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United States of America

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

1924 Building - Room 2R90, 100 Alabama Street, SW  
Atlanta, Georgia 30303-3104

Secretary of Labor,

Complainant,

Corrpro Companies, Inc.,

Respondent.

OSHRC Docket No. 11-1969

Appearances: Patrick L. DePace, Esq., U. S. Department of Labor, Office of the Solicitor,  
Cleveland, Ohio  
For the Complainant

Kevin T. McLaughlin, Esq., Greensfelder Hemker & Gale, P.C.,  
St. Louis, Missouri  
For the Respondent

Before: Administrative Law Judge Sharon D. Calhoun

**DECISION AND ORDER**

Corrpro Companies, Inc. (Corrpro), engages in tank cleaning operations. On May 11, 2011, Occupational Safety and Health compliance officer Bob Barbour conducted an inspection of Corrpro's worksite at the Miami County Water Treatment Plant on 3210 Chuck Wagner Lane in Dayton, Ohio. As a result of OSHA's inspection, the Secretary issued a citation to Corrpro on July 5, 2011, alleging Corrpro violated two construction standards of the Occupational Safety and Health Act of 1970 (Act).

Item 1 alleges Corrpro committed a serious violation of 29 C. F. R. § 1926.20(b)(2) by failing to have a competent person inspect and ensure that covers were maintained and utilized in a safe manner. Item 2 alleges a serious violation of 29 C. F. R. § 1926.501(b)(4)<sup>1</sup> for failing to

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<sup>1</sup> The Secretary moved to amend the Citation to allege a violation of § 1926.501(b)(4) in lieu of § 1926.502(i)(3) as alleged in the Citation and Notification of Penalty issued July 5, 2011. By Order dated October 19, 2011, the undersigned granted the Secretary's Motion to Amend.

protect employees from falling through holes more than 6 feet above lower levels. The Secretary proposed penalties of \$5,000.00 for item 1 and \$7,000.00 for item 2.

Corrpro timely contested the citation. This case was designated for Simplified Proceedings under Subpart M, § 2200.203(a), of the Commission Rules. The undersigned held a hearing in this matter on March 15, 2012, in Dayton, Ohio. The parties stipulated to jurisdiction and coverage (Tr. 7 - 8). The parties have filed post-hearing briefs.

For the reasons discussed below, item 1 is vacated. Item 2 is affirmed and a penalty of \$3,500.00 is assessed.

### **Background**

Corrpro engages in the installation of impress current cathodic protection systems, which use a sacrificial anode that forces the corrosion to go to the anode instead of the surface it is protecting (Tr. 100). This installation prevents corrosion on steel structures (Tr. 128). In May 2011, a crew of Corrpro employees was assigned the task of installing a cathodic protection system at the Miami County Water Treatment Plant in Dayton, Ohio. This work was to last approximately one week (five days) (Tr. 21). The crew arrived in Dayton on May 9, 2011. The crew consisted of Jeff Chapman, project foreman, Gregory Copen, field supervisor and [redacted], customer service specialist (Tr. 134, 156). On May 10, 2011, [redacted] fell approximately 12 feet through an uncovered hole while working at the Miami County Water Treatment Plant. OSHA Safety and Health Compliance Officer Robert Barbour arrived at the site the next day to conduct an inspection.

[redacted] job did not normally require him to work in the field (Tr. 16). His regular employment with Corrpro was in sales as a Customer Service Specialist 2, performing clerical work, taking phone calls, answering e-mails and providing quotes for products (Tr. 16). [redacted] was working with the crew on the jobsite in an effort to advance his career (Tr. 16). At [redacted] request, Corrpro allowed him to advance his career by doing sales and negotiation training online, learning products and how to install them. The career advancement training also included going out in the field to see how work was done. [redacted] was to see different applications and ways the products were used. (Tr. 16-17). The career advancement opportunity to work in the field at the Miami County Water Treatment Plant was provided to [redacted] by Scott Cristell, Manager of Corrpro's water works department (Tr. 21).

