



**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

1120 20<sup>th</sup> Street, NW, Ninth Floor  
Washington, DC 20036-3457

Telephone: (202) 606-5405

Fax: (202) 606-5409

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SECRETARY OF LABOR, :  
:   
Complainant, :   
:   
v. :   
:   
McWANE, INC., d/b/a ATLANTIC :   
STATES CAST IRON PIPE COMPANY, :   
:   
Respondent. : 

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OSHRC DOCKET NO. 05-0482

Appearances: Esther D. Curtwright, Esquire  
U.S. Department of Labor  
Office of the Solicitor  
New York, New York  
For the Complainant.

William K. Principe, Esquire  
Constangy, Brooks & Smith, LLC  
Atlanta, Georgia  
For the Respondent.

Before: COVETTE ROONEY  
Administrative Law Judge

***DECISION AND ORDER***

This proceeding is before the Occupational Safety and Health Review Commission (“the Commission”) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (“the Act”). Respondent, Atlantic States Cast Iron Pipe Company, operated a pipe manufacturing facility in Phillipsburg, New Jersey, at all times relevant to this case. Respondent admits that it is an employer engaged in a business affecting commerce within the meaning of section 3(5) of the Act.

## **Background**

From October 5, 2004 to January 13, 2005, the Occupational Safety and Health Administration (“OSHA”) conducted an inspection of Respondent’s work site. As a result of that inspection, on February 3, 2005, OSHA issued a single-item serious citation to Respondent alleging that on or about October 5, 2004, “employees were observed jumping in and climbing out of the lime pit,” and that Respondent violated 29 C.F.R. § 1910.24(b) by its failure to provide fixed industrial stairs into the “lime pit.” The citation proposed a penalty of \$2,500.00. By filing a timely notice of contest, Respondent brought this proceeding before the Commission. A hearing was held before the undersigned on September 23, 2005.

## **Stipulated Statement**

At the commencement of the hearing in this case, the parties submitted a stipulated statement based on stipulated facts. The stipulated statement entered into by the parties reads as follows:

Atlantic States operates a pipe manufacturing facility in Phillipsburg, New Jersey. The manufacturing process at the facility includes the pouring and transfer of molten metal to and from ladles. To capture molten metal spilled during this transfer process, there is an excavated dirt pit inside the facility called the “bull ladle pit” by the Company and the “lime pit” by OSHA. The parties have stipulated that (1) the “lime pit” referenced in Citation 1, Item 1, is a dirt excavation measuring approximately 10 feet in diameter and 7 feet deep; (2) there is nothing built inside of or on the bottom of the dirt pit; (3) the bottom of the pit consists of soil, lime, and spilled debris from the molten metal transfer; (4) three sides of the dirt pit are vertical, with the fourth side consisting of a dirt slope containing loose granular lime and pieces of molten metal debris; (5) typically during the third shift each workday, employees enter and exit the lime pit to remove spilled debris, (6) there were no ladders or fixed stairs being used for access to the lime pit at the time of the OSHA inspection, and (7) the lime pit is located inside respondent’s pipe manufacturing facility.

The parties have further stipulated that the condition at this worksite was abated by the use of a portable ladder in lieu of fixed industrial stairs.

On August 10, 2005, Respondent filed a Motion for Summary Judgment, arguing that section 1910.24(b) was not applicable to the lime pit because the lime pit is an unimproved dirt excavation, not a “structure level” as set out in the standard. The Secretary opposed Respondent’s Motion for Summary Judgment and filed a Cross-Motion for Summary Judgment on August 24, 2005, to which Respondent filed a reply brief on August 25, 2005.

On August 29, 2005, Judge Rooney issued an order denying Respondent's motion and granting Complainant's cross-motion. In the order, it was determined that section 1910.24(b) was applicable to the lime pit at Respondent's facility.

Based upon Judge Rooney's decision that section 1910.24(b) is applicable to Respondent's lime pit, Respondent does not dispute the characterization of the cited condition as serious; it also does not dispute either that employees of Respondent were exposed to the cited condition at the time of the inspection or that Respondent knew or could have known of the exposure. Consequently, the parties agree that the only issue remaining to be resolved is the amount of the penalty to be assessed. The parties stipulate that a penalty of \$1,500.00 is appropriate.

To avoid the expense of an evidentiary hearing, in that the underlying facts are undisputed and the Administrative Law Judge has already determined that the cited standard applies, the parties have agreed to the admission of the foregoing stipulated statement as part of the evidence of record. The parties further agree that Respondent's Motion for Summary Judgment with Supporting Memorandum of Law, Respondent's Reply Brief and supporting exhibits, and Complainant's Opposition and Cross-Motion for Summary Judgment will be admitted into evidence as part of the record that the Judge will consider in entering a final order in this case.

Tr. 3-6.

