the top edge of a stairrail system can serve as a handrail. The top edge of the stairrail system which is used as a handrail shall be <37"-36"> from the surface of the tread measured in line with the face of the riser.

HAZARDS:

Fall from elevation; can be fatal. Most likely injuries range from broken bones to sprains/strains.

(AMONG OTHER) SUGGESTED ABATEMENTS:

● Identify all access points where there is a break in elevation of ≥19". Are all these access points provided a stairway/ladder? Does every access/egress area have a stairway/ladder or some other equivalent safe means of access/egress? Are the stairways constructed/maintained properly?

SELECTED CASE HISTORIES:

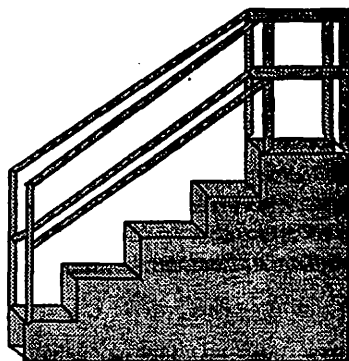
The OSHA IMIS system included no fatalities directly caused by failing to adhere to this standard (since January 1991 when standard came into effect).

COMMENTS:

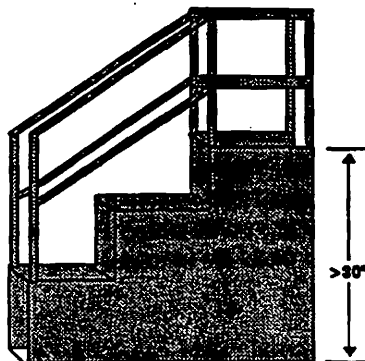
1. This is another of the more common situations found on construction sites which are covered by specification standards that are easily identified and substantiated as a violation. This is probably a reason it is quite high on the list.
2. This standard became effective in January 1991. The old previous standard (1926.500(e)(1)(iii)) ranked #80 on the 1991 List of the Most Frequently Cited Physical Hazards. The two standards taken together would rank #7 on the 100 Most Cited Physical List and #13 on the 100 Most Cited List.
3. One of the most common stairway violations found on a construction site is the complete absence of stairs or no stairrails for the risers leading into the equipment trailer [Conversations with CSHO's].

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[18],[19]



STAIRRAIL SYSTEM REQUIRED FOR 4 OR MORE RISERS*



CHANGE IN ELEVATION GREATER THAN 30" REQUIRES A STAIRRAIL*

* FOR ALL UNPROTECTED EDGES.

NOTE: A WALL OR EQUIVALENT BARRIER CAN BE UTILIZED IN LIEU OF STAIRRAILS.

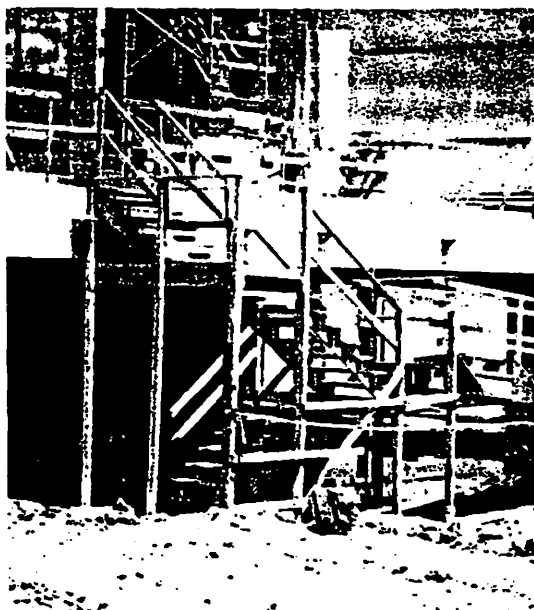
☐ VIOLATION ☒ IN-COMPLIANCE

Stairrail systems which meet OSHA erection specifications.



☒ VIOLATION
☐ IN-COMPLIANCE

No guarding provided for a 6 riser stairway.



☐ VIOLATION ☒ IN-COMPLIANCE

Properly erected stairway and stairrail system.



☒ VIOLATION ☐ IN-COMPLIANCE

Guarding not provided for the unprotected edge.

#9

152(a)(1)

RULE: Only approved containers and portable tanks shall be used for storage and handling of flammable and combustible liquids. Approved metal safety cans shall be used for the handling and use of flammable liquids in quantities greater than one gallon, except that this shall not apply to those flammable liquid materials viscid (extremely hard to pour), which may be used and handled in original shipping containers. For quantities of one gallon or less, only the original container or approved metal safety cans shall be used for storage, use, and handling of flammable liquids.

INTENT:

The intent is to provide acceptable containers (Approved safety cans) for the handling, use and storage of flammable and combustible liquids. Because these materials can ignite and cause fires or explosions this standard requires an "Approved Metal Safety Can". The approved safety can may have a maximum five gallon capacity and must include a spring closing lid and spout, a flame arrestor, and a design to relieve internal pressure in a safe manner when exposed to fire. "Approved" means equipment that has been listed or approved by a nationally recognized testing laboratory. The standard does not apply to highly viscid materials in their original shipping containers nor to any flammable or combustible liquids in quantities ≤ 1 gallon in their original containers or in approved metal safety cans. OSHA now recognizes approved plastic containers, see discussions below.

HAZARDS:

Fire and/or explosion; most likely injuries range from fatalities to 1st degree burns.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- When handling, storing or using flammable and combustible materials, follow all fire prevention rules such as no smoking. Bond and ground all containers when transferring contents to eliminate the possibility of static charge and a potential ignition source.
- Survey your worksite to determine if flammable and combustibles are being used. Then determine if they are being used, transferred, and stored in a safe manner as prescribed by OSHA and NFPA.

SELECTED CASE HISTORIES:

There were no fatality/catastrophes listed in IMIS for the past five years directly tied to violations of this standard. However, the inadequate use, transfer and storage of these materials has caused many serious burns.

COMMENTS:

1. Frequently gasoline is brought on site in a 2½ or 5-gallon unapproved can that was purchased at a local hardware store. Because this is a specification standard the violation is very easy to identify and substantiate [conversations with OSHA CSHOs].
2. Plastic containers can be used as an "approved" container IF they have been "approved" by a nationally recognized testing laboratory. See below.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Subpart F

OSHA COMPLIANCE MEMORANDUM

Date 7/19/89; From Directorate of Compliance Programs to Regional Administrator VI; Synopsis - Clarification stating that the term "approved" applies to the use of plastic containers in lieu of metal safety cans when they are approved as containers for flammable liquids over one gallon by Underwriters Laboratories (UL) or Factory Mutual (FM) (or other nationally recognized testing laboratory).

OSHA INSTRUCTION STD 3-4.1A

Date 9/16/80; From OSHA Compliance Programming; Synopsis - 1926.155(l) requires a flash arrestor screen for an approved metal safety can. FM requires flame arrestor screens in their approvals of safety cans; however, UL does not require the arrestor screens in their safety can approval. NFPA 30 recognizes approval of both FM or UL. Therefore, any citation issued under this standard for lack of the flame arrestor screen only is de minimis.

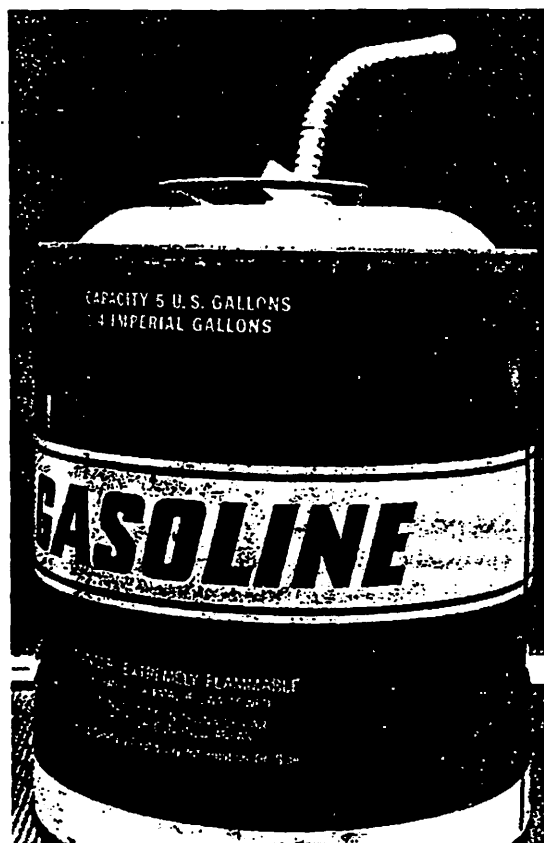


☐ VIOLATION ☒ IN-COMPLIANCE

An approved safety can. The arrows show the self-closing cover and flame arrestor.

☒ VIOLATION ☐ IN-COMPLIANCE

A common can on the market for gasoline. However, the can is not approved because it does not include a self-closing top.



☒ VIOLATION ☐ IN-COMPLIANCE

2 plastic cans which do not meet the criteria for self-closing tops.

#10

25(a)

GENERAL HOUSEKEEPING

RULE: *During the course of construction, alteration, or repairs, form and scrap lumber with protruding nails, and all other debris, shall be kept cleared from work areas, passageways, and stairs, in and around buildings or other structures.*

INTENT:

Since construction sites are dynamic by nature, the work areas often times become cluttered and disorderly creating a hazard. The array of construction debris is almost endless, including wood from old forms, broken pallets, boards with protruding nails; and material shipping containers to name just a few. At any given time it would not be unexpected to find any area of a construction site with a housekeeping problem. Housekeeping must be on-going as the job progresses.

HAZARDS:

Poor housekeeping can lead to the increased risk of trips, slips and falls. Resulting injuries range from fractures to sprains/strains. Associated hazards include nails in boards responsible for skin punctures resulting in lockjaw. If combustibles are not controlled at the site fires may occur.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Encourage the first line managers to make a concentrated effort to focus on housekeeping.
- On larger job sites, give laborers specific duties related to housekeeping only.
- On smaller sites, set up a system designating certain employees on an hourly basis to care for housekeeping chores.

SELECTED CASE HISTORIES:

IMIS did not contain any fatality/catastrophe inspections over the past five years, where violations of this standard were a direct/indirect cause(s) of an accident.

COMMENTS:

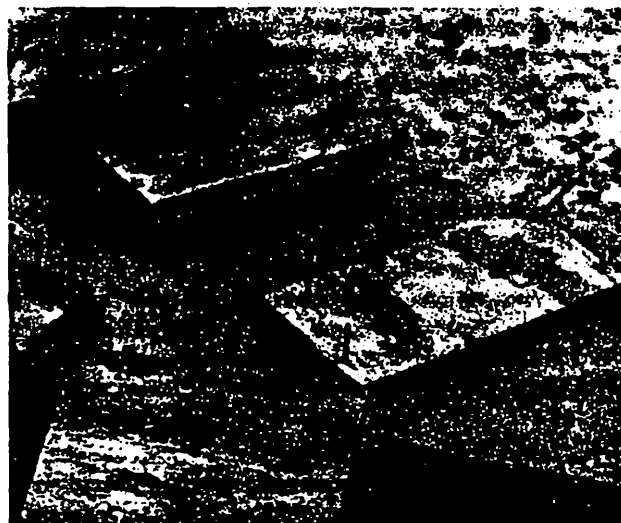
1. Although identifying a housekeeping violation is a subjective call (no real specific criteria which delineate what an actual housekeeping hazard is) these violations are rarely challenged when the CSHO has a photograph of the particular situation (Conversations with OSHA Area Directors).
2. This standard was cited in 33 OSHA fatality/catastrophe inspections in five years.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Section 25 (b) & (c)

☒ VIOLATION ☐ IN-COMPLIANCE

All six worksites below are examples of poor housekeeping.



#11

651(K)(1)

DAILY INSPECTION OF
PHYSICAL COMPONENTS OF
TRENCH AND PROTECTION
SYSTEM

RULE: *Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.*

INTENT:

This rule gives criteria for employees to use in conducting inspections of excavations to identify signs warning of potential cave-in, failure of a protective system, hazardous atmosphere or other hazards. The criteria include the frequency of inspections (daily prior to each shift, throughout shift as needed, after rainstorms or other hazard-increasing occurrence) and the locations of the inspections (excavations, adjacent areas and protective systems). The competent person is responsible for conducting these inspections. The competent person must have specific training in, and be knowledgeable about soil analysis, the use of protective systems and the requirements of the standard. An important provision of the competent person requirement is that he/she must have real authorization to take prompt corrective measures to eliminate hazards.

HAZARDS:

Cave-ins are the most frequent and most dangerous hazard associated with these excavations. Fatalities can be expected if a cave-in occurs. Other type hazards similar to those associated with confined spaces should be expected including asphyxiation due to lack of O₂, inhalation of toxic materials, fire, drowning, etc. Moving machinery near the edge of the excavation can cause a surcharge (overloading) with resulting stress cracks at/near the edge of the excavation wall which can cause collapse. Many accidents occur when employees contact or sever underground utility lines.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Use the GUIDE FOR THE DAILY INSPECTION OF TRENCHES/EXCAVATIONS on the next page to assist in identifying the warning signs of excavation failure and specific items to evaluate for different trench/excavation protection systems.
- Keep excavations open the minimum amount of time needed.
- RECOMMENDATION ONLY: Prior to giving authorization as competent person conduct a rigorous testing program to assure that his/her knowledge level is functional for the duties and responsibilities of a competent person.

SELECTED CASE HISTORIES:

- An employee was in a 7'6" deep trench installing forms for concrete footers when the trench caved-in causing fatal injuries. The trench was in loose sandy soil (Type C) and no inspection was conducted prior to the start of the shift/operation.
- An employee in a trench 6' deep x 32" wide was applying a waterproofing primer material containing methyl chloroform and 1,4 dioxane to the foundation of a house. The employee was overcome and latter died of trichloroethane intoxication. Deficiencies related to the cause of the accident included: 1) no one had tested the atmosphere in the trench; 2) the employees were not provided with respiratory protection; and 3) mechanical ventilation was not used.

COMMENTS:

1. The competent person must be knowledgeable and have the authority to take corrective action.
2. At times the production schedule and the duties of the competent persons conflict. If the competent person's authority is overridden, overtly or he/she fails to act because he/she believes the company would not support him/her, then in reality there is no true competent person at the excavation site.
3. This standard was cited in 37 fatality inspections conducted by OSHA since March 1990.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[14], [20]

OSHA CLARIFICATION LETTER

8/5/92; From Directorate of Compliance Programs to Private Company; Synopsis - A competent person need not present at the site at all times when trenching/excavating operations are being conducted. However, it is the competent person's responsibility to inspect the site to identify hazardous conditions and to take the appropriate corrective action. Therefore, the individual conditions at each site will govern the amount of time a competent person must spend at the site.

GUIDE FOR THE DAILY INSPECTION OF TRENCHES AND EXCAVATIONS ⁽³⁰⁾

See next page.

GUIDE FOR THE DAILY INSPECTION OF TRENCHES/EXCAVATIONS^[30]

WARNING SIGNS OF FAILURE

- Tension Cracks (In Sidewalls, Slopes and Surface adjacent to Excavation)
- Ground Settlement or Subsidence
- Changes in Wall Slope or Bulge
- Increase in Strut Loads
- Bowing of Struts
- Spalling or Sloughing of Soils
- Excessive Seepage and Piping of Fine Soils
- Softening of Sidewalls
- Boiling of Trench Bottom
- Creaking or Popping Sounds
- Visual Deformation of Bracing System or Trench

SHORING/BRACING CHECKLIST

- Strict Adherence to Plans and Specifications
- Changes in Soil Condition
- Maintenance of Proper Slope Ratio
- Excessive Vibrations
- Location of Spoil Pile
- Equipment Location Relative to Excavation
- Secondary Soil/Rock Structure
- Presence of Water Seepage and Rainfall
- Location of Trees, Boulders, Structures and Existing Utilities
- Right-of-Way
- Signs of Distress

SLOPING/BENCHING CHECKLIST

- Strict Adherence to Plans and Specifications
- Changes in Soil Conditions
- Excessive Vibration
- Location of Spoil Pile
- Equipment Location Relative to Excavation
- Excessive Wear or Damage to Equipment
- Signs of Distress
- Improper Installation Procedures
 - Workers in unbraced trench
 - Improper system being used
 - Improper alignment of members
 - Improper installation of connections
- Location of Existing Utilities and Backfill

TRENCH SHIELD (BOX) CHECKLIST

- Strict Adherence to Plans and Specifications
- Changes in Soil Conditions
- Clearance Between Shield and Trench Sidewalls
- Adequate Freeboard at Top of Shield
- Proper Slope Above Shield
- Current Certification of Shield
- Excessive Wear or Damage of Shield
- Improper Use of Shield
 - Workers in unshielded trench
 - Improper shield being used
- Location of Existing Utilities

NOTE: These are only general warnings of failure and recommendations for daily inspections of most trenches and excavations. Every trench/excavation must be inspected by a competent person as per 1926.651(k)(1) for the items listed above and all other hazards which are unique to that site.

#12

451(a)(13)

SAFE ACCESS FOR ALL
TYPES OF SCAFFOLDS**RULE:** *An access ladder or equivalent safe access shall be provided.***INTENT:**

To decrease the risk of a fall, this standard requires a ladder or other equivalent means of access for scaffolds. Too often when ladders are not in place, workers climb the end frames of the scaffold (a common unsafe work practice in the construction industry). This can be hazardous. Depending on the design of the end frame the structural members which are used as ladders rungs can be narrower than the width of an average foot, i.e. this case requires the employee to actually stand on the side of his foot on the "rung". The vertical distance between "rungs" also may be excessive (2½'-3'), resulting in the employee reaching for the next "rung". Unless the end frame is designed as a ladder access frame, it must not be used as such. The scaffold manufacturer or dealer can assist the user in determining if a scaffold frame has a built-in ladder. Some of the common frames do not have built-in ladders. Scaffold ladders that attach directly to the frame can be obtained from scaffold dealers. Equivalent safe access to scaffold platforms can include access from a building floor/window directly to the platform, a portable stairway system, etc.

HAZARDS:

Fall from elevation. Probable injuries vary from death to severe sprains/strains.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Construct all scaffolds and related components (ladder access) as per scaffold manufacturers technical literature.
- Whenever possible, use a window/floor at the elevation of the platform to gain access, thereby, eliminating any hazard associated with climbing.

SELECTED CASE HISTORIES:

While descending the end frame of a scaffold that was not designed to be a built-in ladder, an employee lost his balance, fell 13' to concrete and suffered fatal head injuries.

COMMENTS:

1. If the scaffold user has any questions about the scaffold, i.e. construction, use, etc. they should contact the scaffold manufacturer or dealer. Experience has proven that they are fully cooperative and can assist with technical questions.
2. If workers use an attached ladder on the end frame of the scaffold, the scaffold must be constructed to withstand the effects of the overturning force imparted on the scaffold due to the external loading caused by the weight of the person climbing the ladder. A material hoist on the same side as the ladder might increase the overturning force causing collapse of the scaffold. These loading factors must be considered in the design/construction phase.
3. A portable ladder, constructed and used as per Subpart X of 1926 is an acceptable ladder for access to scaffolding.
4. This standard was cited in 35 fatality inspections conducted by OSHA over five years.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

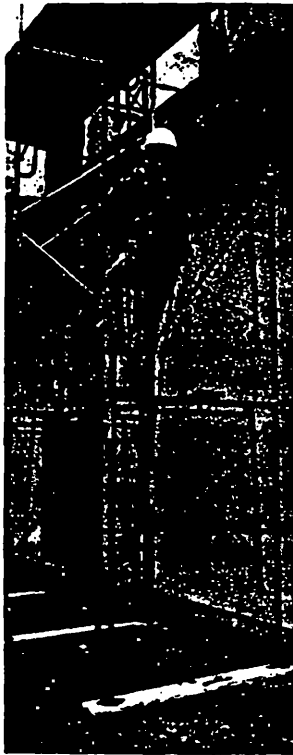
[1] Section 451; [18] Sections 1051 & 1053-1060 (Subpart X)

OSHA COMPLIANCE LETTER

Date 2/25/83; From Chief, Division of Compliance Prgrms., to Individual Company; Synopsis - 1) It's not practical for employer to provide ladder access at all times for employees assembling/disassembling scaffolding; however, other safe access must be provided; 2) end frames designed by a scaffold manufacturer as ladder access are acceptable if they are erected in a continuous line and the maximum spacing between rungs < 16½"; 3) portable wood or metal ladders must comply with Subpart X (formerly Subpart L); 4) fixed ladder standards do not apply to scaffolds; and 5) Subpart X does not apply to built-in scaffold ladders.

OSHA CLARIFICATION LETTER

Date 4/7/87; From Director of Directorate of Field Programs to Regional Administrator; Synopsis - The following relate to designed and manufactured built-in scaffold access ladders: 1) allow a maximum 16½" rung spacing; 2) rungs may be spaced unevenly where end frames join provided they do not exceed maximum rung spacing; 3) climbing over top guardrail or scaffold board overlay is not a safe practice; and 4) guardrail systems shall be provided with removable rails, chains or gates in accordance with manufacturers' recommendations.

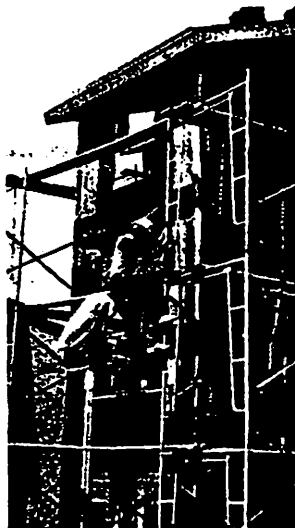


☐ VIOLATION
☒ IN-COMPLIANCE

The 2 photos (left) show employees accessing scaffolds by using a hook-on scaffold ladder. NOTE: the inward swinging gate which allows employees to step directly from the ladder on to the platform. Also, the scaffold (far left) has a platform which is not fully planked and creates a hazard.

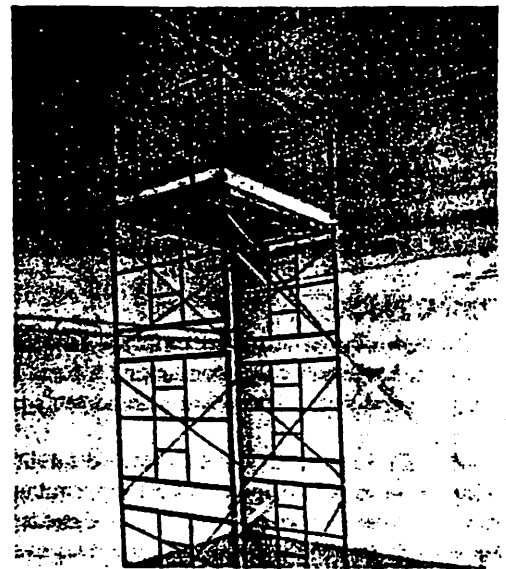
☐ VIOLATION ☒ IN-COMPLIANCE

The scaffold below shows end frames which were designed by the manufacturer to be built-in ladders. NOTE: The chain above the platform guarding opening.



☒ VIOLATION ☐ IN-COMPLIANCE

The 2 photos (above & left) show employees using the structural members of end frames as ladders. The scaffold manufacturer did not design these type end frames as built-in ladders. NOTE: The platform violations.



#13

404(b)(1)(i)

GROUND FAULT CIRCUIT
INTERRUPTERS (GFCI's)

RULE: All 120-volt, single-phase, 15-and-20-ampere receptacle outlets on construction sites, which are not a part of the permanent wiring of the building or structure and which are in use by employees, shall have approved ground-fault circuit interrupters for personnel protection. Receptacles on a two-wire, single-phase portable or vehicle-mounted generator rated not more than 5kw, where the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces, need not be protected with ground-fault circuit interrupters.

INTENT:

This standard requires the use of electrical hardware that is designed for monitoring ground fault current and is capable of stopping the fault current in the circuit, i.e. through an employee's body. This rule states that all 120 volt 15 & 20 amp receptacles outlets on construction sites will be protected by ground fault circuit interrupters (GFCI's), when not part of the permanent wiring of a structure. Because a receptacle is in effect part of the branch circuit wiring, this rule is effectively identical to 1926.404(b)(1)(i) - GROUND FAULT PROTECTION. For more information related to the operation of GFCI's see #3 GUIDE Sheet. This rule exempts portable or vehicle-mounted generators that meet the following: 1) rated < 5kW; 2) system wiring is two wire, single phase; and 3) circuit conductors are insulated from the generator frame and all other grounded surfaces. **NOTE: GFCI'S ARE NOT TO BE USED IN LIEU OF EQUIPMENT GROUNDING - GFCI'S ARE SUPPLEMENTAL PROTECTION AND MUST ONLY BE CONSIDERED AS A BACKUP TO EQUIPMENT GROUNDING.** GFCI's can be placed anywhere in the circuit and still be effective. They may be put in a panel box as a breaker, at the receptacle or in-line anywhere along an extension cord up to the tool. GFCI's are very important on construction sites because of the likely probability of encountering wet/damp locations that greatly increase the risk of electrical shock.