May 10, 2011, was the first day [redacted] had ever worked out in the field (Tr. 16, 40). Prior to going out in the field, [redacted] took new hire orientation safety training and a fall protection training program online (Tr. 17). The fall protection training was a power point presentation and it covered harnesses, use of harnesses, different weight requirements and other matters (Tr. 18 - 19). It lasted one-half to one hour (Tr. 18 - 19)

The Corpro crew for the Miami County Water Treatment Plant job arrived at the jobsite on the morning of May 10, 2011, which was their first day on this job (Tr. 132). Once onsite, Chapman walked the jobsite while his crew waited at the van (Tr. 22, 43, 134). Upon completion of his walk around the jobsite, Chapman discussed with the crew the scope of the job, what was to be done and things that they needed to be aware of (Tr. 129 – 130, 156). He also discussed with them the fall arrest systems, the harnesses, all the safety PPE that were going to be used on the job site. Chapman advised the crew there was a hole adjacent to the area where they would be working (Tr. 129-130, 156). Chapman testified he had talked to the painting contractor the first thing that morning and was informed the hatches were off so the paint could cure (Tr. 130). One of the open hatches created the hole at issue in this case (Tr. 130).

Before they began work that morning, Chapman fitted [redacted] with personal protective equipment including a safety harness, hard hat, safety glasses, shock absorbing lanyards and two four-foot lanyards and made sure they were correctly attached (Tr. 133-134). The crew then walked around the site with Chapman, during which time Chapman identified hazards in the area, including the hole in the vicinity of where they would be working (Tr. 48, 49, 134, 157, 158). The hole was approximately 2 feet by 2 feet and presented a fall hazard of 12 feet (Tr. 74).

The crew worked inside the clarifier tank which was a circular structure (a cylinder shape) with a wall on the outside at the perimeter of the structure (Tr. 46, 136, 137; Exh. C-4). The crew was tasked with stringing rope and suspending anodes around the tank (Tr. 24). The crew worked within the circular perimeter of the tank, tying rope and suspending anodes over the outside of the wall. Approximately 2 to 3 feet from the wall (towards the inside of the circle) there were I-beams that formed an X which were approximately 10 feet high which supported a catwalk and other structures (Tr. 137-138; Exh.C-4). There was a 2 to 3 foot area between the I-beams and the wall (Tr. 137, 138; Exh. C-4). As depicted in Exhibit C-4, these I-beams were not located at every section along the perimeter of the clarifier tank. [redacted] job onsite involved cutting ropes into various lengths and lowering the rope to the outside of the wall, tying

the rope so that it would remain suspended between the tank and the wall (Tr. 23). The rope was used to suspend the anode (Tr. 23).

Just prior to the accident, the crew had lowered the rope down the wall and around a smaller tank. They dropped the rope around the outside of it, tying it off so it remained suspended in the middle of those two. The crew was able to walk up to the wall and reach over the wall and tie the rope, tie the knot, wrap tape around it, zip tie it and then wrap electrical tape around it (Tr. 25). As [redacted] was moving around the perimeter of the wall, headed in the direction of the hole, Chapman told him to watch out for the hole (Tr. 25 – 26; Exhs. C-3, C-4). [redacted] walked around the hole and kept going to the next area where he was to tie rope. [redacted] was 1 to 3 feet from the hole, when he realized he had run out of zip ties. At that point he turned around to go get more zip ties. When he turned and took one to two steps, he stepped into the hole and fell approximately 12 feet to the concrete bottom of the clarifier tank (Tr. 25 – 26; Exhs. C-3, C-4). When [redacted] fell, he was not tied off (Tr. 27, 53-54). He remained in the bottom of the clarifier tank for approximately one hour until he could be rescued (Tr. 28). The accident occurred at approximately 10:20 a.m. that day (Tr. 52).

As a result of the fall, [redacted] was hospitalized for at least five days, where he underwent a spinal fusion on his L1 vertebrae due to a fracture he sustained in the fall (Tr. 28). After his hospitalization, [redacted] received inpatient rehabilitation for seven days (Tr. 29). Once he recovered, [redacted] resumed his inside sales job, but his work with Corrpro ended after three weeks. During that three week period [redacted] was given a written notice for a serious violation of safety rules relating to his fall (Tr. 30; Exh. C-2).

OSHA issued the two-item citation at issue here as a result of Barbour's inspection relating to the accident at Corrpro's worksite on May 10, 2012.

### **DISCUSSION**

The Secretary has the burden of establishing the employer violated the cited standard.

To prove a violation of an OSHA standard, the Secretary must show by a preponderance of the evidence that (1) the cited standard applies; (2) the employer failed to comply with the terms of the cited standard; (3) employees had access to the violative condition; and (4) the cited employer either knew or could have known with the exercise of reasonable diligence of the violative condition.

*JPC Group Inc.*, 22 BNA OSHC 1859, 1861 (No. 05-1907, 2009).