#### **Discussion**

I have examined the record before me, which consists of the citation, the notice of contest, the complainant and answer, the parties' stipulated statement, Respondent's Motion for Summary Judgment with Supporting Memorandum of Law, Respondent's Reply Brief and supporting exhibits, and Complainant's Opposition and Cross-Motion for Summary Judgment. I have also considered "Exhibit A," attached hereto and incorporated by reference, which is a copy of my order dated August 29, 2005, wherein I found that section 1910.24(b) was applicable to the lime pit at Respondent's facility. Based on the record, I find that the Secretary has met her burden of proof and has established a violation of 29 C.F.R. § 1910.24(b). I further find that the stipulated penalty in the amount of \$1,500.00 is appropriate.

#### **Findings of Fact and Conclusions of Law**

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

**ORDER**

Based upon the foregoing, it is hereby ORDERED that:

1. Citation 1, Item 1, alleging a serious violation of 29 C.F.R. § 1910.24(b) is AFFIRMED, and a penalty in the amount of \$1,500.00 is assessed.

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Covette Rooney  
Judge, OSHRC

Dated:

Washington, D.C.



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

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**McWANE, INC., d/b/a ATLANTIC  
STATES CAST IRON PIPE COMPANY,**

**Respondent.**

**OSHRC DOCKET NO. 05-0482**

**ORDER**

Under consideration is Respondent's Motion for Summary Judgment and Complainant's Cross-Motion for Summary Judgment in the above-captioned matter. The record reveals that on February 3, 2005, OSHA issued a single-item citation to Respondent, alleging a violation of 29 C.F.R. § 1910.24(b) for failure to provide fixed industrial stairs into a "lime pit."<sup>1</sup> Respondent operates a pipe manufacturing facility in Phillipsburg, New Jersey. The manufacturing process at that facility necessarily includes the pouring and transfer of molten metal to and from ladles. To capture molten metal spilled during this process, there is an excavated dirt pit called the "bull ladle pit" by

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<sup>1</sup> The cited standard provides, in pertinent part, that: "[f]ixed stairs shall be provided for access from one structure level to another where operations necessitate regular travel between levels...."

**EXHIBIT A**

Respondent and the “lime pit” by OSHA. Clean-up employees enter the pit each night to clean up spilled molten metal debris. The alleged violation was corrected during the inspection by securing in place in the pit a portable ladder for employees to use to enter and exit the pit.

It is Respondent’s position that the cited standard is not applicable because the pit, *i.e.*, a dirt excavation, does not constitute a “structural level” within the meaning of the standard. The Complainant asserts that fixed ladders must be provided whenever employees must travel from one level of a “structure” to another. She also asserts that, pursuant to the application provision at 29 C.F.R. § 1910.24(a), “pits” are among the types of “structures” contemplated by the standard; in her view, earthen pits are not excluded, and the cited standard thus applies to the activity in question. Respondent, in turn, argues that the term “structure” in section 1910.24(b) means something that is constructed; a “pit” covered by the standard, therefore, is something that has been constructed rather than an unimproved dirt excavation such as the one at issue.

In support of their respective positions, both parties have moved for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure. The parties agree that there are no genuine issues of fact and have stipulated that (1) the lime pit referenced in Citation 1, Item 1, is a dirt excavation measuring approximately 10 feet in diameter and 7 feet in depth; (2) there is nothing built inside of or on the bottom of the dirt pit; (3) the bottom of the pit consists of soil, lime, and spilled debris from the molten metal transfer; and (4) three sides of the dirt pit are vertical, with the fourth side consisting of a dirt slope containing loose granular lime and pieces of molten metal debris.

I find that the cited standard applies, based upon the application provision of the fixed industrial stairs standard. *See Application of Requirements*, 29 C.F.R. § 1910.24(a). This section expressly states that “pits” are subject to the requirements of the fixed industrial stairs standard. The term “pits” is not limited or restricted in any way, and I therefore conclude that the word encompasses a broad range of “pits.” The ordinary, commonsense meaning of the term “pit” is a “hole, shaft, or cavity in the ground” or an area “sunken or depressed below the adjacent floor area....”<sup>2</sup> Accordingly, I find that “pits” of any type are among the kinds of “structures” contemplated

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<sup>2</sup> **pit** 1 a (1): a hole, shaft, or cavity in the ground (2): MINE (3): a scooped-out place used for burning something (as charcoal) b: an area often sunken or depressed below the adjacent floor area...*See Merriam-Webster Online Dictionary*, <http://www.m-w.com>.

by the standard.<sup>3</sup> The specific inclusion of the term “pits” and the ordinary meaning of the word makes the standard applicable to the instant unimproved dirt excavation.

In view of the forgoing, Respondent’s Motion for Summary Judgment is DENIED, and the Secretary’s Cross-Motion for Summary Judgment is GRANTED.

SO ORDERED.

/s/

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COVETTE ROONEY  
Judge, OSHRC

Dated: August 29, 2005  
Washington, D.C.

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<sup>3</sup> **Structure** (1) : the action of building : CONSTRUCTION (2) a : something (as a building) that is constructed b : something arranged in a definite pattern of organization (3): manner of construction : MAKEUP (4) a : the arrangement of particles or parts in a substance or body ... (5) : the aggregate of elements of an entity in their relationships to each other. *See* Merriam-Webster Online Dictionary, <http://www.m-w.com>.