HAZARDS:

Fatal electrocutions, electrical burns ranging from critical to minor, Fire; Explosion; Electric shock has been initiator of other type hazards, i.e. electrical shocks can cause employees to fall from elevated work surfaces, loose control of hand held equipment which in turn can strike other employees in the immediate work area, etc.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- o Frequently trip GFCI's while test tool is operating to insure GFCI is operating correctly.
- o Use double insulated tools. Double insulated tools can protect the user from fault currents which might energize the case of the tool or equipment.
- o GFCI's for 220-volt circuits are available. Note: they are not required by this standard.

SELECTED CASE HISTORIES:

An employee attempted to plug an extension cord into a temporary power spider box. The employee was kneeling on the ground and held the box in his hand. Fault current energized the case of the box and electrocuted the employee. No GFCI's were used.

COMMENTS:

1. Although double insulated tools are recommended, using them does not relieve the employer from providing ground fault protection. Extension cords connecting a fixed electrical system (permanent outlet) and a tool can become worn with exposed energized conductors. Therefore, ground fault protection or an AEGCP would be required. See OSHA CLARIFICATION LETTER below.
2. According to OSHA ^[10] there were 48 fatalities in the years 1985 to 1989 related to 120-volt electrical systems.
3. Employers have attempted to skirt the requirements of providing ground fault protection by using 30 amp breakers in their 120-volt, single-phase systems. This not only defeats the intent of the ground fault provisions, it also introduces new hazards because the system is no longer rated for the actual over current protection (30 amp breaker) that is in place. (Personal experience & conversations with CSHO's).
4. Had all 3 requirements for ground fault protection been combined (1926.404(b)(1)(i) & (ii) & (iii)), they would have been ranked #1 on the 100 Most Cited Physical List and #4 on the 100 Most Cited LIST.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Section 404(b); [3]; [4]; [5]

OSHA CLARIFICATION LETTER

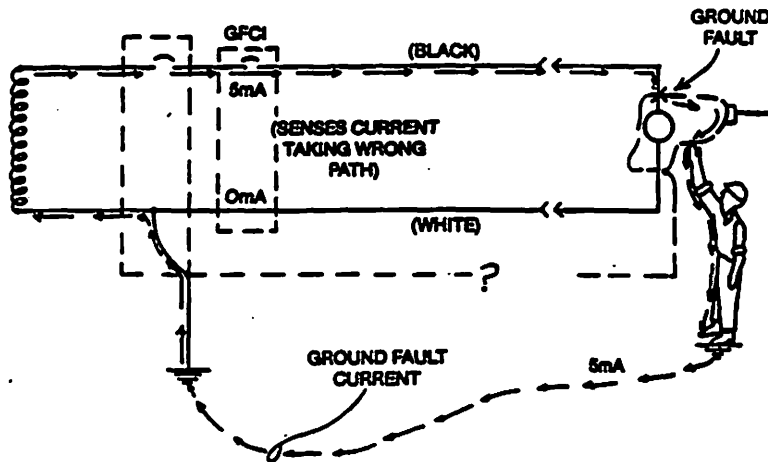
Date 11/4/92; Directorate Compliance Programs to Private Company; Synopsis - If all extension cord sets and/or portable tool assemblies are approved and used in such a manner that the entire lengths of all cords whether provided power from either permanent or temporary wiring, have GFCI protection, then the employer would be in compliance. If any of the cords or tools in a series are not protected by a GFCI, then an AEGCP would be required for all the cords and tools, including the ones already protected by a GFCI.

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS

The Ground-Fault-Circuit Interrupter ("GFCI") provides an additional precaution.

The GFCI is a solid-state, sensitive device which can be applied to open the circuit in case of ground-fault leakage too small to trip the circuit breaker, (but large enough to be dangerous to people).

[31]



HOW THE GFCI PROTECTS PEOPLE

(BY OPENING THE CIRCUIT WHEN CURRENT FLOWS THRU A GROUND-FAULT PATH.)

Note that the GFCI will open the circuit if 5 mA or more of current returns to the service entrance by any path other than the intended white wire. If the equipment-grounding conductor is properly installed and maintained this will happen as soon as the faulty tool is plugged in. If by chance this grounding conductor is not intact and low-impedance, the GFCI may not trip out until a person provides the path. In this case the person will receive a shock, but the GFCI should trip out so quickly that the shock will not be harmful.

Where are GFCI's required?

OSHA requires GFCI's on construction sites because of the combined special hazards of two conditions:

- Questionable integrity of the ground-fault path through temporary wiring.
- Presence of wetness due to working on earth, wet concrete, etc.

☐ VIOLATION ☒ IN-COMPLIANCE

The use of portable GFCI's (arrow) meets this requirement.



#14

701(b)

GUARDING OF PROTRUDING
STEEL REBARS

RULE: *Reinforcing steel. All protruding reinforcing steel, onto and into which employees could fall, shall be guarded to eliminate the hazard of impalement.*

INTENT:

In conversations with construction personnel, they seem to all have an account of a situation where an employee has fallen and impaled themselves on a piece of steel rebar. The accounts are some of the most gruesome stories told related to accidents in the construction industry. This rule requires guarding for the ends of the rebar where the potential for impalement could exist. The most common guarding is specially manufactured rebar caps which fit onto the rebar and have rounded surfaces facing upward, or lumber is used and set on top of the rebar. The theory is to dissipate the force of the fall by distributing it over a larger area than the diameter of the rebar, i.e. less force reduces the chance of impalement.

HAZARDS:

Impalement/puncture. Probable injuries can range from death to serious internal injuries.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Prior to installing rebar at the site, insure enough rebar caps or materials to construct caps will be available.

SELECTED CASE HISTORIES:

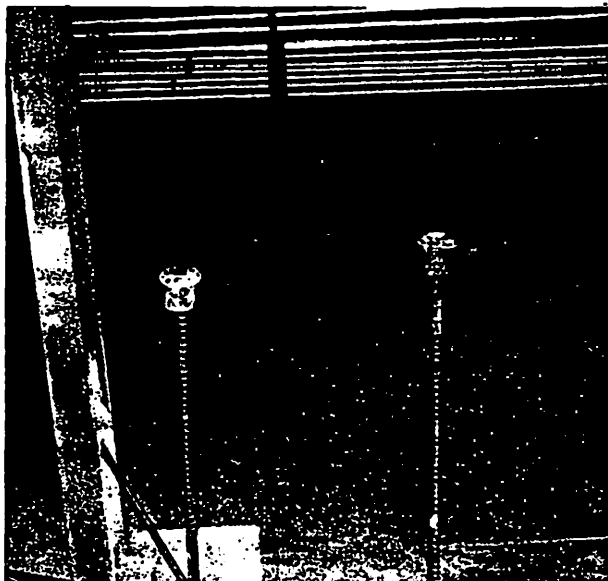
- An employee pulling a concrete hose along a form fell 2 stories and hit his head on steel bars which punctured his brain.
- A laborer fell through a roof opening about 8' to a patio foundation that had about 20 half-inch rebar protruding straight up. The laborer was impaled by one of the bars and died.

COMMENTS:

1. This is another example of a specification standard which is easy to identify and substantiate (its either in-place or its not) as a violation. Even though exposed vertical rebar would not be present at many OSHA construction inspections, this situation is being cited very frequently as evident by its #14 ranking on the Most Cited Physical Hazard List. This might be an indicator of industry wide non-compliance.
2. This standard was cited in 12 fatality investigations.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Subpart Q, [26]; [27]



☐ VIOLATION ☒ IN-COMPLIANCE

Rebar caps which are acceptable as meeting OSHA requirements.



☒ VIOLATION ☐ IN-COMPLIANCE

The arrows show 3 rebars without protective caps which create a hazard.

#15

451(a)(4)

GENERAL REQUIREMENTS
FOR GUARDING SCAFFOLDS

RULE: Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor, except needle beam scaffolds (See paragraphs (p) and (w) of this section). Scaffolds 4 feet to 10 feet in height, having a minimum horizontal dimension in either direction of less than 45 inches, shall have standard guardrails installed on all open sides and ends of the platform.

INTENT:

This standard specifies when guardrail systems and toeboards are required for all types of scaffolds (General Scaffold Requirements) that are not covered by a specific standard. The requirements for guardrails at specific heights is similar to 1926.451(d)(10) - Tubular Welded Frame Scaffolds (See #6 "Most Cited Physical Standards Sheet"), except for scaffolds which are 4' to 10' in height which are not covered by a specific standard. For further explanation see OSHA CLARIFICATION LETTER, date 8/7/92, below. Guardrail and toeboard construction specifications are contained in 1926.451 (a)(5) & (6). This rule contains an exemption for needle beam scaffolds and floats (suspended scaffolds) and directs compliance with those type scaffolds be in accordance with paragraphs (p) & (w), respectively. Guardrail systems are not required on these type scaffolds, OSHA requires only safety-belts and lifelines in accordance with 1926.104 for needle beam and float scaffolds.

HAZARDS:

- Fall from elevation. Probable injuries range from death to severe sprains/strains.
- Struck by falling objects from scaffold platform due to lack of/insufficient material containment system, i.e., wire mesh screen or toeboards. Probable injuries include death, lost-time injuries due to head concussion, broken bones in the upper body, etc.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Whenever an employee must work at any elevated location ask the questions: 1) Are they protected from a fall? and 2) What measures must be taken to protect the employee at the elevated work location?
- Fall prevention systems such as standard guardrail systems provide more positive means of protection than fall protection systems such as a bodybelt/harness-lanyard-lifeline combination, except when workers are suspended, i.e., from suspended scaffolds, work platforms, etc.
- Construct/maintain all guardrail system according to OSHA requirements.

SELECTED CASE HISTORIES:

An employee was installing overhead boards from a scaffold platform consisting of two 2"x10" boards with no guardrails. He lost his balance and fell 7'6" to the floor sustaining fatal injuries.

COMMENTS:

1. Many scaffolding guardrail violations are issued because no railings were provided on the ends of the scaffolds. The fall prevention system is not complete until it is completely enclosed. Additionally, because this is a specification standard it is more easily identified and substantiated as a violation when guarding is not provided.
2. This standard was cited in 56 fatality investigations over a five year period.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Section 451(a) & (d), [17]

OSHA CLARIFICATION LETTER

Date 3/11/83; From Acting Regional Administrator Region III to Area Director; Synopsis - 1926.451(a)(4) - General Scaffold Requirements, guarding in particular - If a specific type scaffold is covered by a individual standard, such as tubular welded frame, guarding doesn't need to be provided as per 451(a)(4) from the 4'-10' level unless adjacent to dangerous equipment.

OSHA CLARIFICATION LETTER

Date 8/7/92; From - Acting Assistant Secretary to individual company; Synopsis - The interpretation listed above is correct and still in effect. General requirements for scaffolds, 451(a), apply to all scaffolds unless specifically exempted or when the issue is specifically addressed in a specific section for a particular type of scaffold. The requirements for guardrails on scaffolds was specified at a height of 10' (less than 10' in height was omitted) for paragraphs .451(b) through .451(y) (standards for particular type scaffolds). Therefore, the .451(a)(4) standard does not apply to any .451(b) through .451(y) scaffolds. The general rule, (.451(a)), applies to scaffolds not addressed by .451(b) through .451(y) such as proprietary or make shift type scaffolds. Also, clarification of "10' above the ground or floor" was given - it is the falling distance, not the vertical dimension of the scaffold that is the controlling factor.

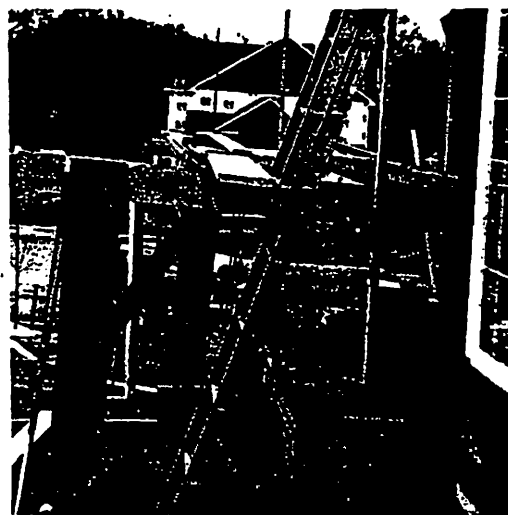
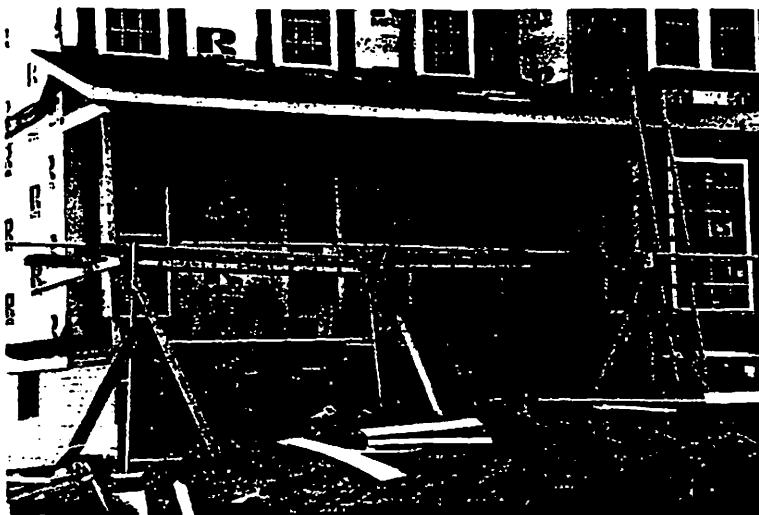
OSHA CLARIFICATION LETTER

Date 12/88; From Director of Compliance Programs to Regional Administrator; Synopsis - Guardrails not required for Ladder Jack Scaffolds because they may pose additional hazards and increase risk. The OSHA proposed rule requires the use of a body harness/belt and lanyard for fall protection on these scaffolds.



☒ VIOLATION ☐ IN-COMPLIANCE

An employee using a makeshift single plank scaffold to apply stucco approximately 7'-8' above the ground with no fall protection.



☒ VIOLATION ☐ IN-COMPLIANCE

Front and side view (above) of a make shift scaffold 4'-6' above the ground. No fall protection is provided. NOTE: The openings between the scaffold platforms and the unsecured portable ladder.

#16

651(j)(2)

SPOIL PILE PROTECTION

RULE:

Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.

INTENT:

The intent of this standard is two-fold, by requiring excavated material (spoils) and equipment to be set back 2 feet it accomplishes the following: 1) decreases the risk of spoils or equipment from rolling back into the excavation on top of employees; and 2) reduces superimposed loads on the face of the excavation which possibly could contribute to a cave-in. If the superimposed load of the spoils has been considered in the design of the protection system the spoils may be placed at the face of the excavation if they are retained by a sufficient (strength, i.e. can resist any reasonably anticipated forces applied to it, and/or height) device/operation such as barricading or wire mesh.

HAZARDS:

- Cave-in caused by superimposed load on face of excavation. Probable injury is death.
- Rolling/falling spoils or equipment; Probable injuries could be expected to range from head concussion to bruises. Extreme cases could result in death due to suffocation.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Conduct a pre-job survey of site to insure the location is large enough to accommodate 2 foot set back for the spoil pile. If not, materials must be obtained to provide an alternate retaining device.
- In some cases contractor may need to haul spoils to a temporary site until excavation is ready to back fill.

SELECTED CASE HISTORIES:

A spoil pile had been placed on top of a curb which formed the west face of a trench. A backhoe was spotted on top of the spoil pile. The west face of the trench collapsed on two employees who were installing sewer pipe. One employee was killed; the other received back injuries. The trench was 8 feet deep with vertical walls. No other protection was provided. In fact, the superimposed loads of the spoil pile and backhoe may have initiated the collapse.

COMMENTS:

1. Many excavations/trenches dug for utility line are located in narrow right-of-ways. Often spoil piles are placed at the edge with no retaining device. This situation can be avoided with a sound pre-job survey and plan.
2. The fatality rate for trenching/excavation work was 112% higher than the rate for construction in general ⁽¹⁴⁾.
3. This standard was cited in 37 fatality inspections since it became effective in March 1990.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Section 651(j); [14]; [20]; GUIDE FOR THE DAILY INSPECTION OF TRENCHES AND EXCAVATIONS (See pg.53)

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS



☐ VIOLATION ☒ IN-COMPLIANCE

Proper spoil pile set back (above & right).
Arrows show spoil piles.



☒ VIOLATION ☐ IN-COMPLIANCE

Two employees along pipe are exposed to the spoil pile (arrow) which is located on the edge of the trench.
NOTE: Sloping does not meet OSHA requirements.



☒ VIOLATION ☐ IN-COMPLIANCE

Employee at end of pipe is exposed to the spoil pile (arrow) at the edge of the trench.



#17

350(a)(9)

SECURING OF COMPRESSED
GAS CYLINDERS

RULE: Compressed gas cylinders shall be secured in an upright position at all times except, if necessary, for short periods of time while cylinders are actually being hoisted or carried.

INTENT:

This standard specifies the following: 1) gas cylinders must be secured to prevent them from falling against people, equipment, and other cylinders; if a cylinder strikes a person it can cause an impact type injury, if it strikes nearby equipment the consequences will vary depending on the type of equipment, if the first cylinder strikes other unsecured cylinders a domino effect may occur; an unsecured cylinder with its valve protection cap off could fall and strike its valve, rupturing it, causing the compressed gas cylinder to take-off like a rocket; and 2) the cylinders must be stored upright since adverse effects can result if cylinders containing some welding gases are stored/used in a horizontal position. This standard exempts hoisting or carrying cylinders that are only intended to be moved during short periods of time.

HAZARDS:

- Struck by falling or rocketing cylinders. Injuries can range from death to contusions.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Supervisors should note all cylinders in their work area and identify if they are in use or storage. If they are in storage, are they upright, secured and labeled? Is the valve protection cap in place? Are incompatible materials (oxygen and fuel gas) separated properly? If the cylinders are in use, are all appropriate safeguards in place to protect the welder and other personnel in the area?

SELECTED CASE HISTORIES:

OSHA IMIS did not contain any fatal/catastrophe inspections citing conditions related to this standard as a direct/indirect cause(s) of an accident.

COMMENTS:

1. Welding cylinders placed in welding carts are considered to be secured.
2. Unsecured cylinders on construction sites are common. This is a specification standard which is easily identified and substantiated as a violation as evident of it's high ranking on the 100 Most Cited Physical List. Therefore, the contractor must continually audit the site to ensure compliance.
3. This standard was cited in 29 OSHA fatality inspections in 5 years.

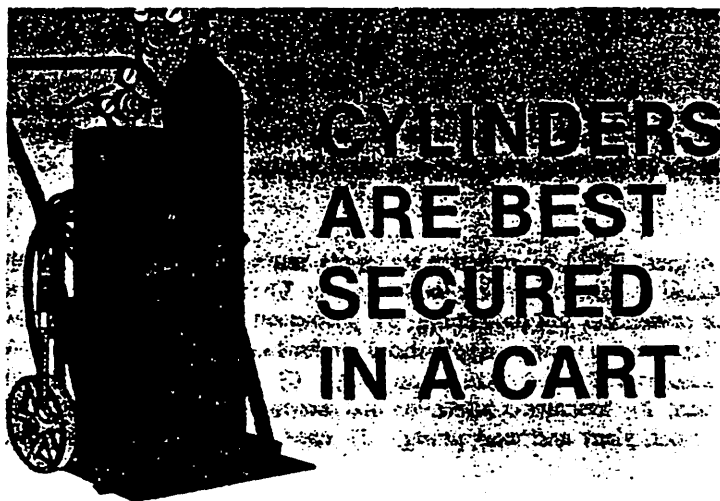
ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Section 350; [22]; [23]; [24]

- Referenced in 29 CFR 1926 - Construction Standards

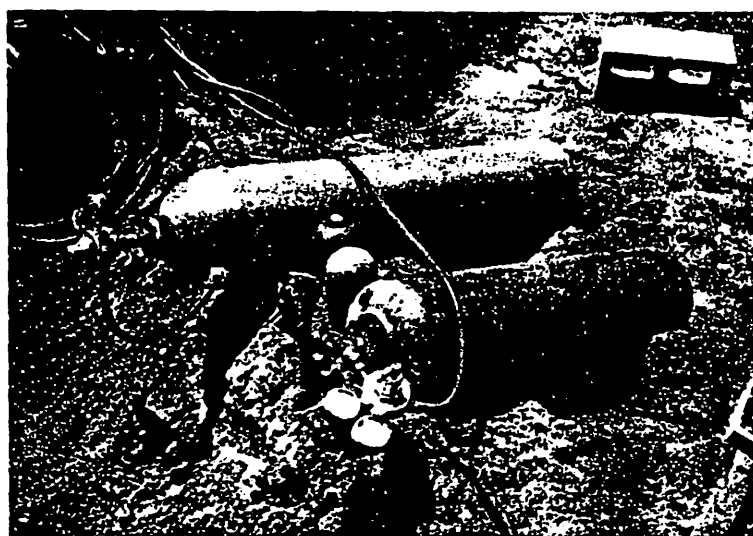
OSHA INSTRUCTION STD 3-8.2

Dated 3/11/81 - Synopsis - Clarifies that the standard does not apply to welding gas supply manufacturers or distributors prior to delivery at construction sites. The intent of the standard is for it to apply to welding or cutting operations on construction sites.



☐ VIOLATION ☒ IN-COMPLIANCE

The cylinders (above & right) are secured properly in an upright position. NOTE: Cylinders are not required to be secured to a cart as shown above. This method is only a recommendation.



☒ VIOLATION ☐ IN-COMPLIANCE

The cylinders are not secured (left) and are not secured in an upright position (above). NOTE: Improper storage of oxygen and fuel gas cylinders in photo on left.

#18

3500

ADDITIONAL RULES FOR
WELDING/CUTTING AS PER
ANSI Z49.1 - 1967

ROLE: Additional rules. For additional details not covered in this subpart, applicable technical portions of American National Standards Institute, Z49.1 - 1967, Safety in Welding and Cutting, shall apply.

INTENT:

This ANSI standard was incorporated by reference into the original OSHA construction standards and remains today. Its intent is to supplement the safety requirement for gas welding. Additional requirements cover the following: 1) installation and operation of oxygen-fuel gas systems for welding and cutting; 2) fire prevention and protection; 3) protection of personnel; 4) health protection and ventilation; and 5) industrial applications. Construction industry applications are further subdivided by operation, those operations include: A) general; B) general maintenance welding and cutting operations; C) earth moving and grading equipment; D) fire protection and prevention; E) demolition; F) concrete construction and masonry; G) tunnels, shafts and caissons; H) marine piling and marine construction; I) batch plant and road paving; J) steel erection; K) transmission pipeline; and L) mechanical piping systems.

HAZARDS:

- Fire/explosion. Probable injuries range from death to minor burns.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- A pre-job survey to identify all potential hazards and affected areas around the operation is critical.
- All fire prevention and protection rules absolutely must be followed.

SELECTED CASE HISTORIES:

- A welder was cutting braces on a catwalk of a conveyor when the catwalk collapsed falling approximately 30' to the ground killing the welder.
- Three employees were cutting (burning) a catwalk from the top of a 20,000 gallon ethanol storage tank which had been drained of liquid but the vapors were not purged. Vapors emanating from a gage hatch which was not sealed were ignited and the tank exploded. The three employees were fatally injured. The area (not designed for cutting purposes) was not properly inspected and authorized prior to the start of the operation.