The cited standards are found in Subpart C, which covers general safety and health provisions and Subpart M, which covers fall protection standards.

## The Citation

### Item 1: Alleged Serious Violation of 29 C. F. R. § 1926.20(b)(2)

The citation alleges:

The employer's accident prevention program did not provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons designated by the employer:

- a) Employees were engaged in commercial construction activities installing a cathodic protection system for an existing water treatment structure. Workers were exposed to potential fall hazards and regular and frequent inspections by a competent person were not conducted to ensure that the job site, materials, and equipment such as deck/floor hole covers were maintained and utilized in a safe manner.

Section 1926.20(b)(2) provides:

*(b) Accident prevention responsibilities.*

(2) Such programs shall provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons designated by the employers.

As set forth in item 1, the Secretary contends Corpro violated § 1926(b)(2) by failing to have regular and frequent inspections conducted by a competent person. In her brief, the Secretary argues that any purported inspections by Corpro were ineffective in that the hazard presented by the hole was never properly addressed, arguing that an effective inspection would have involved a clear plan to prevent employee exposure to the hazard of the unguarded hole (Secretary's Brief pp. 10 - 11). Corpro contends it conducted inspections as required by the standard (Corpro's Brief pp. 12 - 13). For the reasons set forth below, the undersigned agrees with Corpro.

### *Applicability*

Corpro does not dispute that the cited standard is applicable. Corpro employees were engaged in construction work activity on the jobsite installing a cathodic protection system to prevent corrosion on the steel structures.

### *Compliance with the Standard's Terms*

The Secretary does not dispute that Corpro conducted an inspection of the jobsite. Rather, the Secretary takes issue with the quality of the inspection. The uncontroverted evidence shows that Chapman conducted two inspections of the jobsite before work began on the morning of May 10, 2011. Chapman did an initial inspection alone when he arrived at the site on May 10, 2011 (Tr. 22, 43, 134). Chapman testified he informed the crew of the hole after his initial

inspection (Tr. 129 - 130). Then, after crew members donned safety equipment, he and the crew walked the site, during which time he did a second inspection (Tr. 48, 49, 157, 158). During the inspections, Chapman observed the hole which was created by the paint contractor having left the hatch open so that the paint could cure (Tr. 130, 134). [redacted] is not certain that Chapman told him about the hole after Chapman's first inspection. There is no dispute however, that Chapman pointed the hole out to him when the crew walked the jobsite together.

The Secretary may establish a violation of § 1926(b)(2) by showing that the employer failed to act as would a reasonably prudent person in the industry. An employer must meet the criteria for reasonableness. This applies to the thoroughness of the safety inspection and to the degree of sophistication expected of the employer-inspector. An employer must make a reasonable effort to anticipate the particular hazards to which its employees may be exposed during the course of their scheduled work. Corrpro's actions on the jobsite were reasonable. Chapman conducted two inspections within a short time of having arrived at the jobsite, satisfying the "frequent and regular" requirement of the standard. Further, the evidence shows Chapman was knowledgeable, experienced and qualified to conduct safety inspections (Tr. 105, 128-129). He has been employed by Corrpro for 7 years and has been promoted from field technician to field supervisor and to foreman (Tr. 128). As a typical Corrpro employee, he would have received 60 to 80 hours of training annually (Tr. 105). Finally, Chapman's testimony reveals that he determined the hole at issue here was a hazard. The undersigned finds he was competent to conduct the inspections.

Section 1926.20(b)(2) requires the designated competent person to make "frequent and regular inspections" of the site. The standard does not address the quality of the inspection regarding what steps must be taken to protect the employees from any hazardous condition discovered during the inspection. The Secretary is attempting to read requirements into § 1926.20(b)(2) that are not evident in the plain language of the standard. A violation of this standard cannot be found based on the Secretary's belief that the inspection should have resulted in a clear plan to prevent exposure or because the Secretary disagrees with the method Corrpro chose to protect its employees from the hazard. The standard only mandates that an inspection be conducted by a competent person. There is no record upon which a finding of inadequate inspection or incompetence of inspecting personnel can be made. This item is vacated.

**Item 2: Alleged Serious Violation of 29 C. F. R. § 1926.501(b)(4) (as amended)**

The amended citation alleges:

Each employee on walking/working surfaces was not protected from falling through holes more than 6 feet above lower levels.

Employees were engaged in commercial construction activities installing a cathodic protection system for an existing water treatment structure. A worker was not protected from a fall hazard of a distance of 12 feet through a 2 foot x 2 foot hole.