COMMENTS:

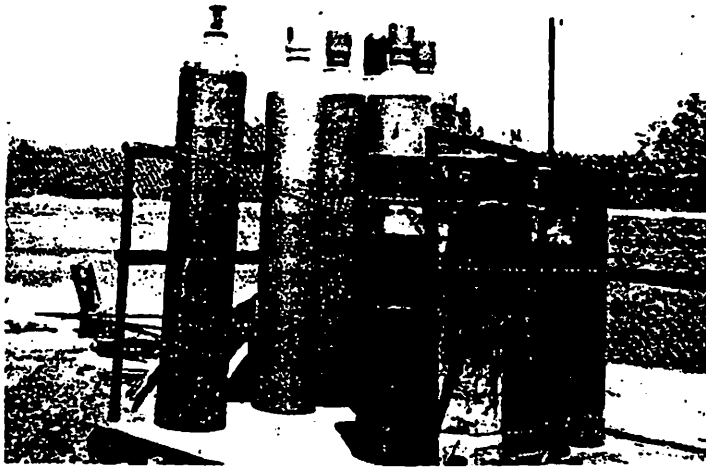
1. The most common standard cited from ANSI Z49.1-1967 is 3.2.4.3, which specifies a 20 foot minimum spacing or 1/2 hour minimum fire rated wall 5 feet high separating oxygen cylinders from fuel gas cylinders in storage. Other commonly cited standards include: using acetylene at a pressure greater than 15 psig (3.1.2) and failure to inspect and authorize an operation when welding or cutting must be done in a location not designed for such purposes (6.2.5).
2. This rule only applies to gas welding. It does not apply to arc welding, resistance welding or other non-gas welding procedures.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Subpart J; [24]; [28]

- Referenced in 29 CFR 1926 - Construction Standards

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS



☒ VIOLATION ☐ IN-COMPLIANCE

Oxygen and fuel gas cylinders stored together without proper separation or barriers.

NOTE: The missing valve protection cap on the front cylinder bottle.



☐ VIOLATION ☒ IN-COMPLIANCE

Oxygen cylinders in storage separated from fuel gas cylinders by a 5' tall properly constructed and rated fire wall (arrow).

#19

102(a)(1)

EYE/FACE PROTECTION FOR
OPERATIONS WHICH CREATE
EXPOSURE

RULE: Employees shall be provided with eye and face protection equipment when machines or operations present potential eye or face injury from physical, chemical, or radiation agents.

INTENT:

There were about 22,000 lost-time accidents in the construction industry in 10 states from 1985-1989 due to eye injuries ⁽⁶⁾. Metal items (34.5%) and wood items (10.7%) were the most frequent sources of eye injuries. The purpose of the standard is obvious - to reduce the number of eye injuries. The rule requires employers to provide eye/face protection when there are potential hazards to the eye/face related to physical, chemical, or radiation agents. The key word is potential. On very few construction sites would potential for falling, flying, moving, etc. objects not be present. Sometimes pieces of debris break off, spring, eject, etc. from objects which are usually intact. Once airborne, potential exist to cause an eye/face injury (example - prying on a wooden box, when a splinter breaks due to the force (energy) of the prying operation, the splinter might be thrown in the direction of the employees face). Although these types of events are not normal, they can and should be expected because of the nature of construction work. Therefore, protection must be provided. Other standards in this Part include 1926.102(a)(2) which specifies that eye/face PPE will meet requirements of ANSI Z87.1-1968, ⁽¹⁵⁾ and 1926.102(a)(5), which specifies that Table E-1 ⁽¹⁾ shall be used as guidance for selecting appropriate protection for listed operations. This is a very useful and user friendly table. All spectacle type glasses listed in TABLE E-1 require sideshields. A footnote in the table states spectacles without sideshields are available when only frontal exposure is possible. Most construction operations would require sideshields.

HAZARDS:

- Struck by flying objects, particles, and chemicals. Probable eye injuries can range from blindness to minor irritation caused by foreign matter in the eye. Probable injuries to the face range from chemical burns caused by splashes to lacerations caused by flying objects.
- Radiant energy exposure from welding and laser operations. Probable injuries range from blindness to temporary eye irritation.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Instruct first-line supervisors to continually audit employees to insure eye/face protection is worn.
- Institute a formal discipline program in workplaces where a problem exist relating to employees not wearing PPE when required.
- Make the wearing of PPE in accordance with company rules a specific condition of employment. This has proven to be an effective tool for safety managers (Conversations with safety managers).

SELECTED CASE HISTORIES:

IMIS data did not show violations of this standard contributing to the direct cause of a fatality/catastrophe. However, numerous severe lost-time injuries are related.

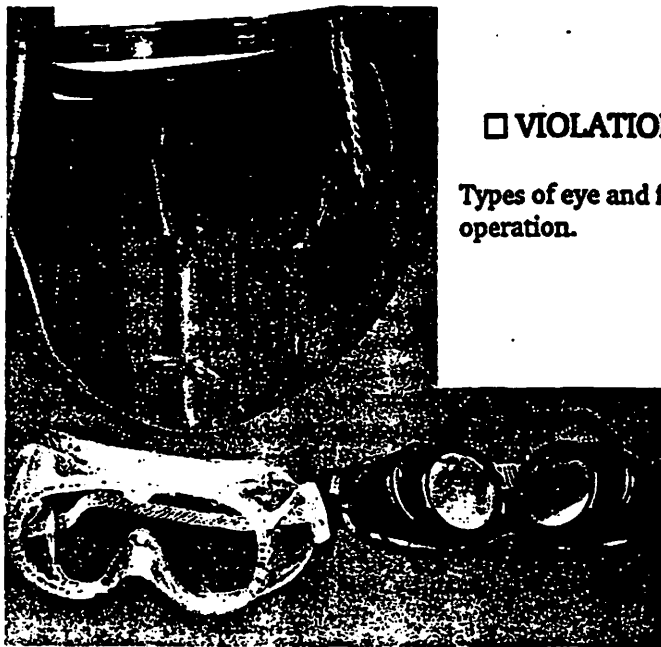
COMMENTS:

1. This rule requires employers to actually provide the eye/face protection to the employees.
2. This standard was cited in 17 fatality inspections conducted by OSHA in five years.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

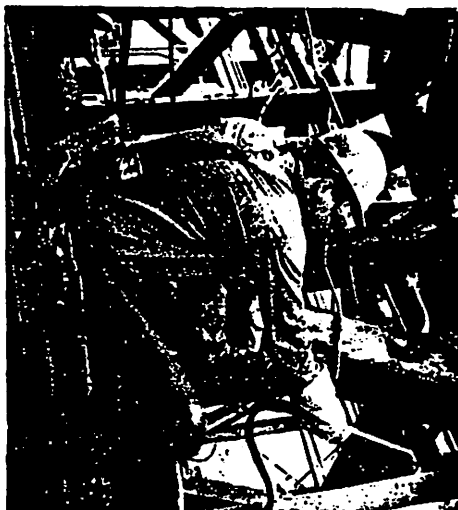
[1] Section 102, TABLES E-1, E-2 & E-3; [15]^{*}; [25]

^{*} - Referenced in 29 CFR 1926 - Construction Standards



☐ VIOLATION ☒ IN-COMPLIANCE

Types of eye and face protection that are required depending on the operation.



☐ VIOLATION ☒ IN-COMPLIANCE

Employee is wearing the proper cutting goggles while cutting steel for stairway.

#20

500(b)(1)

GUARDING OF FLOOR
OPENINGS

RULE: Floor openings shall be guarded by a standard railing and toeboards or cover, as specified in paragraph (f) of this section. In general, the railing shall be provided on all exposed sides, except at entrances to stairways.

INTENT:

OSHA defines a floor opening as "An opening measuring 12 inches or more in its least dimension in any floor, roof, or platform through which persons may fall." This rule is to specify that holes will be protected with guardrails and toeboards or covers. It also specifies the requirements of construction for the guardrails, toeboards and covers (1926.500(f)). An exemption is given guarding the exposed side of an entrance to a stairway. Table 5.2-1 and Table 5.2-2 give details for constructing standard guardrails and toeboards. Floor hole coverings must meet the construction specifications listed in 1926.500(f)(5). Regular floor hole covers must be capable of supporting the maximum intended load and must be installed to prevent accidental displacement and covers and their supports when located in roadways and vehicle aiseways for conduits, trenches and manholes must be designed to carry a rear axle load of two times the maximum intended load.

HAZARDS:

- Fall from elevation. Probable injuries range from death to sprains/strains.
- Struck by falling objects through floor hole. Probable injuries range from death to head concussion.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- For new construction identify floor holes as they are created and take immediate action.
- For existing structures, survey the site prior to starting work and continue audit as renovation, repair, etc. proceeds for floor opening and holes.
- Insure all covers are constructed properly and will support the maximum intended load.

SELECTED CASE HISTORIES:

- An employee fell 16 feet to his death through an improperly guarded roof opening 36"x30" while attempting to stay clear of an overhead crane load. The improper guarding system consisted of four 2"x4" posts supported using only one nail per post and high visibility barrier tape strung between the posts.
- An employee fell through an uncovered 36" diameter hole in the top of a slurry tank and fell 32 feet to his death.

COMMENTS:

1. Many deaths occur each year when floor hole covers were removed and were not replaced or when they were constructed of materials that could not support the person/equipment load. (OSHA 1st Report of Death or Serious Injuries).
2. Toeboards are required to prevent materials from falling through the opening and striking persons below.
3. A floor hole is an opening measuring less than 12" but more than 1" in its least dimension. Floor hole protection is intended to prevent materials from falling to the level(s) below.
4. This standard was cited in 67 OSHA fatality cases in 5 years.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Sections 500(b) & (f); [19]

OSHA CLARIFICATION LETTER

Date 8/31/89; From Director of Construction Compliance Programs to Regional Administrator; Synopsis - A floor hole 60' x 40' x 12" deep in the middle of a large finished floor is not a floor opening or hole under this standard. Additionally, a uniform enforcement policy on floor openings is not possible because of the many variables that exist, i.e. the depth of the hole, workers exposure, etc.; therefore, each particular situation must be evaluated by the CSHO to determine if a hazard exists.



☐ VIOLATION ☒ IN-COMPLIANCE

Properly erected standard guardrail system for floor opening.

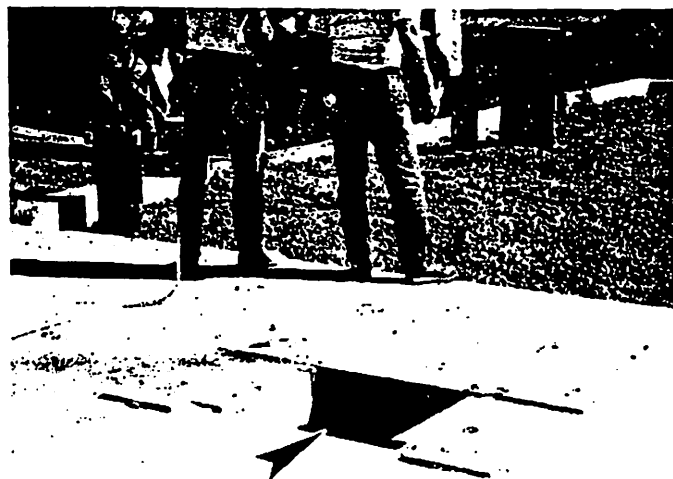


☐ VIOLATION ☒ IN-COMPLIANCE

Proper guarding of floor opening on roof under construction.

☒ VIOLATION ☐ IN-COMPLIANCE

Unguarded floor opening (arrow) which exposes workers to a 9' fall into basement.



305

#21

1053(b)(1)

LADDER EXTENDED 3'
ABOVE LANDINGS

RULE: When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (9 m) above the landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support

INTENT:

The purpose of this rule is to provide protection for employees during two critical phases of ladder climbing: 1) when employees are on the ladder and their movement may cause forces to be transferred to the ladder and its support points which might tend to make it slip or fall; and 2) when the employee is either getting on or off the ladder - if nothing is available to grab and provide support, the employee will be in a bent over position and his/her center of gravity may be outside the vertical line of normal body position, in an attempt to correct this and straighten up and get on/off the ladder the employee is vulnerable to a fall. The rule specifies: 1) that the side rails must extend three feet above the landing; 2) side rails must be secured at the top to a rigid support when the 3 foot extension is not provided (this can be done by tying with rope, boxing in with lumber, etc.); 3) a grab device must be provided when the ladder's side rails do not extend 3 feet above the landing (the grasping device can be constructed of materials such as metal, lumber, etc., it can be a part of the structure providing it's location does not create a hazard in itself and it's easily grasped); and 4) when employees are on the ladder its deflection cannot cause it to slip off its support; therefore, when selecting/spotting a ladder, consider the amount it will deflect during use to assure that the proper length is used.

HAZARDS:

Fall from elevation. Probable injuries range from death to sprains/strains.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Abatement is obvious - construct/use ladders according to specification requirement.
- Instruct first-line supervisors to inspect ladders during each shift in their work area.

SELECTED CASE HISTORIES:

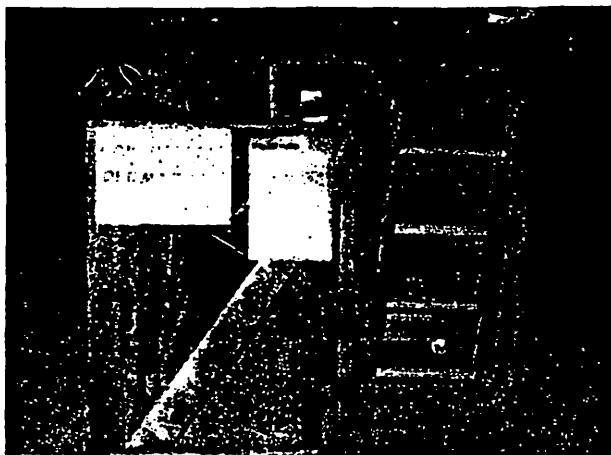
An employee was climbing a 10 foot ladder to access a landing which was 9 feet above the adjacent floor. The ladder slid down, and the employee fell to the floor, sustaining fatal injuries. Although the ladder had slip-resistant feet, it was not secured, and the railings did not extend 3 feet above the landing.

COMMENTS:

1. This standard covers only portable ladders. A similar requirement for fixed ladders is 1926.1053(a)(24).
2. This is a specification standard which is easily identified and substantiated as a violation as evident by it's high ranking on the 100 Most Cited Physical List. Therefore, the contractor must continually audit the site to remain in compliance with this item.
3. This standard was cited in 6 fatality/catastrophe inspections since January, 1991.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

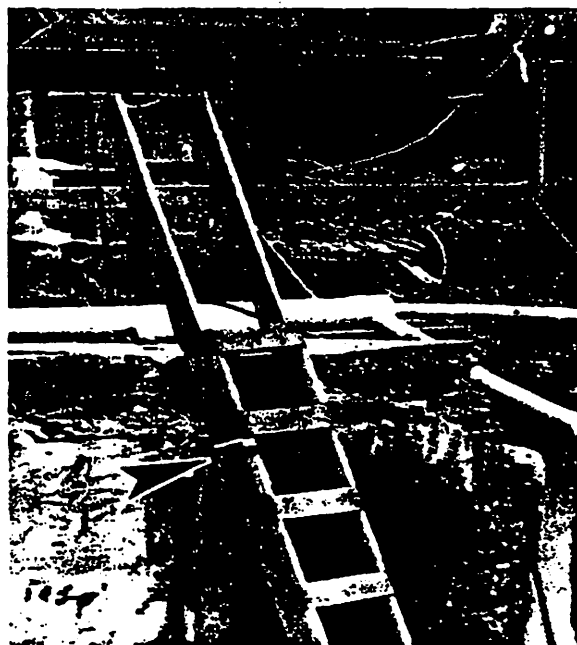
[1] Subpart X; [18]



☐ VIOLATION ☒ IN-COMPLIANCE

The portable ladder extends 3' above the opening (landing) of the confined space.

NOTE: The guarding of the floor hole except at the entrance for the ladder is acceptable.



☐ VIOLATION ☒ IN-COMPLIANCE

The job made ladder is secured (arrow) and extended 3' above the landing.

NOTE: The exposure to the open-sided floor when employees are on the landing would be a violation of 1926.500(d)(1).



☒ VIOLATION ☐ IN-COMPLIANCE

The job made ladder does not extend at least 3' above landing, nor is it secured against tipping.

#22

651(C)(2)

EGRESS FROM
TRENCH/EXCAVATION

RULE: Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees.

INTENT:

When conditions begin to deteriorate in a trench, such as soil beginning to sluff off the face of the trench, the risk of a cave-in increases and emergency egress may be required. This standard requires a means of egress. The intent of this rule is to specify the following: 1) maximum lateral distances an employee can travel (25 feet) to egress a trench; 2) maximum depth of the trench (4 feet) when egress must be provided; and 3) means in which egress from the trench can be accomplished, i.e. stairway, ladder, ramp, or other safe means. Note: It is not intended that this rule apply to large excavations ([14], pg. 45918). However, a safe means of access/egress from large excavations must be provided as per 29 CFR 1926.1051(a). That standard requires a stairway or ladder be provided at personnel points of access where there is a break in elevation of 19 inches or more, and no ramp runway, sloped embankment or personnel hoist is provided.

HAZARDS:

- Cave-in. Probable injury is death.
- Hazardous atmospheres caused by broken utility lines, toxic materials entrained in soil, etc. Large range of injuries from death due to inhalation of toxic materials to first aid.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Provide properly constructed /maintained means of egress at predetermined points.

SELECTED CASE HISTORIES:

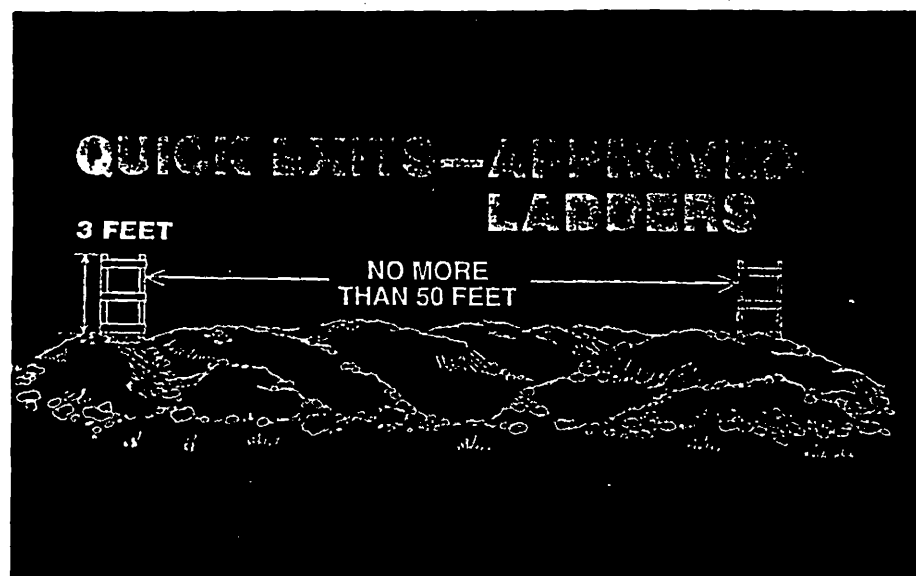
- Two employees were in a 12 foot deep trench laying pipe when one of the employees saw the bottom face of the trench move and jumped out of the way along the length of the trench as the wall caved-in fatally injuring the other employee. The walls of the trench were vertical and no means of emergency egress was provided.
- Two employees laying sewer pipe were in a 15 foot deep trench, which was not shored or sloped properly. The employees had to egress the trench by climbing the backfill. While exiting the trench the first worker was trapped by a small cave-in. The second employee tried to extricate him but a second cave-in occurred trapping the second employee at the waist. The second cave-in actually caused the death of the first employee; the second employee sustained a hip injury.

COMMENTS:

1. Only one means of egress is required in the middle of a trench 50' long to meet the requirements of this standard.
2. Earthen ramps may be used as a suitable means of egress only if employees can walk the ramp in an upright position when entering and exiting. The earthen ramp must be evaluated as acceptable by the competent person.
3. This standard was cited in 24 fatality inspections conducted by OSHA since January 1991.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Subpart P; [14]; [20]



☐ VIOLATION ☒ IN-COMPLIANCE

Required for trench/excavations \geq 4 feet deep.



☒ VIOLATION ☐ IN-COMPLIANCE

No means of egress provided. Employee is riding backhoe bucket out of trench.

309

#23

403(b)(2)

LISTED, LABELED OR
CERTIFIED EQUIPMENT USED
IN MANNER PRESCRIBED

RULE: Listed, labeled, or certified equipment shall be installed and used in accordance with instructions included in the listing, labeling, or certification.

INTENT:

At times electrical equipment is installed or used in a manner for which it was not designed. This is one of the electrical standards which is used as a "catch all" for hazardous situations which are not covered by specific electrical standards. While the application of this standard may be broad, the intent is to ensure that all electrical equipment is used/installed as designed. The most common specific application of this standard as used by OSHA in construction is to address the situation when a multiple-receptacle box designed to be mounted is fitted with a power cord and placed on the floor to provide power for various tools. This would not be a prescribed use for the receptacle box. OSHA also cites this standard for the use of ROMEX[®] wire for making up extension cords; using equipment outdoors which is only listed and labeled for use in indoor dry locations (this can even apply to double insulated tools which are listed and labeled for dry indoor locations only); short two-prong adapter plugs with pig tail equipment grounding connections to facilitate the attachment of cords and tools to electrical systems; and the use of the wrong size circuit breakers or fuses for overcurrent protection. The situations listed above would not be in accordance with the equipment's prescribed use.

HAZARDS:

- Electrical shock. Probable injuries can vary from death to minor burns.
- Fire. Probable injuries can vary from third degree to minor burns.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Since most violations related to this standard are the result of original equipment being shop fabricated, altered, modified, etc. instruct first-line supervisors to watch for such equipment and determine if it is in compliance with OSHA/NEC. If not, take equipment out of service immediately.

SELECTED CASE HISTORIES:

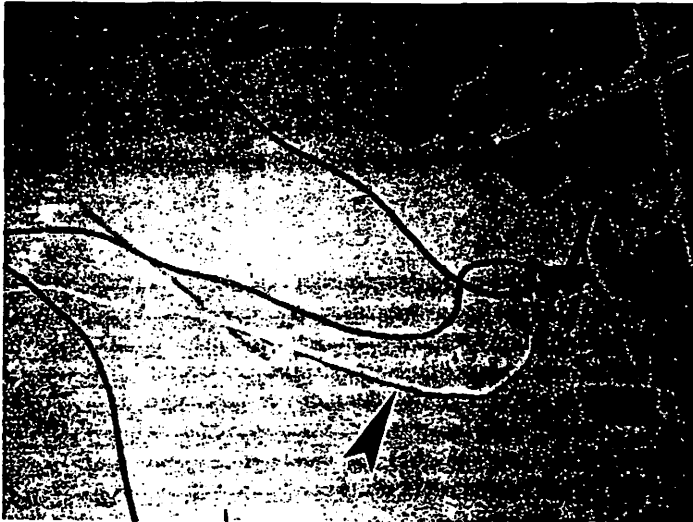
An employee was texturing a wall using an air compressor. The plug of the compressor and an extension cord had been modified to fit a wall outlet for a common household dryer (220 V). While attempting to unplug the compressor from the extension cord, the employee was fatally shocked. The modification to the plugs was not an intended use or prescribed by the manufacturer.

COMMENTS:

1. The shop-fabricated multi-receptacle box laying on the floor is quite common in the industry. After, OSHA CSHO's become familiar with this problem it becomes as easy a violation to identify and substantiate as many of the specification standards.
2. If an installation is made in accord with the 1984 National Electric Code, it will be considered to be in compliance with Sections 1926.403 thru 1926.408, except 1926.404(b)(1), 1926.405(a)(2)(ii)(E), 1926.405(a)(2)(ii)(F), 1926.405(a)(2)(ii)(G) & 1926.405(a)(2)(ii)(J).
3. This standard was cited in seven fatality inspections conducted by OSHA in 5 years.

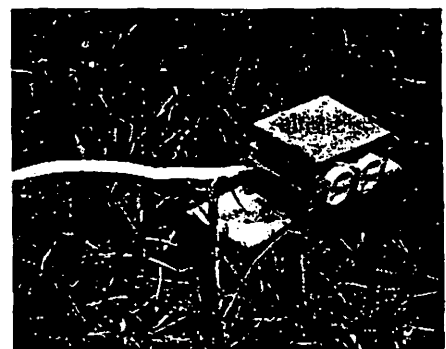
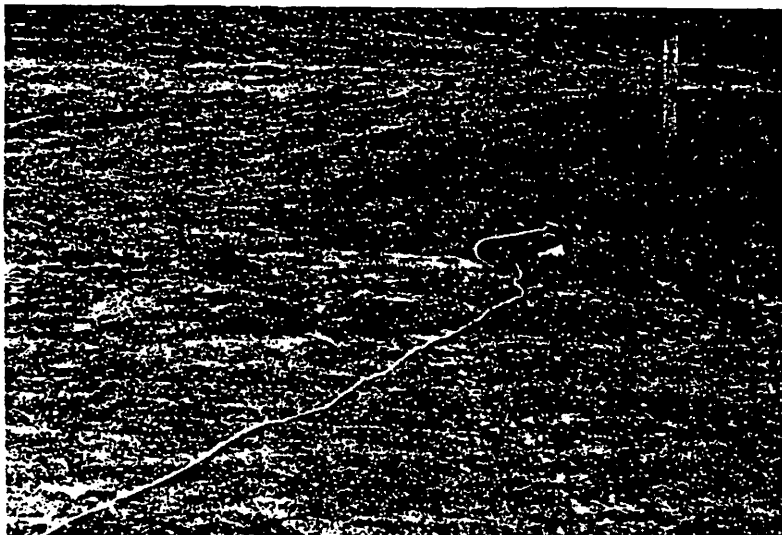
ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Subpart K; [2]; [3]



☒ VIOLATION ☐ IN-COMPLIANCE

Multi-receptacle outlet box on the floor providing power to 3 extension cords. The supply power to the outlet box is provided by non-metallic sheath (NM) cable (arrow). The manner in which the outlet box and NM cable is used is not a prescribed use.