Section 1926.501(b)(4) provides:

*Holes.* (i) Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes.

(ii). Each employee on a walking/working surface shall be protected from tripping or stepping into or through holes (including skylights) by covers.

(iii) Each employee on a walking/working surface shall be protected from objects falling through holes (including skylights) by covers.

Corrpro acknowledges that employee [redacted] fell, but contends it provided appropriate instruction and protection to prevent the fall (Corrpro's Brief pp. 2 - 3). For the reasons set forth below, the undersigned disagrees.

Three of the elements required for the Secretary's prima case are not in dispute. Applicability is established by evidence adduced at the hearing showing Corrpro employees were engaged in a process of installing a cathodic protection system for the existing water treatment structure (Tr. 21, 100). In performing this work, they were engaged in construction activities. The construction fall protection standard is applicable. Exposure is established by the fact that [redacted] fell through the unprotected hole (Tr. 25 – 27, 51). Knowledge is established by the admission of foreman Chapman that he discovered the hole during his inspections and was aware that he and his crew would be working in proximity to the hole (Tr. 130, 134). Further, Chapman was in clear view of [redacted] as he worked and observed him approaching the vicinity of the hole. The remaining element which the Secretary must prove is whether the terms of the standard were violated.

*Noncompliance with the Terms of the Standard*

Section 1926.501(b)(4) provides that an employer shall protect its employees from fall hazards by the use of personal fall arrest systems, guardrails erected around the hole, or a cover over the hole. According to Corrpro, it did not have the authority to close the hatch which

created the hole at issue in this case (Tr. 130, 142). Therefore, Corrpro asserts, guardrails in the form of 10 foot I-beams, protected employees from the hazard presented by the hole (Corrpro's Brief, pp. 2 - 3).

Section 1926.501(b)(4) requires that guardrail systems be erected *around the hole*. The record evidence shows the I-beams were placed around the perimeter of the circular work area of the tank (Exh. C-4). These I-beams were utilized to support the catwalk and other structures. It is not credible that they were intended to guard the hole as Corrpro contends. The undersigned gives no weight to the testimony suggesting that they were. Chapman testified about various safety measures he discussed with his crew both before and after work began, but there was no testimony that he advised his crew that the I-beams were to protect them from accessing the hole, or that they were required to remain between the I-beams and the wall while working. The testimony of Chapman and Copen that the I-beams served as a barrier in the area where [redacted] was working appeared coached and designed to benefit Corrpro.

In addition, Chapman and [redacted] testified that Chapman warned [redacted] about the hole as he moved closer to the hole. Such a warning would not have been necessary if the I-beams guarded the hole. [redacted] testimony as to how he fell in the hole supports the undersigned's finding that the I-beams were not guardrails as required by the standard and did not protect employees from accessing the hole. [redacted] testified that he took only one to two steps when he turned around before falling into the hole. When shown Exhibit C-4, a photograph of the clarifier tank, he pointed out the area where the I-beams were located on Exhibit C-4 as the area in which he was working. However his testimony was tenuous at best. When questioned further, he testified that maybe the area depicted in Exhibit C-4 was a "reverse image, you know, if there's another hole on the other side it would look the same." (Tr. 166). He appeared uncertain that Exhibit C-4 depicted where he was working when he fell. He testified confidently, however, that he did not have to step over the cross bracing when he fell; he just turned around and there was nothing obstructing his way (Tr. 164). The undersigned finds [redacted] testimony regarding how he fell into the hole and the circumstances surrounding his fall credible, as he was in the best position to know how the fall occurred. The I-beams were not guardrails precluding access to the hole as Corrpro contends.

Corrpro also asserts its employees were protected from falling by the use of personal fall arrest systems and that Chapman warned [redacted] to tie off. This argument too fails because

employees wearing personal fall arrest equipment were not tied off. None of the three member crew who worked in proximity to the hole was tied off (Tr. 33; Exh. C-2). There is no personal fall protection system if employees are not tied off, despite wearing the appropriate equipment. A personal fall arrest system is defined in § 1926.500(b) as

a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, a body belt or body harness and may include a lanyard, deceleration device, lifeline, or suitable combinations of these . . .