☒ VIOLATION
☐ IN-COMPLIANCE

NM cable is being run across a field (above) to provide power to an outlet laying on ground (blow-up). It is being utilized as an extension cord. The use of the NM cable and outlet in this manner is not a prescribed use. NOTE: The NM cable is run on ground and is not protected from damage (this particular cable was run across a subdivision street). When NM cable is used on a construction site it must be used in a manner prescribed such as wiring for feeders, branch lines and temporary lighting. Additionally, it must be installed properly and must be protected from physical damage.

#24

405(a)(2)(ii)(i)

RULE: Extension cord sets used with portable electric tools and appliances shall be of three-wire type and shall be designed for hard or extra-hard usage. Flexible cords used with temporary and portable lights shall be designed for hard or extra-hard usage.

INTENT:

Extension cords when exposed to even "normal" construction use can experience rapid deterioration. When this happens, conductors with energized bare wires can be exposed. Conductors can break or come loose from their terminal screws, specifically the equipment grounding conductor. If that should occur the equipment grounding for the tool in use is lost. Since deterioration occurs more rapidly in cords which are not rugged enough for construction conditions, the National Electric Code ^[5] and OSHA have specified the types of cords to use in a construction environment. This rule designates the types of cords that must be used for various applications including portable tools, appliances, temporary and portable lights. The cords are designated HARD and EXTRA HARD SERVICE. Examples of HARD SERVICE designation types include S, ST, SO, STO, SJ, SJO, SJT, & SJTO. Extension cords must be durably marked as per 1926.405(g)(2)(ii) with one of the HARD or EXTRA HARD SERVICE designation letters, size and number of conductors.

HAZARDS:

Electric shock. Probable injuries range from death to minor burns.

(AMONG OTHER) SUGGESTED ABATEMENTS:

Continually audit cords on-site. Any cords found not to be HARD or EXTRA HARD SERVICE must be taken out of service immediately.

SELECTED CASE HISTORIES:

An employee received a fatal shock when he was cutting drywall with a metal casing router. The router's 3-wire power cord had been spliced to a 2-wire cord and plug. A fault occurred and with no grounding and the absence of GFCI protection, the employee was electrocuted. The cord was not a 3-wire HARD SERVICE variety.

COMMENTS:

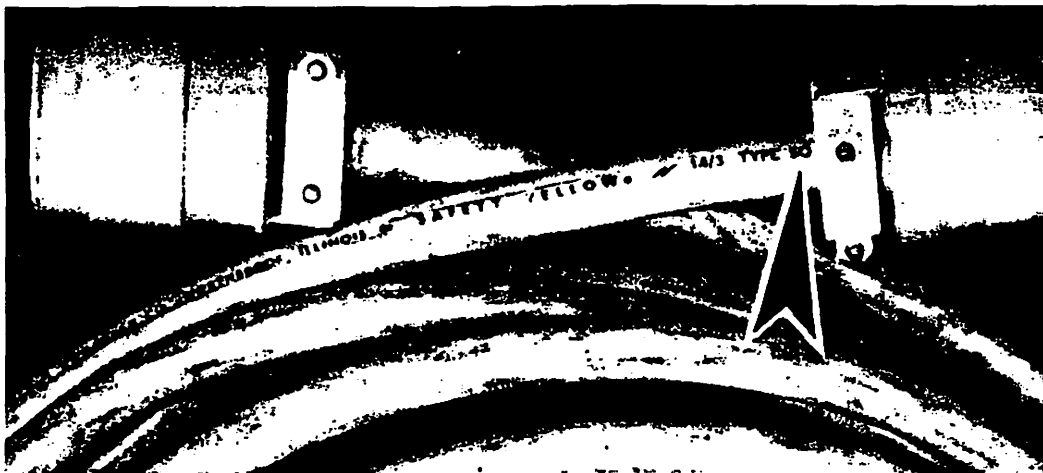
1. The durable marking required to be on the cord can be found as an indelible marking by the manufacturer approximately every foot along the length of the cord.
2. Because the use of extension cords is so numerous at construction sites and this is a specification standard, the number of related violations is quite high. For the OSHA CSHO this situation is relatively easy to identify and substantiate as a violation.
3. Because of the constant movement of contractors and equipment, specifically extension cords, on/off-site and the fact that sometimes several contractors draw power utilizing the same extension cord, identifying improper service cords may be difficult.
4. This standard was cited in 20 fatality inspections in last 5 years.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Sections 405(b) & (g); [2], [3]

OSHA CLARIFICATION LETTER

Date 3/3/92; From Director of Compliance Programs to Director of Office of Construction and Engineering; Synopsis -- Contractor shop-made extension cords are acceptable if they meet the following criteria: 1) all individual components of the cord set must be approved by a nationally recognized testing laboratory; 2) the cord sets must meet all applicable requirements such as strain relief, correct polarity of conductors, proper marking, etc.; 3) cords must be assembled by a qualified person; and 4) the cord set must be checked prior to its first use, for example, the following tests should be performed a) all equipment grounding conductors shall be tested for continuity and shall be electrically continuous and b) each receptacle and attachment plug must be tested to insure proper connection of the equipment grounding conductor to its appropriate terminal.



☐ VIOLATION ☒ IN-COMPLIANCE

Hard service cord TYPE SO (arrow).

NOTE: The strain relief devices for ends of the attachment plugs.



☒ VIOLATION ☐ IN-COMPLIANCE

2 wire ribbon type cord is not designed for HARD USAGE.

NOTE: The 2 wire cord does not provide equipment grounding. Additionally, there are exposed terminal screws and conductors on the end of the cord which create a shock hazard.



#25

405(g)(2)(iv)

STRAIN RELIEF FOR CORDS

RULE: Flexible cords shall be connected to devices and fittings so that strain relief is provided which will prevent pull from being directly transmitted to joints or terminal screws.

INTENT:

The deterioration of electrical cords on construction sites is a common occurrence. If a cord deteriorates to a point where conductors have effectively worn through their insulation or equipment grounding conductors are no longer attached to their terminal screws, an electric shock hazard is created. Many times deterioration of the cord is due to the strain, both normal and abnormal, it experiences on the site. One of the weak points of a cord assembly is the area in which attachments are made (plug cap and connector body). When devices or fittings designed to relieve cord strain are not used, insulation will tend to pull back and expose conductors or the conductors will loosen from their terminal screws. Therefore, this standard requires hardware to prevent tension from being transmitted to joints and terminal screws. Manufactured molded plug caps and associated connections usually do not pose this problem under normal use. However, site-fabricated cords or cords that have been repaired in the field frequently do not have sufficient strain relief. Loose wires in a plug cap caused by improper connection or tension due to no strain relief can cause conductors to make contact where not intended causing short-circuits, fires, arcing type explosion, etc.

HAZARDS:

Electrocution and fire. Probable injuries can range from death to first degree burns.

(AMONG OTHER) SUGGESTED ABATEMENTS:

- Use approved cords for HARD or EXTRA HARD USAGE (Designated S, ST, SO, STO, SJ, SJO, SJT or SJTO).
- Use only cords which are equipped or designed with strain relief.
- Use factory-assembled cord sets as much as possible.
- Reinforce the simple work practice that everyone learned when they were children - remove cords from receptacles by pulling on the plugs, not the cords.

SELECTED CASE HISTORIES:

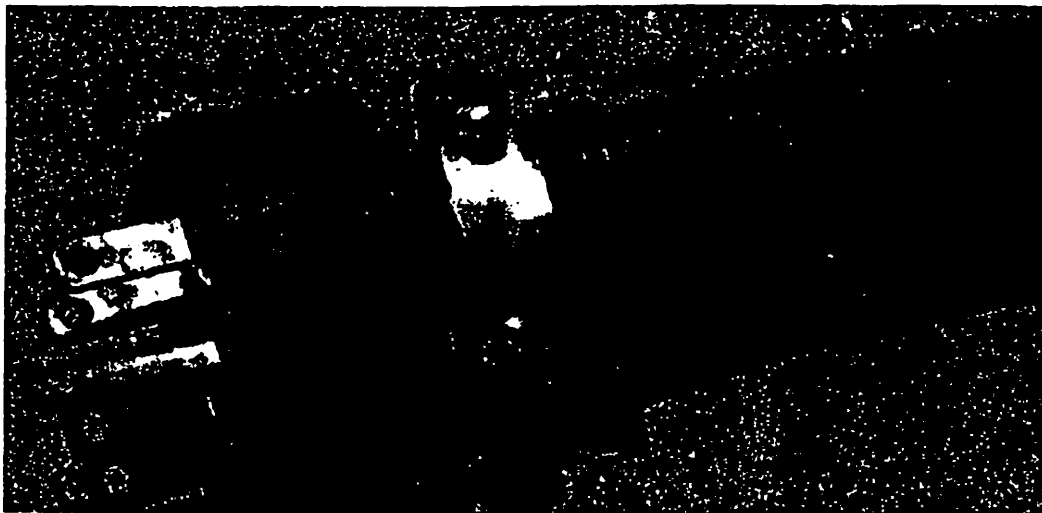
An employee operating a 3/4" electric chisel was electrocuted. An electrical fault occurred in the casing of the tool. An inspection revealed that the original power cord had been replaced with a flat cord (not designed for HARD service), the ground prong was missing and strain relief was not provided for the cord at the point it entered the tool. Additionally, no GFCI protection was provided.

COMMENTS:

1. There is no prohibition against fixing a cord or reattaching it to a plug. However, care must be taken to assure the original electrical and mechanical integrity of the cord is maintained.
2. Splices to flexible cords and cables are prohibited under 1926.405(g)(2)(iii) if their service rating is less than Hard Service No. 12. If the service rating is greater than No. 12 splices may be made provided they meet other mechanical requirements.
3. This standard was cited in 20 fatality inspections conducted in five years.

ADDITIONAL DOCUMENTS TO AID IN COMPLIANCE:

[1] Section 405; [2]; [3]; [21] Fact Sheet #5; Pull at Joints & Terminals Must Be Prevented



☐ VIOLATION ☒ IN-COMPLIANCE

Strain relief provided for plug on cord.



☒ VIOLATION
☐ IN-COMPLIANCE

The insulation of the cord (arrow) is pulling away from plug. The plug had earlier been repaired and its original molded plug strain relief was compromised. Additionally, strain relief was not provided at the time of repair resulting in condition shown above.

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5.2 CONSTRUCTION SPECIFICATIONS FOR GUARDRAILS AND TOEBOARDS

The following section presents construction specifications for guardrails and toeboards. These specifications relate to GUIDE Sheets #1, #6, #12, #15 and #20 listed above in Section 5.1. These tables compile the requirements for "standard guardrails and toeboards or their equivalent". Table 5.2-1 lists construction specifications for guardrails and Table 5.2-2 lists construction specifications for toeboards.

TABLE 5.2-1

MINIMUM SPECIFICATIONS FOR GUARDRAIL SYSTEMS

TYPE OF MATERIAL	SIZE OF TOP/MID RAIL [IN]	HEIGHT [IN] TOP RAIL ⁽¹⁾	POST SIZE/SPACING ⁽²⁾	STRENGTH ⁽³⁾ [LBS.]
WOOD	2x4/1x6	42	2"x4"/8'	200
PIPE	1-½ nominal OD	42	1-½" nom./8'	200
STEEL	2x2x¾ angle	42	2"x2"x¾" angle/8'	200 or equiv. bend. strength
WIRE ROPE	¾ ⁽⁴⁾	42	equivalent to one of above	200
OTHER EQUIVALENT	equivalent to one of above	42	equivalent to one of above	200

(1) Acceptable heights range from 39" to 45" (42"±3"). Mid rail height should be about ½ height of top rail.

(2) Spacing is horizontal distance measured center post to center post.

(3) Railing must have minimum deflection in any direction 200 lb. force is applied. Minimum deflection is not defined although 3" of deflection for wire rope after force is applied is a guideline. Strength criteria also applies to all structural members of system including post anchorages

(4) There is no present OSHA National Office guidance at this time for size of wire rope guard rails. ¾" is a recommended size, however, any wire rope size ¼" or larger (as per NPRM for Subpart M) would be acceptable. OSHA requires a ½" wire rope or equivalent for periphery of floors during steel erection.

Note - Lumber sizes listed above can be nominal size.

TABLE 5.2-2**MINIMUM SPECIFICATIONS FOR TOEBOARDS**

HEIGHT OF PROTECTION ⁽¹⁾	MATERIAL	CONSTRUCTION	SIZE
<u>Standard Toeboard Does Provide Protection</u>	Substantial	1) Solid 2) Openings < 1" 3) ¼" max. clear. from floor	4" min. (vertical dimension)
<u>Stand. Toeboard Does Not Provide Proper Protection</u>	Substantial	Paneling or Screening	Floor to Mid or Top Rail

(1) The size of the material containment, i.e. toeboard is dictated by the size of the material or the way it is piled. A standard toeboard may not be sufficient to contain items near the edge of an open-sided floor/platform. In that case the height of the containment must be increased accordingly.

5.3 REFERENCES

1. 29 CFR 1926/1910; Construction Industry - OSHA Safety and Health Standards; OSHA 2207; Revised 1991; U.S. Department of Labor, Occupational Safety and Health Administration, Washington, DC.
2. Electrical Standards for Construction; OSHA 3097; 1989 (Revised); U.S. Department of Labor, Occupational Safety and Health Administration, Washington, DC.
3. An Illustrated Guide to Electrical Safety; OSHA 3073; 1983 (Revised); U.S. Department of Labor, Occupational Safety and Health Administration, Washington, DC.
4. Ground Fault Protection on Construction Sites; OSHA 3007; 1990 (Reprint); U.S. Department of Labor, Occupational Safety and Health Administration, Washington, DC.
5. ANSI/NFPA 70-1990; National Electrical Code; 1990; National Fire Protection Association, Batterymarch Park, Quincy, MA.
6. Construction Accidents: The Workers' Compensation Data Base 1985-1988; April 1992; U.S. Department of Labor, Occupational Safety and Health Administration, Office of Construction and Engineering, Washington, DC.
7. ANSI Z89.1-1969; Safety Requirements for Industrial Head Protection; 1969; American National Standards Institute, New York, NY.
8. ANSI Z89.2-1971; Safety Requirements for Industrial Protective Helmets for Electrical Workers; 1971; American National Standards Institute, New York, NY.
9. Personnel Protective Equipment; OSHA 3077; U.S. Department of Labor, Occupational Safety and Health Administration, Washington, DC.
10. Analysis of Construction Fatalities - The OSHA Data Base 1985-1989; Nov. 1990; U.S. Department of Labor, Occupational Safety and Health Administration, Office of Construction and Engineering, Washington, DC.
11. Safety Standards for Fall Protection in the Construction Industry; Notice of Proposed Rulemaking; Part III; Federal Register; Nov. 25, 1986; U.S. Department of Labor, Occupational Safety and Health Administration, Washington, DC.
12. ANSI A10.14-1975. Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Droplines for Construction and Industrial Use.1971; American National Standards Institute, New York, NY.
13. ANSI-A10.11-1979; Standard for Safety Nets Used During Construction, Repair and Demolition 1979; American National Standards Institute, New York, NY.
14. 29 CFR Part 1926 Occupational Safety and Health Standards - Excavations; Final Rule; Part II; October 31, 1989; U.S. Department of Labor, Occupational Safety and Health Administration, Washington, DC.
15. ANSI Z87.1-1968. Practice for Occupational and Educational Eye and Face Protection, 1968, American National Standards Institute, New York, NY.
16. 29 CFR 1910.134; Respiratory Protection, U.S. Department of Labor, Occupational Safety and Health Administration, Washington, DC.

HOT WORK

INTRODUCTION

"Hot Work" is defined as grinding, cutting, burning, welding or the use of open flames or spark producing equipment, and requires the completion of a "Hot Work" permit. It is designed to ensure that all potential ignition sources in the area where the hot work will be performed have been evaluated and minimized, so that any potential for injuries or property damage is reduced.

The permit is only valid for the times and the designated work area specified on the permit. If the work extends into the next shift or conditions in the surrounding area change, a new permit must be issued.

IF POSSIBLE, ALL PERMITS MUST BE COMPLETED AND APPROVED AT LEAST 24 HOURS BEFORE THE WORK IS SCHEDULED TO BEGIN.

RESPONSIBILITIES

It is the responsibility of the Plant Safety Department to audit the program for compliance.

The Site Engineer and Plant Safety designate are responsible for ensuring that all contractors are in compliance with the procedures set forth in this document.

The contractor is responsible for ensuring that his/her employees are adequately trained and qualified to perform hot work procedures, and is directly responsible for the safety of his/her employees.

PROCEDURE

A hot work permit must first be obtained from the site trailer. The contractor performing the hot work must complete the permit and have it approved by the Site Engineer. (See Attachment I)

In areas where it is suspected that flammable vapors may be present the contractor shall conduct a test for flammable vapor concentrations using a properly calibrated flammable vapor monitor. If the detector indicates the presence of greater than 2% of the lower explosive limit, the permit shall not be issued. Where possible, objects to be cut or welded should be moved to designated welding areas to eliminate the potential for presence of flammable vapors. If there are any questions while conducting the test, contact the Site Engineer.

All combustible materials shall be moved 30-40 feet from the Hot Work area. If this isn't possible, the combustibles shall be covered with flame proof tarpaulins or other acceptable shielding. Spark producing work shall be performed away from chemical sewer

access points (manholes, grates, etc.). If this is not possible, the access points must be covered with a fire proof sewer covering. The area above the access must be checked for flammable vapor concentrations prior to beginning work and periodically as needed.

The properly filled out hot work permit should be displayed prominently at the hot work area. Items on the permit must be re-surveyed following breaks and lunch.

The construction employee in charge of the work shall confirm that a fire hose or fire extinguisher, compatible with the potential fire hazard, is available in the immediate area.

The contractor must also designate a "Fire Watch" for each "Hot Work" permit who will remain at the hot work area during the ENTIRE TIME that the work is in progress.

Duties of the fire watch are to:

- Ensure that hot sparks do not contact flammable or combustible material.

- Stand by the hot work area with a fire extinguisher "in hand" and ready to extinguish flames if necessary.

- Contact Plant Security at Ext. 53555 in the event of any emergency. (See "Emergency Procedures")

- Check back periodically for at least 30 minutes after completion of the work to ensure no fire has started.

- Keep floors and surrounding area swept clean of combustibles such as lint or dust, and wet down the area as necessary.

Welding areas should be separated from work or traffic areas by non-combustible partitions or flash screens.

Adequate ventilation must be provided when welding with or on toxic materials.

No cutting or welding is permitted on drums, tanks, or barrels until they have been cleaned (triple rinsed) to make certain there are no flammables, greases, tars, acids or other material which, when subject to heat, might produce flammable or toxic vapor.

Ducts and conveyors shall be shut down unless provisions can be made to prevent them from carrying sparks.

When cutting or welding is to be performed in tanks or confined spaces, the elements in the confined space entry procedure must be followed. (See "Confined Spaces")

When the work is complete, the permit should be forwarded to the Site Engineer for filing.

Permit Issued	Date _____	Time _____
Permit Expires	Date _____	Time _____


COMMITTED
TO
SAFETY

ABBOTT LABORATORIES HOT WORK PERMIT

(Cutting, welding, spark-producing equipment)

See Corporate Safety and Loss Prevention Policy No. 26.0

Initiating department must complete first 7 items and include card with work request. Remainder must be completed by area supervisor or Abbott representative in charge of the work.

1. Initiated by: (name) _____
2. Work to performed for: Dept. _____
3. Location: Bldg. _____ Floor _____ Area _____
4. Alarm box location _____
5. Is Confined Space Entry Permit required? _____ yes _____ no
6. Work Order No. _____
7. Title of Work Order _____

• • • • •

Type of Work to be performed (welding, cutting, grinding, etc.) _____

*Abbott Fire Chief notified (Lake County only) _____

Fire Watcher to be present during and ½ hr. after cutting and welding:

(name) _____

*Explosimeter test by _____ (Qualified Person)

Worksite has been personally examined and approved immediately prior to hot work, and all items on back have been complied with:

Signed _____

Operating Supervision/Designate

Site Engineer/Maintenance Supervisor

(Tradesman/Contractor Signature)

(Dept./Co. Name)

Complete Reverse Side

*If applicable.

DISTR: 1. Issuer; 2. Tradesperson/Contractor; 3. Posting at Job Site.

5421-3-R5

Sio

To Be Checked By Area Supervisor

DO NOT CUT, WELD, OR USE OTHER OPEN-FLAME OR SPARK-PRODUCING EQUIPMENT UNTIL THE FOLLOWING PRECAUTIONS HAVE BEEN TAKEN.

Check each item that applies.

- ☐ 1. The location where the work is to be done has been personally examined.
- ☐ A. Sprinklers, where provided, are in commission and will not to be taken out of service until this work has been completed.
- ☐ B. This work will be confined to the area or equipment specified in the permit.
- ☐ 2. The following safeguards have been provided:
 - ☐ A. There are no flammable vapors or liquids or unpurged tanks or equipment previously containing such materials in the area.
 - ☐ B. Floors and surroundings have been swept clean and wet down when needed, because of dust.
 - ☐ C. Ample portable extinguishing equipment — hand hose, extinguishers, water pails, etc. — have been provided.
 - ☐ D. Lockouts on drives; pressure and solvent line blanked off; Valves tagged.
 - ☐ E. All combustibles have been located 30 ft. to 40 ft. from the operation and the remainder protected with metal guards or flameproofed covers (not ordinary tarpaulins). There will be no transferring of combustibles and no flammables under pressure within 30 to 40 feet.
 - ☐ F. All floor and wall openings within 40 ft. of the operations have been covered tightly or welding is contained to protect areas surrounding operations.
 - ☐ G. Responsible people have been assigned to watch for dangerous sparks in area, as well as in floors above and below.
 - ☐ H. Chemical sewer openings covered (durable metal) and sealed.
- ☐ 3. Flame or spark-producing equipment to be used has been inspected and found in good repair.
- ☐ 4. Arrangements have been made for a patrol of the area, including floors above and below, during any lunch or rest period and for at least one half hour after work has been completed.

This card not valid unless filled out in ink and kept at the worksite during work. Valid for one shift only.

5421-3-R5

CONFINED SPACE ENTRY

INTRODUCTION

Confined spaces are enclosures having limited means of access and egress. They include but are not limited to storage tanks, boilers, pits, vaults, septic tanks, sewers, or underground utility tunnels and pipelines. Since ventilation is very limited, confined spaces may contain toxic or flammable vapors and/or decreased oxygen levels. Entry into a confined space such as the ones named above occurs as soon as ANY PART of the entrant's body breaks the plane of the opening. All enclosures fitting the above description are considered confined spaces and will require permits for authorized entry.

RESPONSIBILITIES

It is the responsibility of the Abbott Site Engineer in charge of the work to assure this procedure is followed when contractors enter a confined space.

The contractor is responsible for testing the atmosphere in the confined space for oxygen deficiency and the presence of toxic or flammable vapors. The contractor must also furnish a "Safety Standby" who is trained in entry procedures and can call for help in the event of an emergency.

The "Safety Standby" is responsible for remaining at the entrance to the confined space and maintaining verbal or visual contact with the person inside the tank at all times. This designate must be well trained in basic first aid. The safety standby should always be equipped with a radio in the event that security must be contacted for an emergency. (See "Emergency Procedures")

UNDER NO CIRCUMSTANCES SHOULD THE STANDBY ENTER THE VESSEL UNLESS HE/SHE HAS BEEN RELIEVED AND AUTHORIZED TO DO SO.

All contractor personnel involved with confined space entry must be trained in general confined space entry requirements and applicable procedures specific to the confined space being entered. They must also be familiarized in the operation of safety and emergency equipment. The contractor is responsible for ensuring that his/her employees are properly trained.