If it has no anchorage (secure point of attachment) it cannot arrest the fall. Further, the evidence fails to show that [redacted] was provided any guidance regarding where he should tie off to. Merely warning an employee to watch out for a hole with a 12-foot fall hazard fails to meet any reasonable interpretation of complying with the terms of the standard.<sup>2</sup> The undersigned finds that the Secretary has met her burden of showing employer noncompliance with the terms of the standard, and has established a prima facie case as to § 1926.501(b)(4).

The Secretary classified this item as serious. Under § 17(k) of the Act, a violation is serious “if there is a substantial probability that death or serious physical harm could result from” the violative condition. Here, [redacted] sustained a fracture of his spine, which required surgical fusion. Unquestionably, this was a serious condition. Item 1 is properly cited as serious.

Corrpro places a significant amount of emphasis on statements made by [redacted] that the accident was his fault due to his carelessness. Therefore, Corro contends it should not be held responsible. Whether the employee was careless or not does not discharge Corrpro of its responsibility to ensure that its employees are protected from hazards on the jobsite.

#### **Employee Misconduct (Isolated Incident)**

Corrpro contends that the violation was the result of an isolated incident of employee misconduct. An employer may defend on the basis that the employee's misconduct was unpreventable. In order to establish the defense, the employer must show that the action of its employee represented a departure from a work rule that the employer has uniformly and effectively communicated and enforced. *Frank Swidzinski Co.*, 9 BNA OSHC 1230, (No. 76-4627, 1981); *Merritt Electric Co.*, 9 BNA OSHC 2088 (No. 77-3772, 1981); *Wander Iron Work*, 8 BNA OSHC 1354 (No. 76-3105, 1980), *Mosser Construction Co.* 15 BNA OSHC

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<sup>2</sup> Corrpro’s arguments as to instructions it provided to prevent the fall will be discussed further in the section of this decision relating to Corrpro’s employee misconduct defense.

1408, 1414 (No. 89-1027, 1991). An employer may rebut the Secretary's prima facie showing with evidence that it took reasonable measures to prevent the occurrence of the violation. In particular, the employer must show that it had a work rule that satisfied the requirements of the standard, which it adequately communicated and enforced. *Aquatek Systems, Inc.*, 21 BNA OSHC 1400, 1401-1402 (No. 03-1351, 2006).

To establish the unpreventable employee misconduct defense, an employer must show that it established a work rule to prevent the violation; adequately communicated the rule to its employees, including supervisors; took reasonable steps to discover violations of the rule; and effectively enforced the rule.

*Schuler-Haas Electric Corp.*, 21 BNA OSHC 1489, 1494 (No. 03-0322, 2006). In addition, the employer has the burden of showing "that the violative conduct of the employee was idiosyncratic and unforeseeable." *L. E. Myers Co.*, 16 BNA OSHC 1037, 1040 (No. 90-945, 1993). As set forth below, Corrpro has not put forth sufficient evidence to show it had a work rule which was adequately communicated and therefore has not made the requisite showing to rebut the Secretary's prima facie case.

#### *Work Rule*

The Secretary contends Corrpro did not have an applicable work rule (Secretary's Brief, pp. 16 – 17). The evidence adduced shows Corrpro has a safety program, a safety manual and provides safety training to its employees (Tr. 84, 104, 105). Evidence was presented showing fall protection is one of the areas upon which employees are trained. No copies of the safety program or safety manual were offered into evidence. However, Strickfaden testified that an employee had been recently terminated for violating fall protection rules (Tr. 106). Given this testimony and the fall protection training it provides, the undersigned concludes Corrpro has a safety rule regarding fall protection. However, merely having a work rule is not enough. A work rule is defined as "an employer directive that requires or proscribes certain conduct and that is communicated to employees in such a manner that its mandatory nature is made explicit and its scope clearly understood." *J.K. Butler Builders, Inc.*, 5 BNA OSHC 175, 1076 (No. 12354, 1977). An employer's work rule must be clear enough to eliminate the employees' exposure to the hazard covered by the standard and must be designed to prevent the cited violation. *Beta Construction Co.*, 16 BNA OSHC 1434, 1444 (No. 91-102, 1993). Corrpro seems to argue that the purported direction from Chapman to tie off if near the hole is a work rule. The undersigned finds that this falls short of what is required for a work rule.

### *Adequately Communicated*

The employer must show that it has communicated the specific rule or rules that are in issue. *Hamilton Fixtures*, 16 BNA OSHC 1073, 1090 (No. 88-1722, 1994); *New York State Electric & Gas Corp.*, 17 BNA OSHC 1129, 1134 (No. 91-2897, 1995). See *Propellex Corp.*, 18 BNA OSHC 1677, 1682 (No. 96-0265, 1999) (although the record shows that the employees received training on general safety matters and procedures, the evidence is insufficient to establish that the specific rule was communicated to employees). The communication element of the misconduct defense is met when the employees are well-trained, experienced and know the work rules. *Texland Drilling Corp.*, 9 BNA OSHC 102, 1026 (No. 76-5037, 1980).

Corrpro seems to suggest that it communicates its work rules to employees via mandatory training including new employee safety orientation and fall protection training (Tr. 102 - 104). Although [redacted] took both training courses prior to going into the field, the undersigned finds he was not well trained and was not experienced. The training [redacted] took prior to going into the field for the first time, was online training. Online training can certainly be effective; however, when an employee is presented with an actual situation in the field for the first time it may not be sufficient, as evidenced by what happened here. Although Chapman testified he told [redacted] to tie off when going near the hole, he was not told where he should tie off to. Nor is there evidence that he received this information in his online training.

Corrpro presented evidence that employees could have tied off with the self-retracting lifeline, or on a position device, angle irons, or other steel rods above where they working (Tr. 122, 139 - 140). However, no evidence was adduced at the hearing that this information had been conveyed to [redacted] or any other employee. Corrpro basically left it to its employees to determine where they should tie off on the jobsite. This alone reflects insufficient communication. The undersigned finds that Corrpro has not adequately communicated its work rules to its employees.<sup>3</sup>

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<sup>3</sup> Because of this finding, is not necessary to address the remaining two elements; however the undersigned finds that Corrpro took steps to discover violations as evidenced by Chapman's inspections of the jobsite (Tr. 130 - 134). Corrpro also disciplined employees, including [redacted], for fall protection infractions (Tr. 30, 32, 132; Exh. C-2).

### *Foreseeability and Preventability*

The defense of employee misconduct requires “that the violative conduct of the employee was idiosyncratic and unforeseeable.” *L. E. Myers Co., supra*. The undersigned finds that any purported misconduct by [redacted] was foreseeable. [redacted] had never been out in the field, was not a construction worker, and had no experience with the hazards out in the field. His fall protection training was online and limited at most to one hour (Tr. 18 - 19). Although he was provided appropriate personal fall protection equipment, he was never instructed where to tie off when in proximity to the hole. The expectation that he would know where to tie off is unreasonable. [redacted] was a novice on the jobsite and the guidance he received was inadequate. Corpro has failed to rebut the Secretary’s prima facie case. Item 2 is affirmed.

### **Penalty Determination**

The Commission is the final arbiter of penalties in all contested cases. “In assessing penalties, section 17(j) of the OSH Act, 29 U. S. C. § 666(j), requires the Commission to give due consideration to the gravity of the violation and the employer’s size, history of violation, and good faith.” *Burkes Mechanical Inc.*, 21 BNA OSHC 2136, 2142 (No. 04-0475, 2007). “Gravity is a principal factor in a penalty determination and is based on the number of employees exposed, duration of exposure, likelihood of injury, and precautions taken against injury.” *Siemens Energy and Automation, Inc.*, 20 BNA OSHC 2196, 2201 (No. 00-1052, 2005).

Corpro employed approximately 500 workers at the time of the inspection and because of its size, no penalty reduction was given (Tr. 76; Exh. C-6). Barbour also did not apply any penalty reductions for history or good faith (Tr. 76 - 78). However, he testified Corpro cooperated during the investigation (Tr. 78). The undersigned finds Corpro demonstrated good faith in this proceeding.

The gravity of the violation of § 1926.501(b)(4) is high. [redacted] fell approximately 12 feet and was not protected with a properly secured fall protection system. As a result of the fall, [redacted] suffered a fractured spine requiring surgical fusion. In consideration of the statutory factors and the facts in this case, the undersigned determines a penalty of \$3,500.00 is appropriate.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The foregoing decision constitutes the findings of fact and conclusions of law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure.

### **ORDER**

Based upon the foregoing decision, it is ORDERED that:

(1) Item 1 of the Citation, alleging a serious violation of § 1926.20(b)(2), is vacated, and no penalty is assessed; and

(2) Item 2 of the Citation, alleging a serious violation of § 1926.501(b)(4), as amended, is affirmed, and a penalty of \$3,500.00 is assessed.

/s/ Sharon D. Calhoun

**SHARON D. CALHOUN**

Judge

Date: April 30, 2012  
Atlanta, Georgia