PREPARATION FOR ENTRY

Before entering a confined space the "Confined Space Entry Permit" must be obtained from the site trailer and completed. Entry into the confined space is not allowed until the permit has been signed by the Site Engineer and the Plant Safety designate and all provisions on the card are satisfied. (See Attachment I)

The completed permit shall be displayed at the confined space site by the person(s) entering the confined space. When the work is complete the permit shall be forwarded to the Plant Safety Department.

All motor driven equipment present in the confined space such as agitators, conveyors, etc. must be properly de-energized or locked out before employees are allowed to enter. (See "Lockout/Tagout")

Tanks or other confined spaces shall be emptied and cleaned of hazardous materials. Tanks that have contained hazardous materials shall be purged with fresh air prior to entry for a minimum of four hours.

When applicable, all lines leading to the confined space will be disconnected or blanked off prior to entry to eliminate the potential for toxic or flammable materials to enter. Suitable ventilation must be provided in the confined space to maintain a safe atmosphere.

A test must be made for oxygen content before entry and/or before re-entry (i.e. breaks or lunch). If the oxygen level is outside acceptable limits (19.5% - 23%) the confined space must be enriched with fresh air. Contractors are required to provide their own oxygen monitors, which must be calibrated to factory specifications at least yearly and field calibrated prior to each use. The results of the monitoring must be documented on the permit.

A test for flammable vapor concentration must also be done using a flammable vapor detector. The atmosphere must be monitored at least once each hour and the results documented in the permit section entitled "Precautionary Remarks". The atmosphere will also be tested before initial entry and/or at each re-entry. If the detector indicates high flammable concentrations the entry shall not be permitted until the confined space has been purged of the flammable material. Flammable vapor detectors must also be calibrated to factory specifications at least yearly and field calibrated prior to each use.

If the confined space cannot be purged of toxic or flammable vapors or the oxygen level cannot be maintained at at least 19.5%, then personal protective equipment such as respirators, chemical suits, and goggles will have to be worn while in the confined space. Self-contained breathing apparatus (SCBA) must be worn when the integrity of the atmosphere cannot be guaranteed or an oxygen deficiency exists. Welding in a confined space requires the use of an air-line respirator.

Entry involving SCBA (self contained breathing apparatus) or air line respirator must be approved by the Plant Safety Department.

EMERGENCY PLANNING

Prior to a planned confined space entry, the contractor is required to review emergency procedures with all personnel involved. The contractor must comply with the following:

Have adequate rescue equipment present for every confined space entry (i.e. SCBA, rescue harness, lifeline, radio, etc.)

Ensure that all rescue personnel are properly trained.

Never send rescue personnel into the confined space unless all other attempts to pull the victim out have failed.

If additional emergency assistance is needed, contact Security by dialing 53555. **SLOWLY** and **CLEARLY** give the following information:

- 1. NAME**
- 2. LOCATION**
- 3. NATURE OF EMERGENCY**

Before This Permit is Issued All Conditions Listed Below Shall Be Evaluated And The Appropriate Box Checked Off And Initialed.

1. Tank/Vessel/Space cleaned for safe entry (Washed out, Purged, Etc.): ☐ Yes ☐ Not Necessary
2. Continuous monitoring of atmosphere quality required: ☐ Yes ☐ Not Necessary
3. Atmosphere tested for flammable vapors:
%LEL=_____ (Max 2% LEL Permitted) Time:_____
4. Atmosphere tested for oxygen deficiency and enrichment
%O2=_____ (Min=19.5%; Max 23%) Time:_____
5. Tested for toxic atmosphere: ☐ Yes ☐ Not Necessary

Tested For	PEL	Reading	Remarks
6. Surrounding area checked for flammable and toxic atmosphere: ☐ Yes ☐ Not Necessary
7. All hazardous energy sources (chemical, mechanical, electrical, etc.) have been disconnected or otherwise neutralized according to lockout/tagout procedures: ☐ Yes ☐ Not Necessary
8. Fresh air supply provided and all access ports open (If welding or burning a min. of 2000 cfm fresh air required per welder/burner): ☐ Yes ☐ Not Necessary
9. Personal protective equipment provided as appropriate:
Respiratory Protection ☐ Yes ☐ Not Necessary
Protective Clothing ☐ Yes ☐ Not Necessary
10. Rescue equipment at entry site (extra harness, self contained breathing apparatus, rope, etc.) ☐ Yes ☐ Not Necessary
11. Rescue harness provided and worn by entrants:
☐ Yes ☐ Not Necessary
Lanyard provided and used: ☐ Yes ☐ Not Necessary
12. Mechanical lifting devices set up at entry way: ☐ Yes ☐ Not Necessary
13. Low voltage (24 V. Max.) light or GFI protection provided: (GFI is required for electric tools, etc.) ☐ Yes ☐ Not Necessary
14. List types of environmental testing methods and equipment used: _____
15. Hot Work Permit issued (required where welding or flame/spark making equipment is used): ☐ Yes ☐ Not Necessary
16. Additional precautionary remarks (Means of communication to be used, special start-up instructions, etc.): _____

Permit Copy Distribution: Original to Facility Supervisor, Card to be posted at entry way during entry and returned to facility supervisor on completion of job and cancellation of permit.

Reference: Corp. Safety Policy No. 27.0



CONFINED SPACE ENTRY PERMIT

**BOTH SIDES OF
PERMIT MUST BE
COMPLETED.**

Good this date only _____
From _____:____am/pm to _____:____am/pm

EMERGENCY PHONE NOS. _____

Permit is required for entering any tank, vessel or confined space for any purpose. This permit is to be displayed at the point of entry while work is in progress. If work extends beyond the time indicated and/or involves personnel changes, a new permit is required.

Space Location (Bldg., Area, Floor, Col., Etc.) _____
Tank/Space/Equipment Name _____ Dept. _____
Purpose of entry _____

Last material in vessel/space _____
Potential hazards associated with space, e.g., Chemical Exposure, Oxygen Deficiency, Explosive Vapors, Physical Hazards, Extreme Temperatures, Etc. _____

I certify that this entry is required and all necessary precautions have been taken to eliminate potential hazards noted above and the check list on the reverse side of this card has been completed:

(Print Name & Sign Above)

Facility/Operations Supervision: _____ Date _____

Person In Charge of Entry Personnel: _____ Date _____

Area Safety Designate: _____ Date _____

I have been properly instructed for entering confined spaces and understand my duties as a person entering this confined space:

(Print Name & Sign Above)

Authorized Entrant _____ Date _____

Authorized Entrant _____ Date _____

Authorized Entrant _____ Date _____

I have been properly instructed on my duties as Standby Observer and will summon help in case of an emergency:

(Print Name & Sign Above)

Standby Observer: _____ Date _____

I have been alerted that an entry is occurring in my area and I will help if needed. I will keep the Standby Observer informed of my whereabouts:

(Print Name & Sign Above)

(1) _____ Date _____

(2) _____ Date _____

To be signed upon completion of the entry: I certify that all entrants have exited the space and hereby cancel this permit:

(Print Name & Sign Above)

Person In Charge Of Entry Personnel: _____ Date _____

CORE DRILLING AND SURFACE PENETRATION

INTRODUCTION

Core drilling and penetration means to drill, saw, cut or break a hole, cavity or other opening, or enlarge an existing opening in a poured concrete floor, wall, ceiling, roof or foundation of a building or structure. This also applies to concrete and asphalt roadways and parking lots.

Core Drilling, excavation, and surface penetration can be performed at the work site by permit only, which can be obtained from the site trailer. The requirements for obtaining the permit must include the submission of dimensioned plot plan or suitable sketches of the work area to the site manager and Plant Engineering for approval. This ensures that all utilities and hazards below the surface have been positively located and can therefore be avoided..

Exception No. 1: The drilling of small diameter shallow holes (up to 1/2" diameter by 1 1/2" depth) in concrete or asphalt for the installation of hardware to support piping, conduit, handrails, guardrails, signs, and other such facility or production related equipment does not pose a hazard to personnel or property and is thus excepted from this procedure.

Exception No. 2: SURFACE PENETRATION OF THE MFL (MAXIMUM FORSEEABLE LOSS) WALL IN ANY FORM IS UNACCEPTABLE AND WILL NOT BE PERMITTED WITHOUT PRIOR APPROVAL FROM THE SAFETY DEPARTMENT.

RESPONSIBILITIES

The Site Engineer in charge of the work will be responsible for implementing the elements of this procedure.

The Site Manager will review and approve requests for excavation, core drilling or surface penetrations, if there are questionable drawings, unusual circumstances or the MFL wall is involved. Other requests will be handled by the Site Engineer charge of the work.

The contractor is responsible for ensuring that employees are trained in core drilling and excavation procedures and is directly responsible for the safety of their employees.

The Plant Safety Department is responsible for monitoring core drilling and surface penetration procedures for compliance with federal regulations and company guidelines.

PROCEDURE

Obtain a permit from the site trailer or Site Engineer. The permit requires submission of a dimensional plot plan or other suitable sketch of the work area to the Site Engineer. A detailed review of the work area will then be conducted to locate any sub-surface utilities or hazards in the area. (Attachment I)

A written contingency plan must also be developed describing how hazards to personnel will be eliminated and how downtime of plant equipment will be minimized in the event that utilities cannot be positively identified on the drawings or by utilizing locating and/or tracing equipment.

The permit, complete with drawings and the contingency plan will be reviewed by the Site Manager, who will also sign and date the permit and give authorization for work to begin. Plant Safety must also be notified prior to commencing work.

The permit is valid only for the dimensional areas noted in the drawings originally submitted. If work proceeds beyond the original area, a new permit is required.

The hard copy of the permit is to be displayed prominently at the worksite. Permit copies are to be returned to the Safety Department for filing upon the completion of the work.

The area where core debris will fall should be barricaded and a designate should be stationed there to ensure that falling material will not injure other employees or damage property.

At the completion of the work, the Site Engineer should submit to Plant Engineering any sketches, drawings or information necessary to update or produce "as built" drawings.

CORE DRILLING, SURFACE PENETRATION, AND EXCAVATION PERMIT

This permit is required by Corporate Safety and Loss Prevention Policies 34.0 and 35.0 when performing any core drilling, surface penetration or excavation on Abbott property. The application for this permit must be made by the Abbott representative in charge of the work.

This permit is valid only for the dimensioned areas noted on drawings or sketches submitted to Plant Engineering. If the work extends beyond these boundaries, application for a new permit must be made. Structural beams, columns, or column foundations are not to be cored unless approved by a structural engineer or architect.

Date _____

Abbott Representative in charge of work _____

(Please Print)

Description of work to be performed: _____

Drawings or sketches provided: _____

Name/s of Persons/Firms performing operation: _____

PLANT ENGINEERING

(Initial and Date Item 1 or 2)

I have reviewed with the Abbott Representative in charge of the operation described above the drawings/sketches provided me. In addition, I have reviewed and have determined (one of the following):

- 1) Subsurface utility or process lines will not interfere with the operation described above and if applicable coring will not change floor loading limitations.

Architectural

Mechanical

Electrical

- 2) Subsurface utility or process lines in the area cannot be precisely located from the drawings. Locating/-tracing techniques have also failed to locate them. Therefore the Abbott Representative in charge of the work has prepared a written contingency plan to eliminate/reduce personnel hazards and plant disruptions. This plan has been reviewed by me and is attached to the reverse of this permit. If applicable, utilities has been notified. The applicant may proceed with the work described above.

Architectural

Mechanical

Electrical

ABBOTT REPRESENTATIVE IN CHARGE OF WORK

I have read and understand the requirements of this permit and agree to comply with all its provisions. I have also notified the Safety Designate of the impending operation.

ABBOTT REPRESENTATIVE _____
IN CHARGE OF WORK SIGNED DATE

CONTRACTOR/S OR TRADE GROUP/S

I have been instructed in and understand the limitations and precautions necessary to comply with the conditions of this permit.

Line supervisor in charge of work _____
(Contractor 1 or Trade Group 1)

SIGN AND DATE _____
(Contractor 2 or Trade Group 2)

328 _____
(Contractor 3 or Trade Group 3)

ADD CONTINGENCY PLAN (IF APPLICABLE) ON REVERSE

LOCKOUT/TAGOUT

INTRODUCTION

Process and plant equipment must be made inoperable before any work on the equipment begins. This policy covers servicing or maintenance and operation of equipment for processes in which the unexpected energization, start up, or release of stored energy could cause injury to an Abbott Employee or a contract worker.

DEFINITIONS

Affected Employee: An employee whose job requires him/her to operate or use a machine or equipment on which servicing or maintenance is being performed under lockout or tagout, or whose job requires him/her to work in an area for which such servicing or maintenance is being performed.

Authorized Employee: A person who locks or implements a tagout system procedure on machines or equipment to perform the servicing or maintenance on that machine or equipment. An authorized employee and an affected employee may be the same person when the affected employee's duties also include performing maintenance or service on a machine or equipment which must be locked or a tagout system implemented.

Routine: Any changes, adjustments or minor service activities which take place during normal production operations.

Locked out: A condition that results from a positive action that prevents movement of switches or valves to the "on" or undesired position.

Lockout device: A mechanism or arrangement that allows the use of a key and lock to hold a switch lever or valve handle in the "off" or desired position.

Lockout tags: Tags stating "Danger - Do Not Operate" or similar wording and intent. Tags are not meant to take the place of lockout devices, but are used in situations where control panels, valves, or switches cannot be physically locked out due to their nature.

The Main Disconnect Switch: The switch that de-energizes electrical power to the equipment that is to be worked on.

Multiple lock adapters: Devices that provide for use of multiple locks, and allows lockout to be performed by more than one employee.

Zero Energy State (ZES): A temporary condition in which all energy in and to a machine or pipeline is neutralized to protect against movement or flow.

Lockable Local Disconnect Switch: Used to de-energize equipment in the local area by the equipment if the main disconnect is inconvenient to the operator.

E-Stops: A device (often mushroom shaped) that when engaged breaks the circuit and/or stops the motion of a machine or process. The machine or process cannot be restarted until the E-Stop is disengaged and the stop/start switch is activated.

Momentary Start/Stop Button: A device used to turn a machine on or off. A start/stop button is not acceptable as a method of de-energization.

Limit Micro Switch: The micro switch is a device used as a safety control which is to prevent a machine from being operated if door is not closed or a guard is left off. The micro switch by itself is the least acceptable form of control in de-energizing equipment.

RESPONSIBILITIES

The Site Engineer is responsible for communicating these procedures to contractors and their employees and ensuring that the contractors' procedures are compatible with plant procedures.

The contractor is responsible for ensuring that his/her employees are trained in recognizing the type and magnitude of applicable hazardous energy sources and methods of energy isolation, and are familiar with the procedures set forth in this document.

The Plant Safety Department and Site Engineer are responsible for assessing the program for compliance and ensuring that all rules and procedures are properly followed.

PROCEDURES

The following procedures must be followed by the contractor when de-energizing and locking out equipment on Abbott property.

Preplanning and Review

The lockout/tagout devices used by the contractor must be approved by the Site Engineer or Plant Safety designate before work is allowed to begin.

The operating department or area in which the de-energization is scheduled must be notified prior to the lockout. Any affected personnel in the area must also be notified.

- The contractor must designate an employee to be in charge of the work. This employee must ensure that all applicable energy sources have been locked and tagged and that all authorized employees involved in the lockout have placed their

locks on the appropriate disconnects. **CONSTRUCTION EMPLOYEES WILL NOT BE ALLOWED TO LOAN THEIR LOCKS TO OTHER EMPLOYEES.**

The correct system to be locked out and tagged must be positively identified, including all switches, valves, main disconnects, etc. All energy sources, such as hydraulic, pneumatic, mechanical, or electrical, that are applicable to the system(s) being locked out must also be identified.

Neutralization of Energy Sources

All sources of energy identified in the "pre-planning" stage must be neutralized to eliminate any chance of accidental start-up or energy flow. All high-capacitance elements must be short-circuited or grounded before the equipment can be touched or worked on.

Electrical circuits that have been locked out must be tested by an electrician to insure there are no "hot" leads when electrical work is required.

CAUTION: Control circuit devices such as push buttons, selector switches, or electrical interlocks must not be used as the sole means for de-energizing circuits or equipment.

Each person involved in the work must attach a lock to secure electrical disconnect switches or other primary controls used to neutralize power sources to the equipment. After all lockout devices are correctly applied, try the equipment to see if it works, where appropriate.

"Danger - Do Not Operate" tags must be applied by the designated employee in charge to each energy source locked out and on appropriate start/stop switches and pressure lines. The tags must be signed and dated by the employee placing the tags.

Re-starting Equipment

Clean the work area.

Collect all tools, ensuring that none have been left in the machine or area.

Replace all guards.

Remove all braces, pins, blocks, chains, etc.

Re-connect all pressure tubing, pipes, and hoses and return valves to correct positions.

Remove all locks and tags. EACH EMPLOYEE MUST REMOVE THEIR OWN LOCK AND/OR TAG.

Inform affected personnel and ensure that personal protective equipment required for normal operation is worn.

ANY EXCEPTIONS TO THE POLICY MUST BE REVIEWED WITH THE SITE ENGINEER AND THE PLANT SAFETY DESIGNATE FOR APPROVAL.

PROCESS LINE DISASSEMBLY

INTRODUCTION

Any work to be completed on pipelines or equipment that contains or has contained hazardous materials requires a "Line Disassembly" permit. Hazardous materials include, but are not limited to, corrosives, flammable liquids, biologically active materials, compressed gases, and steam or hot water.

All permits should be completed and submitted for approval at least 24 hours before the work is scheduled to begin. If work extends beyond the expiration time stated on the permit, a new permit must be re-issued.

RESPONSIBILITIES

The Site Engineer and Plant Safety designate are responsible for ensuring that contractors and their employees are in compliance with the procedures set forth in this document.

The contractor must inform his/her employees of the hazards associated with process line disassembly and ensure that employees are properly trained to eliminate the hazards.

PROCEDURES

A "Line Disassembly" permit must be completed prior to opening or working on the pipeline(s) or equipment containing the hazardous material. The permit must be reviewed and approved by the Site Engineer before work will be allowed to begin. (Attachment I)

The line must be positively identified and all plant personnel affected by the work must be notified of what is to be done.

All employees performing the line disassembly are required to wear a full face shield. Other protective equipment such as goggles, protective suits, and rubber boots or gloves may also be required. The Site Engineer or Plant Safety designate will specify the additional personal protective equipment required.

The line or piece of equipment to be opened shall be completely drained or bled down and locked open, and the portion of the line being worked on must be isolated by shutting appropriate valves and locking them.

Any electric controls must be locked out according to procedure. (See "Lockout/Tagout")

The work area should be screened or barricaded to prevent unauthorized personnel from entering the area and to minimize exposure in the event of an un-planned release.

A charged water hose should be available at the line-breaking area for immediate use to flush any spillage.

The completed permit must be conspicuously posted at or near the area while work is in progress.

PROCESS LINE DISASSEMBLY PERMIT

This permit will be initiated by the area supervisor, who will check the "Yes" or "No" and "Not Needed" items. All items must be completed and all signatures obtained. Permit valid for one shift only.

INITIATED BY: W.O. NO.:

DATE OF WORK: TIME:

TYPE OF LINE (SOURCE): LOCATION: Bldg - Flr. - Col.

CHECK LIST

ITEM	YES	NO	ITEM	Floor	Col. No.
LINE CLEANED			Maint. men know location of nearest emergency:		
LINE PURGED			ALARM		
INLET LINES DISCONNECTED			WASHING FACILITIES		
INLET VALVE CLOSED & TAGGED					
ALL VALVES LOCKED OUT AND/OR TAGGED			FIRE FIGHTING EQUIPMENT		

SIGNATURES OF MEN WORKING ON LINE

SIGNATURE OF PERSON THAT CLEANS LINE

APPROVAL SIGNATURES

OPERATING SUPERVISOR

NOTE: Return This Tag To Initiator Upon Completion Of Job.

7617 O

TO BE CHECKED BY AREA SAFETY DESIGNATE

	MARK OK		
OXYGEN TEST (IF NEEDED)			
EXPLOS(METER TEST (IF NEEDED)			
C O TEST (IF NEEDED)			
NEAREST* SAFETY SHOWER TESTED			
HOT WORK PERMIT (IF NEEDED)	YES NO		
PROTECTIVE EQUIPMENT NEEDED AT JOB SITE	YES	NO	NOT NEEDED
DECONTAMINATION SUIT			
LIFE BELT			
FRESH AIR MASK			
RUBBER BOOTS			
GOGGLES			
RUBBER GLOVES			
FIRE EXTINGUISHER OR HOSE LINE			
NON-FERROUS TOOLS			
BLOWER OR AIR MOVER			
ACID SUIT			
HARD HAT			
OTHER (SPECIFY)			
HAZARDS OF CHEMICALS & PRECAUTIONS:			

REMARKS OR SPECIAL INSTRUCTIONS:

*SHOWER OR WATER HOSE MUST BE WITHIN 50 FEET.

CHEMICAL HAZARD AWARENESS PROGRAM "CHAP"

INTRODUCTION

Before work begins in or near any manufacturing operation where chemicals are present, the contractor must first be familiar with all chemicals present in the area and inform his/her employees of the hazards as well. This policy ensures that all hazardous chemicals that enter the premises are identified and labeled and that information on the hazards of these chemicals are maintained in an area well-known and accessible to Abbott employees and construction personnel.

MSDS'S FOR "ABBOTT" CHEMICALS ARE KEPT AT THE GUARD SHACK LOCATED AT THE VISITORS' RECEPTION AREA.

DEFINITIONS

MSDS - Material Safety Data Sheets. These documents provide various information on hazardous chemicals, such as acute and chronic health hazards, chemical reactivities, physical properties, personal protective equipment, and fire fighting procedures.

PHYSICAL HAZARDS

The following is a list of known and readily recognized physical hazards which should be considered with respect to hazard determination. This list is presented to illustrate the range and diversity of hazards but is not intended to be all inclusive:

Combustible Liquid - liquid having a flashpoint at or above 100oF (37.8oC), but below 200oF (93.3oC)

Compressed Gas - gas or mixture of gases in a container having 1) an absolute pressure exceeding 40 psi at 70oF (21.1oC); or 2) an absolute pressure exceeding 104 psi at 130oF (54.4oC) regardless of the pressure at 70oF (21.1oC); or 3) A liquid having a vapor pressure exceeding 40 psi at 100oF (37.8oC) as determined by ASTM D-323-72.

Cryogen - gases that have been liquefied by lowering the temperature below - 73.3oC (-100oF), representing an "extreme cold" hazard.

Explosive - chemicals that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high-temperature.

Flammables - chemical that falls into one of the following categories:

Aerosol - those that yield a flame projection exceeding 18 inches at full valve opening, or flashback (a flame extending back to the valve) at any degree of valve opening.

Flammable gas - gas that at ambient temperature and pressure, 1) forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or 2) forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit.

c) **Flammable liquid** - liquid having a flashpoint below 100oF (37.8oC), except any mixture having components with flashpoints of 100oF (37.8oC) or higher.

d) **Flammable solid** - solid, other than a blasting agent or explosive that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily.

Organic Peroxide - organic compound that contains the structural derivative of hydrogen peroxide.

Oxidizer - chemical other than a blasting agent or explosive as defined in 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

Pyrophoric - chemical that will ignite spontaneously in air at a temperature of 130oF (54.4oC) or below.

Water-reactive - chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

RESPONSIBILITIES

The Site Engineer will be responsible for informing contractors of the hazardous chemicals their employees may potentially be exposed to while at the work site, and the location of the Plant MSDS files. They are also responsible for familiarizing contractors with Abbott hazardous chemical labeling procedures used on site. (See Attachment I)

The contractor is responsible for training his/her employees on the requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

The contractor must inform Abbott personnel of the location of the MSDS's for all hazardous chemicals brought on the premises.

The contractor is responsible for removing all unused chemicals which they have brought on site from the premises.

CONTAINER LABELING PROCEDURES

Contractors must ensure that each container of hazardous chemicals entering Abbott property is labeled with the following information:

Identity of the hazardous chemical(s)

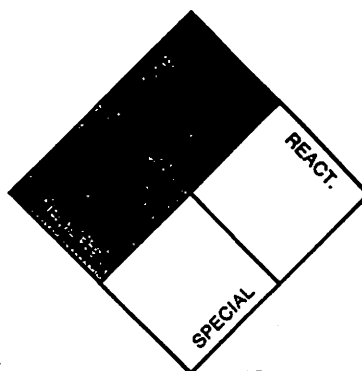
Appropriate hazard warnings for health, fire, and reactivity

Name and address of the chemical manufacturer, importer, or other responsible party.

The identity of the hazardous chemical can be any chemical or common name designation for the individual chemical or mixture, as long as the term used is the same as on the MSDS.

The containers shall be labeled in a manner that does not conflict with the requirements of the Hazardous Materials Transportation Act issued by the Department of Transportation (DOT). In other words, hazardous chemical labels cannot be so similar to a DOT label that it may be confused as one and, therefore, be in violation of DOT labeling regulations (49 CFR 172.500-172.558).

Contractors must provide their own means for the labeling of chemical containers. Abbott CHAP labels are for Abbott use only. See Attachment I for examples of Abbott CHAP labels.

**WARNING:
WATER REACTIVE!**

CHEM. NAME _____ NO. _____

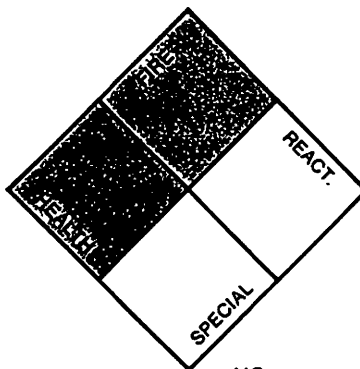
HAZARD INDEX **LOW** — **HIGH**
0 - 1 - 2 - 3 - 4C — CHRONIC HEALTH HAZARD
W — WATER REACTIVE
X — OXIDIZER

PRECAUTIONS: Contact with water may cause fire, explosion, or release of toxic gases. Keep away from moist conditions. Avoid direct contact. Wear the appropriate personal protective equipment as required in operating procedures. Consult the corresponding Material Safety Data Sheet for detailed hazard information.

FIRST AID: Remove contaminated clothing. Flush with plenty of water. Seek immediate medical attention.

95-8109

HL-I

**WARNING: CONTENTS
UNDER PRESSURE!**

CHEM. NAME _____ NO. _____

HAZARD INDEX **LOW** — **HIGH**
0 - 1 - 2 - 3 - 4C — CHRONIC HEALTH HAZARD
W — WATER REACTIVE
X — OXIDIZER

PRECAUTIONS: Container may explode if punctured or heated. NON-FLAMMABLE contents. Store away from corrosives. Avoid storing in direct sunlight. Except for breathing air cylinders, do not use in confined spaces as asphyxiation may result. Consult the corresponding Material Safety Data Sheet for detailed hazard information.

FIRST AID: Move to fresh air. If not breathing, give mouth to mouth resuscitation. Seek medical attention as required.

95-8110

HL-J

TRENCHING AND EXCAVATION

INTRODUCTION

This procedure has been established for trenching and excavation operations to assure personnel safety and prevention of property losses and downtime.

The provisions of this procedure should be used in conjunction with the OSHA Safety and Health Standards, 29 CFR 1926, Subpart-P, "Excavations, Trenching and Shoring."

DEFINITIONS

Angle of Repose - The greatest angle above the horizontal plane at which a material will lie without sliding.

Excavation - Any manmade cavity or depression in the earth's surface, including its sides, walls, or faces formed by earth removal which produces unsupported earth conditions by reasons of the excavation.

Excavating - To dig, bore or otherwise make a hole, trench, tunnel or other cavity in the earth with mechanically powered or manually operated equipment such as a backhoe, trencher, loader, boring machine, shovel, spade, etc.

Exceptions: Shallow hand digging operations, backfilling operations and landscaping activity when the landscaping work consists of the deposition, leveling or rearrangement of top soil only.

Protective system - a method of protecting personnel from cave-ins, from material that could fall or roll into an excavation or from collapse of adjacent structures. Protective systems include support systems, sloping and benching systems, shield systems and other systems that provide the necessary protection.

Slope - The angle with the horizontal at which a particular earth material will stand indefinitely without movement.

Trench - A narrow excavation made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet.

RESPONSIBILITIES

The Site Engineer and Plant Safety designate are responsible for ensuring that all contractors are in compliance with the procedures set forth in this document. They must also periodically inspect trenching and excavation projects for compliance with this procedure and for notifying the contractor in charge of the operation of any violations.

Plant Engineering personnel shall designate individual(s) with plant engineering responsibilities to review and approve all requests for trenching and excavation operations. The approval process will involve review of pertinent site drawings and notification/involvement of the plant utilities department as appropriate.

The contractor is responsible for training his/her employees on proper trenching and excavation techniques and for designating a "competent person" to be in charge of the work.

Contractors performing trenching or excavating operations are responsible for controlling the manner and methods of their operation in accordance with this procedure and applicable governmental regulations, contractors are directly responsible for the safety of their employees.

The "competent person" is responsible for inspecting the excavation daily to identify hazards and correct them.

PROCEDURE

Prior to performing any excavation described in this policy, a properly validated "Core Drilling, Surface Penetration, and Excavation" permit must be obtained from the site trailer. (Attachment I.)

The requirements for obtaining this permit will include submission of a dimensioned plot plan, suitable drawings, or sketches of the work areas. Upon receiving this information, the Site Engineer or Site Manager will make a thorough review to identify and locate any sub-surface utilities or hazards (e.g., water lines, sewers, electrical feeders, etc.) which may be encountered.

In the event a utility(s) cannot be positively located and avoided, the Site Engineer in charge of the work shall utilize available locating/tracing techniques to determine its (their) exact location. If the utility still cannot be located, the Site Engineer will develop a written contingency plan to reduce or eliminate the hazard to personnel and minimize downtime to plant equipment. The plan may include but is not limited to power shutdowns or the use of lineman's gloves. The Site Manager and the Plant Safety designate will review and approve this plan prior to issuance of the permit.

The Site Manager is required to approve the operation and must sign and date the permit before work can begin.

The permit is good only for the dimensioned areas noted in the drawings originally submitted to Plant Engineering. If work proceeds beyond the original areas, a new permit is required.

The permit will be displayed in a prominent place at or near the site of operation and is valid for the duration of work being performed at the location prescribed in the permit.

Upon completion of the work, the Site Engineer in charge of the work will submit to Plant Engineering any sketches, drawings and information required to update or produce "as-built" drawings. Additionally, the permit will be sent to Plant Safety for filing.

TRENCHING AND EXCAVATION REQUIREMENTS (Ref. OSHA Safety and Health Standards 29 CFR 1926.650-652, also see Attachment III)

No one shall be permitted under loads handled by power shovels, derricks, or hoists. Employees shall stand away from vehicles being loaded.

Only certified and/or qualified operators will be allowed to operate cranes, hoists, power shovels, or other trenching and excavation equipment.

Employees must have a fast means of egress when they are in trenches. If they are in trenches 4 feet deep or more, a ladder or steps shall be provided so as not to require more than 25 feet of lateral travel. The ladder must extend 3 feet above ground level and be secured from movement.

Employees should avoid working close together to minimize hazards of being struck by tools, equipment, falling soil or from being buried together by cave-ins, unless another employee is at ground level observing those in trench.

Soil, material, tools, etc., shall be piled no closer than two feet from the excavation or prevented by barriers from falling in.

Undercut sidewalks shall be shored to carry a minimum live load of 125 pounds per square foot and appropriate barricades/handrails erected if sidewalk remains in service or blocked off.

Stop logs or barricades shall be installed if vehicles are used near excavations.

The sites shall be barricaded and signed to prevent access by unauthorized persons or vehicles.

OSHA 29 CFR 1926.900-914, Subpart U, shall be complied with if blasting or explosives are used.

Protective systems; e.g., slopes and benches, shoring, etc., shall be designed by a qualified person and meet accepted engineering standards. Protective systems are required if trench bank is five feet deep or more. Protective systems are not required for stable rock excavations.

Trench shields or boxes may be used for the protection of personnel in lieu of shoring or sloping, if they provide protection equal to or greater than the required shoring or sheeting. Employees shall be protected from cave-ins when entering or exiting the shield and shall not be allowed in the shield when it is being moved vertically.

Hazards to or from adjacent buildings, structures, trees, poles, machinery, vehicle or railway traffic, or blasting must be considered and adequately dealt with by shoring, underpinning, or other safety measures.

Excavation atmospheres shall be tested and controls implemented to protect personnel from exposure to hazardous conditions. Individuals subjected to hazardous dusts, gases, fumes, mists, or atmospheres deficient in oxygen, shall be protected with proper respiratory protection, and other personal protective equipment as appropriate for the conditions.

Emergency rescue equipment shall be readily available where hazardous atmospheric conditions may exist or may develop.

FOR EMERGENCIES THAT REQUIRE ASSISTANCE BEYOND THAT OF BASIC FIRST AID, DIAL EXT. 53555 AND GIVE YOUR NAME, THE LOCATION, AND THE NATURE OF THE EMERGENCY.

The following appendices from OSHA 1926 subpart-P, shall be reviewed by the site engineer prior to beginning excavation work:

APPENDIX-A: Soil Classification

APPENDIX-B: Sloping And Benching

APPENDIX-C: Timber Shoring For Trenches

APPENDIX-D: Aluminum Hydraulic Shoring For Trenches

APPENDIX-E: Alternatives To Timber Shoring

APPENDIX-F: Selection Of Protective Systems

INSPECTIONS

Daily inspections of excavations shall be made each morning before work begins by the competent person placed in charge of the work by the contractor. The "Daily Inspection Form - Excavation/Trenching/Shoring" must be filled out and taken to the site trailer when completed for filing. Any deficiencies noted must be followed up with corrective actions taken. (Attachment II)

If evidence of possible cave-ins or slides is apparent, all work in the excavation shall cease until the necessary precautions have been taken to safeguard the employee.

Excavations shall be inspected by the competent person after every rainstorm or other hazard-increasing occurrence, and the protection against slides and cave-ins shall be increased, if necessary.

NOTE: Fluctuating weather and moisture conditions rainfall, freezing, thawing, overflow of adjacent streams, storm drains, or sewers and melting of snow all produce changes in the condition of the soil that should be considered. A trench in frozen ground may be safe with little or no sheeting; thawing may cause the entire bank to cave in.

If the stability of adjoining buildings or walls is endangered by excavations, shoring, bracing or underpinning shall be provided as necessary to insure their safety. Such shoring, bracing, or underpinning shall be inspected daily or more often, as conditions warrant, by a qualified person and the protection effectively maintained.

CORE DRILLING, SURFACE PENETRATION, AND EXCAVATION PERMIT

This permit is required by Corporate Safety and Loss Prevention Policies 34.0 and 35.0 when performing any core drilling, surface penetration or excavation on Abbott property. The application for this permit must be made by the Abbott representative in charge of the work.

This permit is valid only for the dimensioned areas noted on drawings or sketches submitted to Plant Engineering. If the work extends beyond these boundaries, application for a new permit must be made. Structural beams, columns, or column foundations are not to be cored unless approved by a structural engineer or architect.

Date _____

Abbott Representative in charge of work _____

(Please Print)

Description of work to be performed: _____

Drawings or sketches provided: _____

Name/s of Persons/Firms performing operation: _____

PLANT ENGINEERING
(Initial and Date Item 1 or 2)

I have reviewed with the Abbott Representative in charge of the operation described above the drawings/sketches provided me. In addition, I have reviewed and have determined (one of the following):

- 1) Subsurface utility or process lines will not interfere with the operation described above and if applicable coring will not change floor loading limitations.

Architectural

Mechanical

Electrical

- 2) Subsurface utility or process lines in the area cannot be precisely located from the drawings. Locating/-tracing techniques have also failed to locate them. Therefore the Abbott Representative in charge of the work has prepared a written contingency plan to eliminate/reduce personnel hazards and plant disruptions. This plan has been reviewed by me and is attached to the reverse of this permit. If applicable, utilities has been notified. The applicant may proceed with the work described above.

Architectural

Mechanical

Electrical

ABBOTT REPRESENTATIVE IN CHARGE OF WORK

I have read and understand the requirements of this permit and agree to comply with all its provisions. I have also notified the Safety Designate of the impending operation.

ABBOTT REPRESENTATIVE _____
IN CHARGE OF WORK SIGNED DATE

CONTRACTOR/S OR TRADE GROUP/S

I have been instructed in and understand the limitations and precautions necessary to comply with the conditions of this permit.

Line supervisor in charge of work _____

(Contractor 1 or Trade Group 1)

SIGN AND DATE

(Contractor 2 or Trade Group 2)

(Contractor 3 or Trade Group 3)

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ADD CONTINGENCY PLAN (IF APPLICABLE) ON REVERSE

DAILY INSPECTION - EXCAVATION-TRENCHING-SHORING and SLOPING

Job Site: _____ Division: _____

Plant: _____ Dept.: _____ Date: _____

Contractor _____ Abbott Site Engineer _____

Yes		No	Explain
_____	Excavation Permit completed	_____	
_____	Shoring still adequate; no changes needed	_____	
_____	No excess water in excavation/trench; conditions satisfactory	_____	
_____	Angles of repose adequate	_____	
_____	Excavated and other materials way from trench edge at least 2ft.	_____	
_____	Mat'ls/tools/equipment restrained from falling in trench	_____	
_____	Air quality tested	_____	
_____	Ladders (or other safe means of egress) located in the trench to require no more than 25 feet of travel.	_____	
_____	Vehicles and earth movers located in safe positions to protect persons in trench	_____	
_____	Soil conditions near trench are satisfactory; no signs of cave-in no excess water or cracks in the earth, etc.	_____	
_____	Emergency rescue equipment on site and ready as appropriate	_____	
_____	Barricades in use as needed	_____	
_____	Nearby structures, trees, sidewalks etc., protected and pose no hazards, sidewalks underpinned, etc.	_____	
_____	Inspections made daily after rain storms and other hazard-increasing occurrences	_____	
_____	Job completed. Date _____		

Note: Keep this record in project file 30 days beyond completion of work

OSHA Part 1926 Construction Safety & Health Compliance

SUBPART P - EXCAVATIONS

FOR MORE INFORMATION, PLEASE SEE O.S.H.A. MANUAL.



1-800-558-5011

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J. J. KELLER & ASSOCIATES, INC.

145 WEST WISCONSIN AVE. P.O. BOX 368 • NEENAH WI 54957-0368

**TABLE B-1
MAXIMUM ALLOWABLE SLOPES**

SOIL OR ROCK TYPE	MAXIMUM ALLOWABLE SLOPES (H:V) ⁽¹⁾ FOR EXCAVATIONS LESS THAN 20 FEET DEEP ⁽²⁾
STABLE ROCK	VERTICAL (90°)
TYPE A ⁽³⁾	¾:1 (53°)
TYPE B	1:1 (45°)
TYPE C	1½:1 (34°)

NOTES:

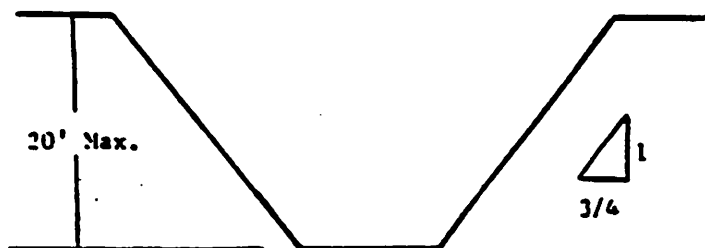
1. Numbers shown in parentheses next to maximum allowable slopes are angles expressed in degrees from the horizontal. Angles have been rounded off.
2. A short-term maximum allowable slope of ¾H:1V (53°) is allowed in excavations in Type A soil that are 12 feet (3.67 m) or less in depth. Short-term maximum allowable slopes for excavations greater than 12 feet (3.67 m) in depth shall be ¾H:1V (53°).
3. Sloping or benching for excavations greater than 20 feet deep shall be designed by a registered professional engineer.

Figure B-1**Slope Configurations**

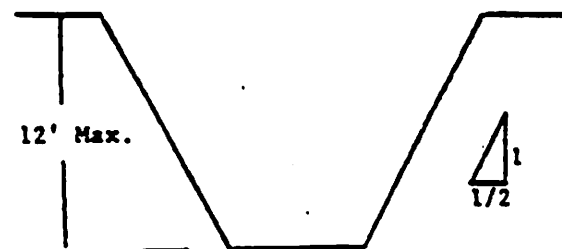
(All slopes stated below are in the horizontal to vertical ratio)

B-1.1 Excavations made in Type A soil.

1. All simple slope excavation 20 feet or less in depth shall have a maximum allowable slope of ¾:1.

**Simple Slope—General**

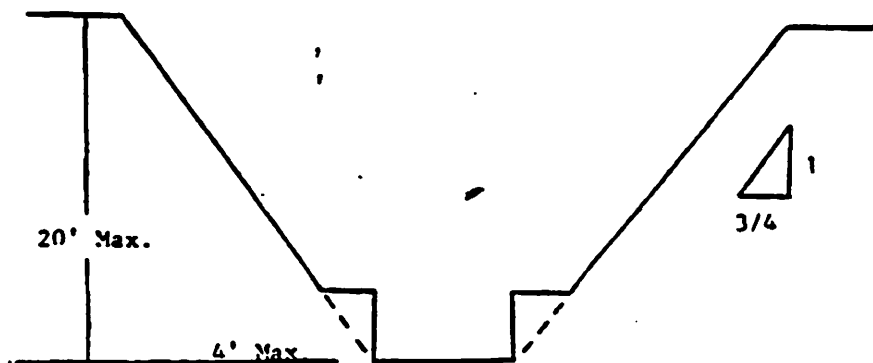
Exception: Simple slope excavations which are open 24 hours or less (short term) and which are 12 feet or less in depth shall have a maximum allowable slope of ½:1.

**Simple Slope—Short Term**

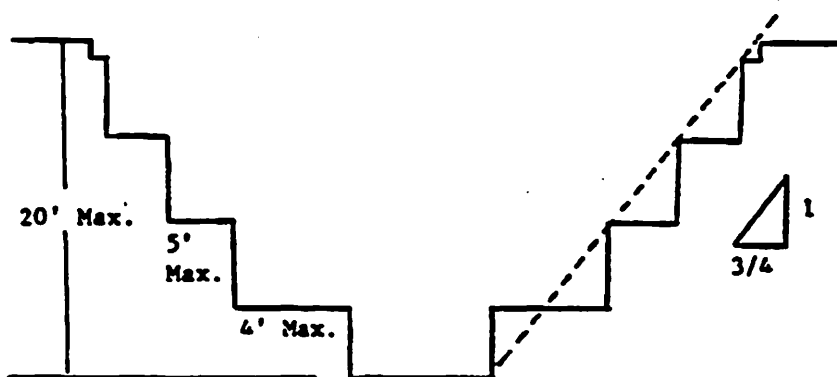
APPENDIX B

EXCAVATIONS

2. All benched excavations 20 feet or less in depth shall have a maximum allowable slope of $\frac{1}{3/4}$ and maximum bench dimensions as follows:

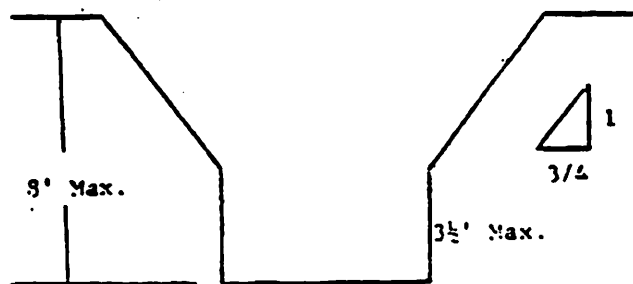


Simple Bench



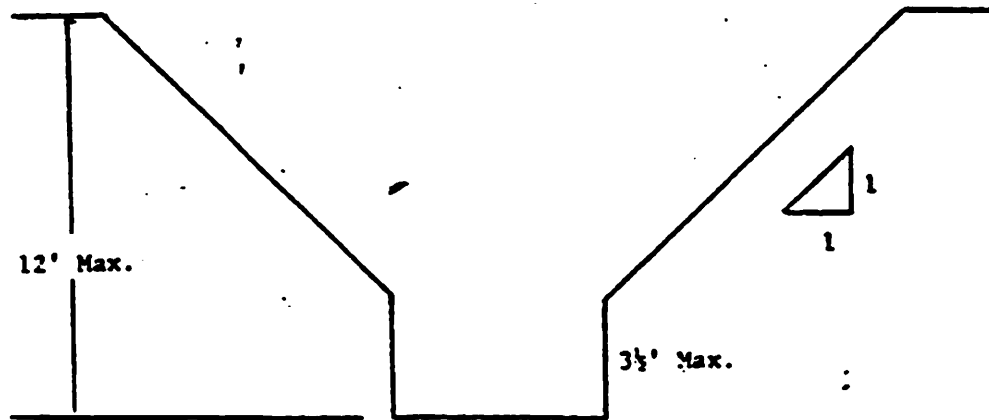
Multiple Bench

3. All excavations 8 feet or less in depth which have unsupported vertically sided lower portions shall have a maximum vertical side of $3\frac{1}{2}$ feet.



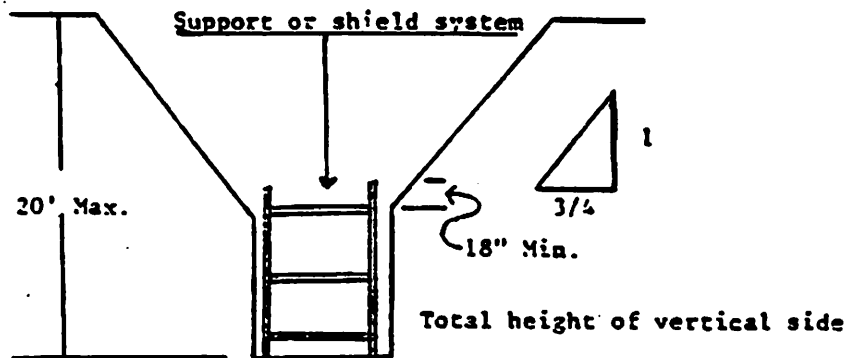
Unsupported Vertically Sided Lower Portion — Maximum 8 Feet in Depth

All excavations more than 8 feet but not more than 12 feet in depth which unsupported vertically sided lower portions shall have a maximum allowable slope of 1:1 and a maximum vertical side of 3½ feet.



Unsupported Vertically Sided Lower Portion—Maximum 12 Feet in Depth

All excavations 20 feet or less in depth which have vertically sided lower portions that are supported or shielded shall have a maximum allowable slope of ¾:1. The support or shield system must extend at least 18 inches above the top of the vertical side.

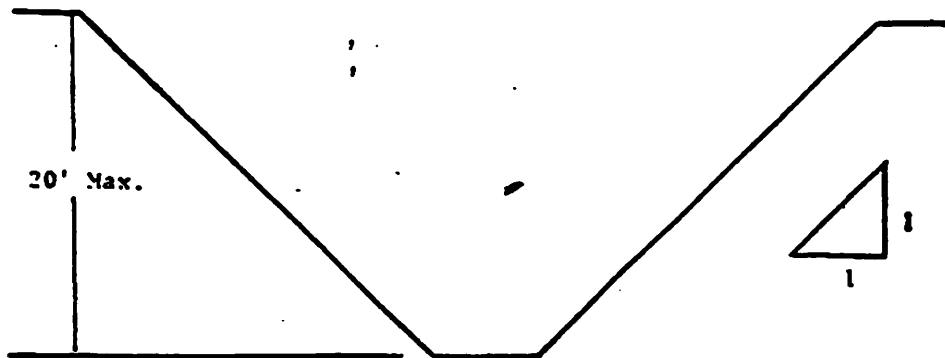


Supported or Shielded Vertically Sided Lower Portion

4. All other simple slope, compound slope, and vertically sided lower portion excavations shall be in accordance with the other options permitted under §1926.652(b).

B—1.2 Excavations Made in Type B Soil

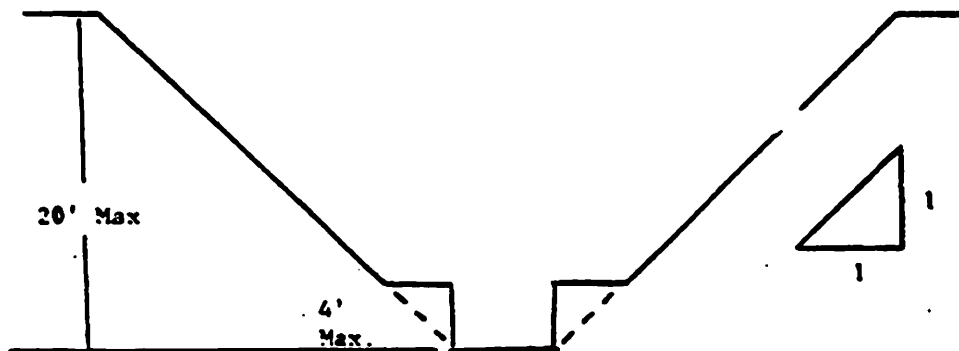
1. All simple slope excavations 20 feet or less in depth shall have a maximum allowable slope of 1:1.



Simple Slope

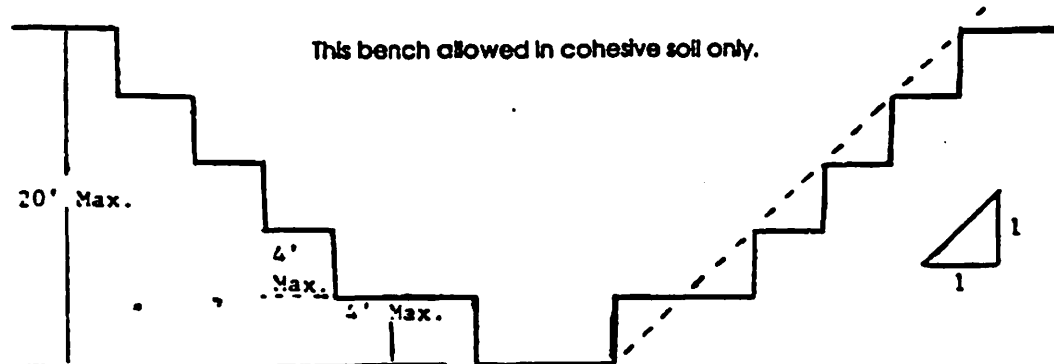
2. All benched excavations 20 feet or less in depth shall have a maximum allowable slope of 1:1 and maximum bench dimensions as follows:

This bench allowed in cohesive soil only.



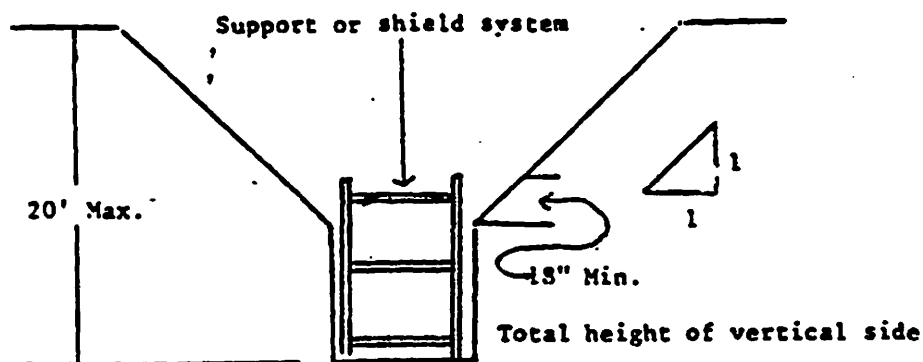
Single Bench

This bench allowed in cohesive soil only.



Multiple Bench

3. All excavations 20 feet or less in depth which have vertically sided lower portions shall be shielded or supported to a height at least 18 inches above the top of the vertical side. All such excavations shall have a maximum allowable slope of 1:1.

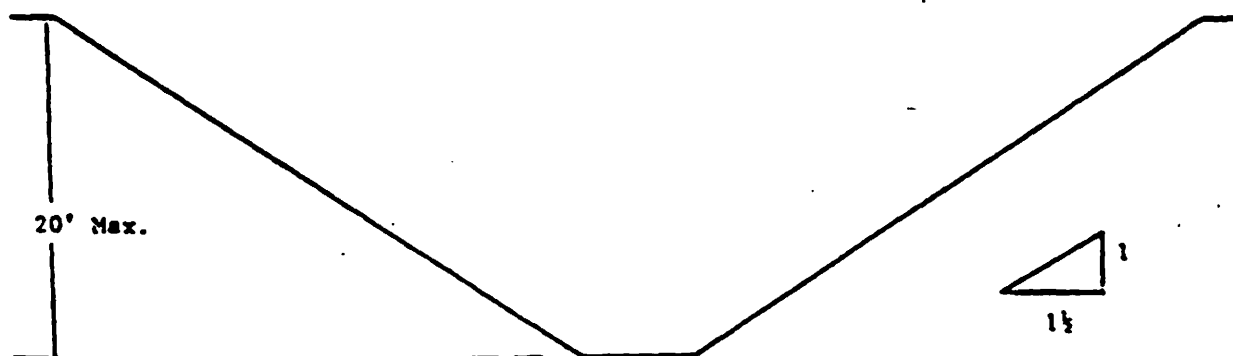


Vertically Sided Lower Portion

4. All other sloped excavations shall be in accordance with the other options permitted in §1926.652(b).

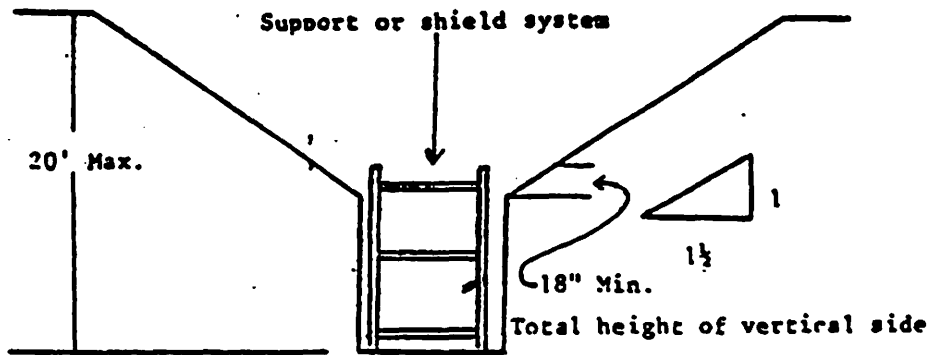
B—1.3 Excavations Made in Type C Soil

1. All simple slope excavations 20 feet or less in depth shall have a maximum allowable slope of $1\frac{1}{2}$:1.



Simple Slope

2. All excavations 20 feet or less in depth which have vertically sided lower portions shall be shielded or supported to a height at least 18 inches above the top of the vertical side. All such excavations shall have a maximum allowable slope of $1\frac{1}{2}$:1.

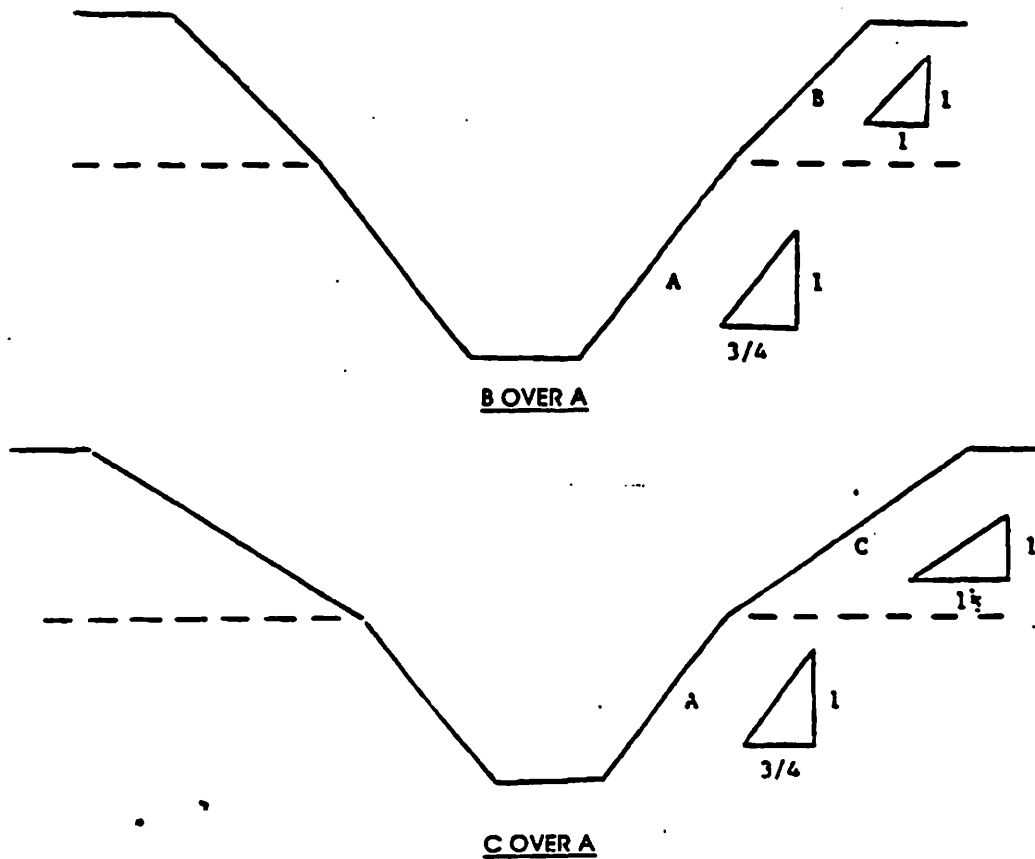


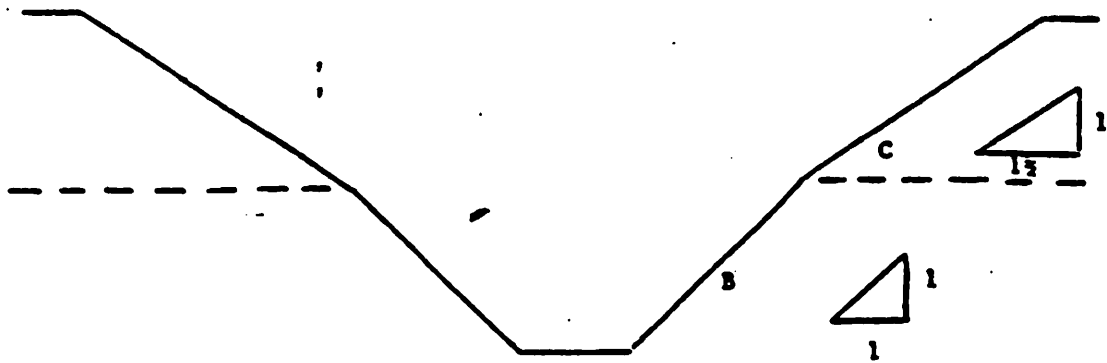
Vertical Sided Lower Portion

3. All other sloped excavations shall be in accordance with the other options permitted in §1926.652(b).

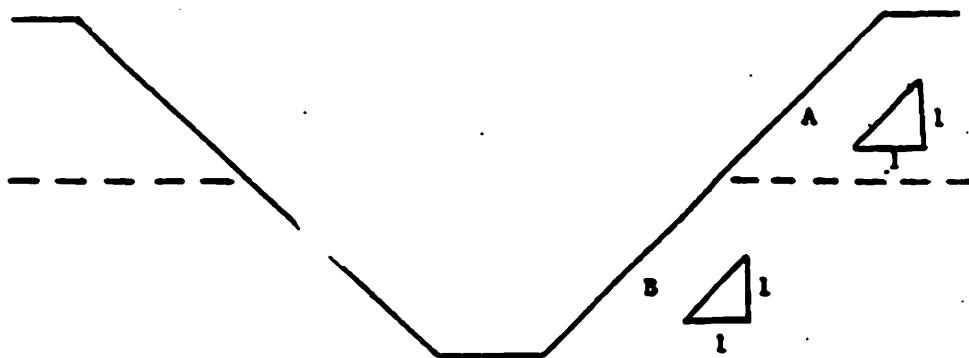
B—1.4 Excavations Made in Layered Soils

1. All excavations 20 feet or less in depth made in layered soils shall have a maximum allowable slope for each layer as set forth below.

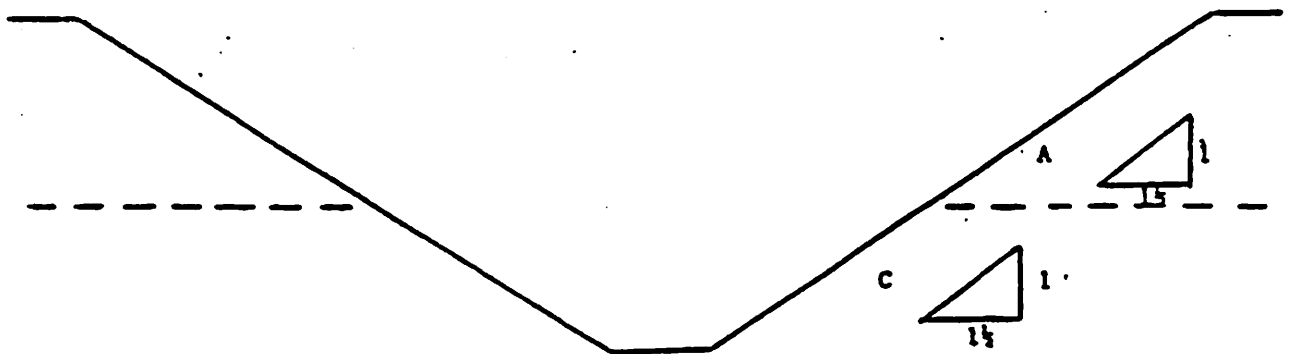




C OVER B



A OVER B



A OVER C

HOLD HARMLESS AGREEMENT

INTRODUCTION

This procedure establishes the guidelines and directives relative to the use of Abbott equipment by construction, contract, vendor, or service personnel who are not Abbott employees. Abbott equipment covered by this procedure includes, but is not limited to: tools, vehicles, respiratory protection devices, analyzers, meters, ropes, lifelines, harnesses, ladders, scaffolds, etc.

RESPONSIBILITIES

The Site Engineer or other designated personnel responsible for the work of contractors, vendors, and service companies are responsible for ensuring compliance with the criteria set forth in this procedure.

PROCEDURE

Contractors needing to borrow Abbott equipment must obtain the "Hold Harmless" form from the site trailer and contact the Site Engineer to obtain approval. If, because of extenuating circumstances, a management decision is made to allow the loan of tools or equipment to non-Abbott personnel, the "Hold Harmless" form is to be used. The form is to be signed by the borrower and must have the approval of the project engineer, maintenance manager, or plant manager. The responsible Abbott employee is to keep a copy of the signed form. (See Attachment I)

No Abbott employee shall loan or knowingly allow a non-Abbott employee to borrow or use any tool or equipment to perform contractual or service functions other than as detailed in this policy.

Vehicles are not to be loaned or used by non-Abbott employees.

An inspection shall be made of the loaned equipment both before and after use. This inspection should be made jointly by the user and the lender.

The approving manager or engineer shall determine liability for damaged equipment if that damage was related to its use by non-Abbott employees.

ATTACHMENT I

HOLD HARMLESS FORM

ABBOTT LABORATORIES

Under the conditions herein stated, Abbott Laboratories (Abbott) agrees to permit _____ (contractor) to use without charge, certain tools or equipment, more particularly described below, for work to be performed on Abbott premises only. Abbott makes no representations or warranties concerning the condition or safety of the tools or equipment or their fitness for the particular purpose intended, and contractor takes such tools or equipment "as is" and assumes any and all risks of personal injury or damage to its property from the use of such tools or equipment. Contractor shall indemnify and hold Abbott harmless from any and all claims of liability for personal injury or death to contractor, its employees or agents, or damage to the property of contractor, its employees or agents caused by such tools or equipment while in the use or control of contractor. Further, contractor agrees to use the tools or equipment with care and to return them when finished or at any time upon demand by Abbott, in the same condition as borrowed, normal wear and tear accepted and contractor shall be liable for any damage done to the tools or equipment by contractor, its employees or agents.

Equipment borrowed or used _____

Signed By Contractor

Signed By Abbott Representative

Obtained from _____ Dept. _____ Date _____

Returned _____ to _____
Date Abbott Representative

CONTRACTOR ACCIDENT REPORTING PROCEDURES

INTRODUCTION

This procedure has been established to identify immediate and follow-up actions to be taken in the event of a contractor employee injury and/or illness on an Abbott construction site.

RESPONSIBILITIES

The Site Engineer is responsible for the implementation of this procedure and for ensuring that all reports and corrective actions are completed properly and on time as outlined in this procedure

The Plant Safety designate is responsible for evaluating the safety of working conditions, reviewing contractor accident reports, and conducting accident investigations where appropriate. The contractor is ultimately responsible for completing all accident investigation reports.

The Site Manager shall ensure that all site personnel are familiar with this procedure.

The contractor must ensure that his/her employees understand the conditions for reporting accidents and illnesses as outlined. The contractor must also designate a work site safety coordinator and First Aid contact person who will be responsible for treating injuries and/or illnesses requiring basic first aid.

PROCEDURE

All minor injuries or illnesses requiring basic first aid must be treated by the First Aid contact person designated by the contractor at the beginning of the project. If an injury and/or illness is too extensive or severe to be treated by basic first aid, the Plant Employee Health Nurse and/or additional emergency personnel may need to respond.

IN THE EVENT OF AN EMERGENCY, DIAL EXT. 53555.

GIVE THE FOLLOWING INFORMATION:

**YOUR NAME
LOCATION OF EMERGENCY
NATURE OF EMERGENCY**

The contractor must report ALL injuries and illnesses to the Site Engineer or Site Manager within 15 minutes of their occurrence.

A "Contractor Accident Report" must be filled out accurately and completely and returned to the Site Engineer within 24 hours or the next working day. A copy of the accident report will also be sent to the Plant Safety designate, who will conduct an investigation of the accident, if necessary. (See Attachment I)

All unsafe conditions which may have contributed to the accident and appropriate corrective actions taken must be documented on the report. Corrective actions must be implemented IMMEDIATELY once the investigation is complete.

Any witnesses at the scene of the accident must also be interviewed and their statements documented.

The contractor must report the condition of the injured employee(s) to the Site Engineer and/or Plant Safety designate, and provide updates on the employee(s) condition(s) where applicable.

For ALL LOST TIME ACCIDENTS, the contractor must report to the Site Engineer and/or Plant Safety designate the anticipated and actual dates of when the employee(s) will be returning to work.

ATTACHMENT I CONTRACTOR ACCIDENT REPORT

FOR ABBOTT USE ONLY

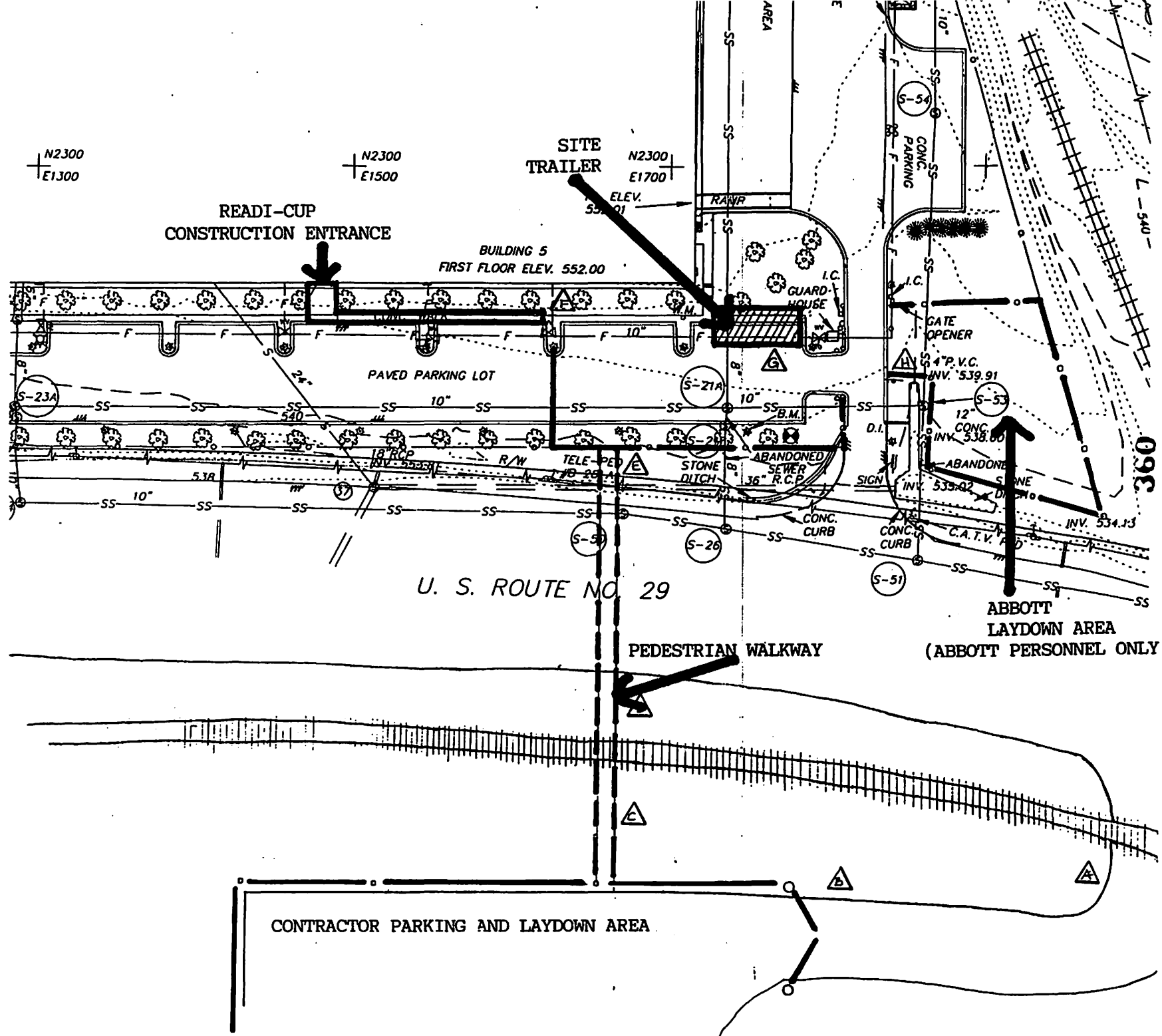
INJURED PERSON	1. NAME OF INJURED _____ <div style="text-align: center; font-size: small;">LAST, FIRST & MI.</div>	S.S.# _____
	2. ADDRESS _____ <div style="display: flex; justify-content: space-between; font-size: x-small;"> STREET CITY STATE </div>	
EMPLOYER	3. NAME OF EMPLOYER _____	PHONE _____
	4. OFFICE ADDRESS _____ <div style="display: flex; justify-content: space-between; font-size: x-small;"> STREET CITY STATE </div>	
	5. NATURE OF BUSINESS _____	
	6. ABBOTT CONTRACT NUMBER / PROJECT NUMBER _____ / _____	
TIME & PLACE	7. LOCATION OF PLANT OR PLACE WHERE ACCIDENT OCCURRED _____ _____	
	8. DATE OF INJURY _____ <div style="display: flex; justify-content: space-between; font-size: x-small;"> DAY OF WK AND M/D/Y </div>	TIME OF INJURY _____ <div style="text-align: right; font-size: x-small;">AM/PM</div>
	9. WEATHER CONDITIONS _____ TEMPERATURE _____	
	10. WHEN DID YOU OR FOREMAN FIRST KNOW OF INJURY? _____	
	11. NAME OF FOREMAN _____	
NATURE OF INJURY	12. NATURE AND LOCATION OF INJURY. DESCRIBE THE EXACT LOCATION AND TYPE OF INJURY. _____ _____	
	13. NAME OF HOSPITAL / DOCTOR _____	
	14. DESCRIBE WHAT MEDICAL TREATMENT WAS GIVEN, IF ANY. _____ _____	
	15. DID EMPLOYEE LEAVE WORK? _____ EXPECTED TO RETURN? _____ <div style="display: flex; justify-content: space-between; font-size: x-small;"> YES / NO M/D/Y YES / NO M/D/Y </div>	
FATAL CASES	16. HAS INJURED PERSON DIED? _____ IF SO, GIVE DATE OF DEATH _____ <div style="display: flex; justify-content: space-between; font-size: x-small;"> YES / NO M/D/Y </div>	
CAUSE OF INJURY	17. DESCRIBE FULLY HOW THE ACCIDENT OCCURRED. STATE WHAT THE EMPLOYEE WAS DOING AT THE TIME. _____ _____	
	18. NAME AND ADDRESSES OF WITNESSES _____ _____ _____	
FOLLOW-UP	19. _____ _____ _____	

SITE ENGINEER _____

DATE OF THIS REPORT _____

M/D/Y

cc: Site Engineer
Site Files
Plant Safety



CONTRACTOR DAILY INSPECTION CHECKLIST

Project # _____ Location _____
 Date _____ Contractor _____

	OK	ACTION REQUIRED
SITE		
Potable water available		
Toilets available		
First Aid kit available and stocked		
HOUSEKEEPING		
Scraps, trash in designated containers		
Supplies stacked safely & well organized		
Hoses, cords routed safely across aisles		
PERSONAL PROTECTION		
Hard hats, safety glasses being worn		
Ear protection worn where required		
Safety belts, lifelines worn where required		
ELECTRICAL SAFETY		
Use of GFCI's		
Tools, extension cords "3 wire" grounded		
Exposed wires on tools & cords		
FIRE PROTECTION		
Adequate number of fire extinguishers		
Flammable liquids stored in safety cans		
Oil, solvent-soaked rags in closed cans		
Employees observing "No Smoking" rule		
WELDING		
"Hot Work" permits used		
Fire extinguisher in immediate area		
Compressed gas cylinders stored upright		
LADDERS		
Ladders placed on sound & stable footing		
No broken rungs, rails, or spreaders		
Ladders secured at top to structure		
Ladders extend 36" above work platform		
GUARD RAILS/FALL PROT.		
Scaffolds have safe access ladders		
Floor & roof openings properly guarded		
1/2" wire rope guardrails must be 42" high, taut, & flagged		
Crane swing radius barricaded		
Scaffolds have toeboards installed		

CC: Abbott Site Engineer

Plant Safety

Permit Issued	_____	_____
	Date	Time
Permit Expires	_____	_____
	Date	Time


COMMITTED
TO
SAFETY

ABBOTT LABORATORIES HOT WORK PERMIT

(Cutting, welding, spark-producing equipment)

See Corporate Safety and Loss Prevention Policy No. 26.0

Initiating department must complete first 7 items and include card with work request. Remainder must be completed by area supervisor or Abbott representative in charge of the work.

1. Initiated by: (name) _____
2. Work to performed for: Dept. _____
3. Location: Bldg. _____ Floor _____ Area _____
4. Alarm box location _____
5. Is Confined Space Entry Permit required? _____ yes _____ no
6. Work Order No. _____
7. Title of Work Order _____

* * * * *

Type of Work to be performed (welding, cutting, grinding, etc.) _____

*Abbott Fire Chief notified (Lake County only) _____

Fire Watcher to be present during and ½ hr. after cutting and welding:

(name) _____

*Explosimeter test by _____ (Qualified Person)

Worksite has been personally examined and approved immediately prior to hot work, and all items on back have been complied with:

Signed _____
Operating Supervisor/Designate

Site Engineer/Maintenance Supervisor

(Tradesman/Contractor Signature) (Dept./Co. Name)

Complete Reverse Side

*If applicable,;

DISTR: 1. Issuer; 2. Tradesperson/Contractor; 3. Posting at Job Site.

5421-3-R5

Sio

To Be Checked By Area Supervisor

DO NOT CUT, WELD, OR USE OTHER OPEN-FLAME OR SPARK-PRODUCING EQUIPMENT UNTIL THE FOLLOWING PRECAUTIONS HAVE BEEN TAKEN.

Check each item that applies.

- ☐ 1. The location where the work is to be done has been personally examined.
- ☐ A. Sprinklers, where provided, are in commission and will not be taken out of service until this work has been completed.
- ☐ B. This work will be confined to the area or equipment specified in the permit.
- ☐ 2. The following safeguards have been provided:
- ☐ A. There are no flammable vapors or liquids or unpurged tanks or equipment previously containing such materials in the area.
- ☐ B. Floors and surroundings have been swept clean and wet down when needed, because of dust.
- ☐ C. Ample portable extinguishing equipment — hand hose, extinguishers, water pails, etc. — have been provided.
- ☐ D. Lockouts on drives; pressure and solvent line blanked off; Valves tagged.
- ☐ E. All combustibles have been located 30 ft. to 40 ft. from the operation and the remainder protected with metal guards or flameproofed covers (not ordinary tarpaulins). There will be no transferring of combustibles and no flammables under pressure within 30 to 40 feet.
- ☐ F. All floor and wall openings within 40 ft. of the operations have been covered tightly or welding is contained to protect areas surrounding operations.
- ☐ G. Responsible people have been assigned to watch for dangerous sparks in area, as well as in floors above and below.
- ☐ H. Chemical sewer openings covered (durable metal) and sealed.
- ☐ 3. Flame or spark-producing equipment to be used has been inspected and found in good repair.
- ☐ 4. Arrangements have been made for a patrol of the area, including floors above and below, during any lunch or rest period and for at least one half hour after work has been completed.

This card not valid unless filled out in ink and kept at the worksite during work. Valid for one shift only.

5421-3-R5



Before This Permit is Issued All Conditions Listed Below Shall Be Evaluated And The Appropriate Box Checked Off And Initialed.

1. Tank/Vessel/Space cleaned for safe entry (Washed out, Purged, Etc.):
☐ Yes ☐ Not Necessary
2. Continuous monitoring of atmosphere quality required:
☐ Yes ☐ Not Necessary
3. Atmosphere tested for flammable vapors:
%LEL=_____ (Max 2% LEL Permitted) Time:_____
4. Atmosphere tested for oxygen deficiency and enrichment:
%O2=_____ (Min=19.5%; Max 23%) Time:_____
5. Tested for toxic atmosphere:

Tested For	PEL	Yes	Not Necessary	Reading	Remarks
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
6. Surrounding area checked for flammable and toxic atmosphere:
☐ Yes ☐ Not Necessary
7. All hazardous energy sources (chemical, mechanical, electrical, etc.) have been disconnected or otherwise neutralized according to lockout/tagout procedures:
☐ Yes ☐ Not Necessary
8. Fresh air supply provided and all access ports open (If welding or burning a min. of 2000 cfm fresh air required per welder/burner):
☐ Yes ☐ Not Necessary
9. Personal protective equipment provided as appropriate:
Respiratory Protection ☐ Yes ☐ Not Necessary
Protective Clothing ☐ Yes ☐ Not Necessary
10. Rescue equipment at entry site (extra harness, self contained breathing apparatus, rope, etc.)
☐ Yes ☐ Not Necessary
11. Rescue harness provided and worn by entrants:
☐ Yes ☐ Not Necessary
Lanyard provided and used:
☐ Yes ☐ Not Necessary
12. Mechanical lifting devices set up at entry way:
☐ Yes ☐ Not Necessary
13. Low voltage (24 V. Max.) light or GFI protection provided:
(GFI is required for electric tools, etc.)
☐ Yes ☐ Not Necessary
14. List types of environmental testing methods and equipment used:

15. Hot Work Permit issued (required where welding or flame/spark making equipment is used):
☐ Yes ☐ Not Necessary
16. Additional precautionary remarks (Means of communication to be used, special start-up instructions, etc.):

Permit Copy Distribution: Original to Facility Supervisor; Card to be posted at entry way during entry and returned to facility supervisor on completion of job and cancellation of permit.

Reference: Corp. Safety Policy No. 27.0



CONFINED SPACE ENTRY PERMIT

**BOTH SIDES OF
PERMIT MUST BE
COMPLETED.**

Good this date only _____
From _____ am/pm to _____ am/pm

EMERGENCY PHONE NOs. _____

Permit is required for entering any tank, vessel or confined space for any purpose. This permit is to be displayed at the point of entry while work is in progress. If work extends beyond the time indicated and/or involves personnel changes, a new permit is required.

Space Location (Bldg., Area, Floor, Col., Etc.) _____
Tank/Space/Equipment Name _____ Dept. _____
Purpose of entry _____

Last material in vessel/space _____
Potential hazards associated with space, e.g., Chemical Exposure, Oxygen Deficiency, Explosive Vapors, Physical Hazards, Extreme Temperatures, Etc.

I certify that this entry is required and all necessary precautions have been taken to eliminate potential hazards noted above and the check list on the reverse side of this card has been completed:

(Print Name & Sign Above)
Facility/Operations Supervision: _____ Date _____
Person In Charge of Entry Personnel: _____ Date _____
Area Safety Designate: _____ Date _____

I have been properly instructed for entering confined spaces and understand my duties as a person entering this confined space:
(Print Name & Sign Above)

Authorized Entrant _____ Date _____
Authorized Entrant _____ Date _____
Authorized Entrant _____ Date _____

I have been properly instructed on my duties as Standby Observer and will summon help in case of an emergency:

(Print Name & Sign Above)
Standby Observer: _____ Date _____

I have been alerted that an entry is occurring in my area and I will help if needed. I will keep the Standby Observer informed of my whereabouts:
(Print Name & Sign Above)

(1) _____ Date _____
(2) _____ Date _____

To be signed upon completion of the entry: I certify that all entrants have exited the space and hereby cancel this permit:

(Print Name & Sign Above)
Person In Charge Of Entry Personnel: _____ Date _____

CORE DRILLING, SURFACE PENETRATION, AND EXCAVATION PERMIT

This permit is required by Corporate Safety and Loss Prevention Policies 34.0 and 35.0 when performing any core drilling, surface penetration or excavation on Abbott property. The application for this permit must be made by the Abbott representative in charge of the work.

This permit is valid only for the dimensioned areas noted on drawings or sketches submitted to Plant Engineering. If the work extends beyond these boundaries, application for a new permit must be made. Structural beams, columns, or column foundations are not to be cored unless approved by a structural engineer or architect.

Date _____

Abbott Representative in charge of work _____

(Please Print)

Description of work to be performed: _____

Drawings or sketches provided: _____

Name/s of Persons/Firms performing operation: _____

PLANT ENGINEERING (Initial and Date Item 1 or 2)

I have reviewed with the Abbott Representative in charge of the operation described above the drawings/sketches provided me. In addition, I have reviewed and have determined (one of the following):

- 1) Subsurface utility or process lines will not interfere with the operation described above and if applicable coring will not change floor loading limitations.

Architectural

Mechanical

Electrical

- 2) Subsurface utility or process lines in the area cannot be precisely located from the drawings. Locating/-tracing techniques have also failed to locate them. Therefore the Abbott Representative in charge of the work has prepared a written contingency plan to eliminate/reduce personnel hazards and plant disruptions. This plan has been reviewed by me and is attached to the reverse of this permit. If applicable, utilities has been notified. The applicant may proceed with the work described above.

Architectural

Mechanical

Electrical

ABBOTT REPRESENTATIVE IN CHARGE OF WORK

I have read and understand the requirements of this permit and agree to comply with all its provisions. I have also notified the Safety Designate of the impending operation.

ABBOTT REPRESENTATIVE _____

IN CHARGE OF WORK

SIGNED

DATE

CONTRACTOR/S OR TRADE GROUP/S

I have been instructed in and understand the limitations and precautions necessary to comply with the conditions of this permit.

Line supervisor in charge of work _____

(Contractor 1 or Trade Group 1)

• SIGN AND DATE

(Contractor 2 or Trade Group 2)

(Contractor 3 or Trade Group 3)

364

ADD CONTINGENCY PLAN (IF APPLICABLE) ON REVERSE

PROCESS LINE DISASSEMBLY PERMIT

This permit will be initiated by the area supervisor, who will check the "Yes" or "No" and "Not Needed" items. All items must be completed and all signatures obtained. Permit valid for one shift only.

INITIATED BY:		W.O. NO.:	
DATE OF WORK:		TIME:	
TYPE OF LINE (SOURCE):		LOCATION: Bldg - Fir - Col.	
CHECK LIST			
ITEM	YES	NO	ITEM
LINE CLEANED			Maint. men know location of nearest emergency ALARM
LINE PURGED			
INLET LINES DISCONNECTED			WASHING FACILITIES
INLET VALVE CLOSED & TAGGED			
ALL VALVES LOCKED OUT AND/OR TAGGED			FIRE FIGHTING EQUIPMENT
SIGNATURES OF MEN WORKING ON LINE			
SIGNATURE OF PERSON THAT CLEANS LINE			
APPROVAL SIGNATURES			
OPERATING SUPERVISOR			

NOTE: Return This Tag To Initiator Upon Completion Of Job.

7617 O

TO BE CHECKED BY AREA SAFETY DESIGNATE

	MARK OK		
OXYGEN TEST (IF NEEDED)			
EXPLOSIMETER TEST (IF NEEDED)			
C O TEST (IF NEEDED)			
NEAREST* SAFETY SHOWER TESTED			
HOT WORK PERMIT (IF NEEDED)	YES	NO	
PROTECTIVE EQUIPMENT NEEDED AT JOB SITE	YES	NO	NOT NEEDED
DECONTAMINATION SUIT			
LIFE BELT			
FRESH AIR MASK			
RUBBER BOOTS			
GOGGLES			
RUBBER GLOVES			
FIRE EXTINGUISHER OR HOSE LINE			
NON-FERROUS TOOLS			
BLOWER OR AIR MOVER			
ACID SUIT			
HARD HAT			
OTHER (SPECIFY)			
HAZARDS OF CHEMICALS & PRECAUTIONS:			

REMARKS OR SPECIAL INSTRUCTIONS:

*SHOWER OR WATER HOSE MUST BE WITHIN 50 FEET.

HOLD HARMLESS FORM

ABBOTT LABORATORIES

Under the conditions herein stated, Abbott Laboratories (Abbott) agrees to permit _____ (contractor) to use without charge, certain tools or equipment, more particularly described below, for work to be performed on Abbott premises only. Abbott makes no representations or warranties concerning the condition or safety of the tools or equipment or their fitness for the particular purpose intended, and contractor takes such tools or equipment "as is" and assumes any and all risks of personal injury or damage to its property from the use of such tools or equipment. Contractor shall indemnify and hold Abbott harmless from any and all claims of liability for personal injury or death to contractor, its employees or agents, or damage to the property of contractor, its employees or agents caused by such tools or equipment while in the use or control of contractor. Further, contractor agrees to use the tools or equipment with care and to return them when finished or at any time upon demand by Abbott, in the same condition as borrowed, normal wear and tear accepted and contractor shall be liable for any damage done to the tools or equipment by contractor, its employees or agents.

Equipment borrowed or used _____

Signed By Contractor

Signed By Abbott Representative

Obtained from _____ Dept. _____ Date _____

Returned _____ to _____
Date Abbott Representative

DAILY INSPECTION - EXCAVATION-TRENCHING-SHORING and SLOPING

Job Site: _____ Division: _____

Plant: _____ Dept.: _____ Date: _____

Contractor _____ Abbott Site Engineer _____

Yes		No	Explain
-----	--	----	---------

_____	Excavation Permit completed	_____	
-------	-----------------------------	-------	--

_____	Shoring still adequate; no changes needed	_____	
-------	---	-------	--

_____	No excess water in excavation/trench; conditions satisfactory	_____	
-------	---	-------	--

_____	Angles of repose adequate	_____	
-------	---------------------------	-------	--

_____	Excavated and other materials way from trench edge at least 2ft.	_____	
-------	--	-------	--

_____	Mat'ls/tools/equipment restrained from falling in trench	_____	
-------	--	-------	--

_____	Air quality tested	_____	
-------	--------------------	-------	--

_____	Ladders (or other safe means of egress) located in the trench to require no more than 25 feet of travel.	_____	
-------	--	-------	--

_____	Vehicles and earth movers located in safe positions to protect persons in trench	_____	
-------	--	-------	--

_____	Soil conditions near trench are satisfactory; no signs of cave-in no excess water or cracks in the earth, etc.	_____	
-------	--	-------	--

_____	Emergency rescue equipment on site and ready as appropriate	_____	
_____	Barricades in use as needed	_____	

_____	Nearby structures, trees, sidewalks etc., protected and pose no hazards, sidewalks underpinned, etc.	_____	
-------	--	-------	--

_____	Inspections made daily after rain storms and other hazard-increasing occurrences	_____	
-------	--	-------	--

_____	Job completed. Date _____		
-------	---------------------------	--	--

Note: Keep this record in project file 30 days beyond completion of work.

CONTRACTOR ACCIDENT REPORT

FOR ABBOTT USE ONLY

INJURED PERSON

1. NAME OF INJURED _____ S.S.# _____
LAST, FIRST & MI.
2. ADDRESS _____
STREET CITY STATE

EMPLOYER

3. NAME OF EMPLOYER _____ PHONE _____
4. OFFICE ADDRESS _____
STREET CITY STATE
5. NATURE OF BUSINESS _____
6. ABBOTT CONTRACT NUMBER / PROJECT NUMBER _____ / _____

TIME & PLACE

7. LOCATION OF PLANT OR PLACE WHERE ACCIDENT OCCURRED _____
8. DATE OF INJURY _____ TIME OF INJURY _____
DAY OF WK AND M/D/Y AM/PM
9. WEATHER CONDITIONS _____ TEMPERATURE _____
10. WHEN DID YOU OR FOREMAN FIRST KNOW OF INJURY? _____
11. NAME OF FOREMAN _____

NATURE OF INJURY

12. NATURE AND LOCATION OF INJURY. DESCRIBE THE EXACT LOCATION AND TYPE OF INJURY. _____
13. NAME OF HOSPITAL / DOCTOR _____
14. DESCRIBE WHAT MEDICAL TREATMENT WAS GIVEN, IF ANY. _____
15. DID EMPLOYEE LEAVE WORK? _____ EXPECTED TO RETURN? _____
YES / NO M/D/Y YES / NO M/D/Y

FATAL CASES

16. HAS INJURED PERSON DIED? _____ IF SO, GIVE DATE OF DEATH _____
YES / NO M/D/Y

CAUSE OF INJURY

17. DESCRIBE FULLY HOW THE ACCIDENT OCCURRED. STATE WHAT THE EMPLOYEE WAS DOING AT THE TIME. _____
18. NAME AND ADDRESSES OF WITNESSES _____

FOLLOW-UP

19. _____

SITE ENGINEER _____

DATE OF THIS REPORT _____
M/D/Y

Site Engineer
Site Files
Plant Safety

TOOL BOX SAFETY MEETING REPORT

Contractor/Foreman: _____ **Date/Time:** _____

Safety Topic: _____

Employee Attendance: (Signatures)

This image shows a single page of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Safety Suggestions/Comments:

[illegible]

W.S. Construction

P.O. Box 416
Blairs, VA 24527
(804) 724-2127 • Fax 724-2129

**PLAINTIFF'S
EXHIBIT**

April 29, 1994

2008

TO: Blair Construction
Ken Becraft

FROM: W. S. Construction

REF: ABBOTT LABS

Based on the strick safety guidelines relating to the above referenced job, we will have in increase for quote of 1-3-94 by \$75,000. These are extra costs that were not taken into consideration on the bid day.

Thank you!

COMMONWEALTH OF VIRGINIA



Def. Exhibit A
JAS

NOTICE OF MOTION FOR JUDGMENT

Case No. CL94000285-00

Campbell County

Circuit Court

New Courthouse Building, 3rd. Floor, Rustburg, Va. 24588

ADDRESS

TO:

RANDY WEATHERFORD

t/a W. S. CONSTRUCTION

136 AUSTIN CIRCLE

DANVILLE, VA. 24540

You are hereby notified that unless within twenty-one (21) days after service of the notice of Motion for Judgment on you, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, judgment may be entered against you by default.

Done in the name of the Commonwealth of Virginia.

December 16, 1994

DATE

Deborah E. Hughes Clerk

by D. Mays

DEPUTY CLERK

W. S. Construction

P.O. Box 418
Blairs, VA 24527
804 724-2127 FAX 724-2129
January 3, 1994

RANDI
WEATHERS RD

PROPOSALABBOTT LABS

We are pleased to quote the sum of \$229,000⁰⁰
to erect the above project. The following are included:

- 1-time mobilization.
- No materials, labor only.
- No reworking of material or field fabricating.
- Siding to be 3' wide w/exposed or semi-concealed screws.
- If walls are 16" wide w/concealed screws and friction fit insulation, add \$24,000⁰⁰.
- Connection of down spouts to other construction by others.
- No touch up painting or priming. If WSC damages any priming, we will correct.
- All common walls open.
- Wall penetrations will cost \$75⁰⁰ ea.
- Roof penetrations or smoke dooms will cost \$100⁰⁰ ea.
- Roof pipe flashings will cost \$35⁰⁰ ea.
- Insulation to be of max width.
- No bad weather days.
- No cleaning of materials. Stage area is to be close to building site, w/proper blocking for storage of material and in a state to min. dirt or mud.
- Must have good access to site and building.
- Not responsible for damage to site by our equipment.
- Unloading to be done @ mobilization and erect to start immediately after.

253,000

EXHIBIT A

372

1 of 2

BLAIR CONSTRUCTION, INC.

P.O. Box 6880

Scott and Stringfellow Bldg. Suite 201

810 Main Street

LYNCHBURG, VIRGINIA 24505

(804) 847-1011

FAX (804) 847-8834

AGREEMENTDATE: April 8, 1994TO: W. S. ConstructionP. O. Box 416Blaine, Va. 24527

***NOTE: NO TOBACCO PRODUCTS ON PREMISES.
 DESIGNATED EATING AREA.
 SAFETY GLASSES/HARD HATS REQUIRED.
 SAFETY MANUAL FOR EACH SUB AVAILABLE.
 MANDATORY (ALL WORKERS) SAFETY SEMINAR
 AVAILABLE EACH DAY FROM 2-3 P.M.
 MANDATORY PROJECT MEETING EACH WED. 11 A.

JCB: Abbott LabsAltavista, Va.confirmation

This is our ~~acceptance~~ of your written/verbal quotation dated 01/03/94 for the following in accordance with plans and specifications.

Complete installation of/furnishing the following materials:

Erection of Varco-Pruden Metal Building includingSpanloc (concealed fasteners), insulation & liner panel.

Base proposal	229,000 + 24,000=	\$ 253,000
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Added frame/roof (10,900 S.F.)	=	7,150
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Wall penetrations	-----	\$ 75 ea.
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Roof penetrations	-----	100 ea.
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Roof pipe flashing	-----	35 ea.
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The above for the sum of See above

Sales tax is/is not included.

Metal building delivery schedule: First week May

Date of installation/schedule to follow. Building to be "Closed In" 12 weeks after above delivery.Please submit. N/A copies of shop drawings or manufacturer's literature for approval.

Please send to our office a certificate of insurance with full coverage of worker's compensation and general liability.

NOTE: Varco-Pruden drawings are expected
 week 4/11.

BLAIR CONSTRUCTION, INC.

BY: [Signature]

Please return one signed copy to our office for our files.

EXHIBIT B

373

ACCEPTED BY: _____

TITLE: _____

CONTRACTOR SAFETY AGREEMENT

_____ certifies that I fully understand and am familiar with the policies and procedures set forth in the Abbott Laboratories - Ross Products Division Contractors' Safety Manual. I agree to communicate these policies and procedures to all contractor employees working for my firm. I understand that I am responsible for the actions of my employees, and that violations of these policies and procedures can result in termination of the contract and or permanent removal of my employees from Abbott property.

Date: _____

Contractor Signature: _____

Please send a copy of this certification to:

Abbott Laboratories - Ross Products Division
Attn: Plant Safety Dept.
P.O. Box 479
Altavista, VA 24517-0479

*Defendant's
Exhibit "B"
JLJ*

PHOTOGRAPHS, ILLUSTRATIONS and OTHER DOCUMENTS

Defendant's
Exhibit "C"
[Signature]

OSHA Notice CPL 2

October 5, 1992

Office of Construction and
Maritime Compliance Assistance

Subject: Cancellation of OSHA Instruction STD 3-3.1

- A. Purpose. This notice cancels an OSHA Instruction based on court decisions that make the guidance given in the instruction inaccurate.
- B. Scope. This notice applies OSHA-wide.
- C. Cancellation. OSHA Instruction STD 3-3.1, July 18, 1983, "Fall Protection in Construction: 29 CFR 1926.28(a) and 29 CFR 1926.105(a)," is canceled.
- D. Expiration Date. This notice expires on October 30, 1992.
- E. Action. Users of the OSHA Directives System shall remove from their files and discard OSHA Instruction STD 3-3.1.
- F. Background. The Review Commission has held in the L.E. Meyers Company case, OSHRC Docket No. 82-1137, that the December 1972 revision to 1926.28(a) was invalid on the grounds that the change from "and" to "or" was substantive change that could not be accomplished without notice and comment rulemaking. This decision holds that, 29 CFR 1926.28(a) may not be cited unless there is exposure to a hazardous condition and the need for personal protective equipment is indicated elsewhere in the Part 1926/1910 Construction Industry Safety and Health Standards.

In view of this decision, use of 1926.28(a) is superfluous. If a hazard is addressed by another standard, such as 1926.105 for a fall greater than 25 feet, the other standard should be cited. Recognized falling hazards not covered by an existing standard shall be cited in appropriate cases under the general duty clause as indicated in Chapter IV of the Field Operations Manual.

Directorate of Compliance Programs

NOTE: Even though the use of this standard has been curtailed. It is strongly recommended by OSHA that the employer evaluate all operations employees are involved with at a worksite to determine what hazards might exist and the appropriate measures including PPE which can be utilized to eliminate or control the hazard. All other PPE requirements specifically addressed by OSHA as well as industry recognized requirements for wearing PPE are still being enforced by the Agency by utilizing specific standards or the General Duty Clause - 5(a)(1).

Tues. 1/24/94

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B. J. Anderson

Osgood & Co
 200 N. 1st St.
 St. Paul, Minn.