

United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
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SECRETARY OF LABOR,

Complainant,

v.

PATTERSON DRILLING CO. RIG #4,

Respondent.

OSHRC DOCKET NO. 98-0672

**APPEARANCES:**

For the Complainant:

David C. Rivela, Esq., U.S. Department of Labor, Office of the Solicitor, Dallas, Texas

For the Respondent:

Lealand W. Green, Esq., Snyder, Texas

Before: Administrative Law Judge: James H. Barkley

**DECISION AND ORDER**

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*; hereafter called the "Act").

Respondent, Patterson Drilling Company (Patterson), at all times relevant to this action maintained a place of business near F.M. 665 and 666, Driscoll, Texas, where it was engaged in drilling. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On March 11-12, 1998 the Occupational Safety and Health Administration (OSHA) conducted an inspection of Patterson's Driscoll work site. As a result of that inspection, Patterson was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest Patterson brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On November 3, 1998, a hearing was held in Corpus Christi, Texas. The parties have submitted briefs on the issues and this matter is ready for disposition.

**Alleged Violation of §1910.23(c)(1)**

Citation 1, item 5 alleges:

29 CFR 1910.23(c)(1): Open sided floor(s) or platform(s) 4 feet or more above the adjacent floor or ground level were not guarded by standard railings (or the equivalent as specified in 29 CFR 1910.23(e)(3)(i) through (v)), on all open sides:

At the rig site, the V-Door on the rig floor had a 5-foot 9-inch loose chain used as a guardrail with no midrail, exposing the employees to a 20-foot fall.

The cited standard provides:

*Protection of open-sided floors, platforms, and runways.* (1) Every opensided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides except where there is entrance to a ramp, stairway, or fixed ladder. . . .

Paragraph (e)(3) provides specifications for wood, pipe and structural steel railings, and goes on to state at (e)(3)(v):

Other types, sizes, and arrangements of railing construction are acceptable provided they meet the following conditions (a) A smooth-surfaced top rail at a height above floor, platform, runway or ramp level of 42 inches nominal; (b) Strength to withstand at least the minimum requirement of 200 pounds top rail pressure; (c) Protection between top rail and floor, platform, runway, ramp, or stair treads, equivalent at least to that afforded by a standard intermediate rail;

**Facts**

OSHA Compliance Officer (CO) Guadelupe Ozuna testified that there is a V-door consisting of a break in the standard guard rail opening onto a chute, where the drilling pipe is taken up on to the rig floor (Tr. 70-73, Exh. C-13, C-14). CO Ozuna testified that the V-door was not adequately guarded, in that there was only a single chain latched across the top of the opening (Tr. 72). The chain was not taut, drooping from 42" to within 36" of the rig floor, and there was no mid-rail (Tr. 74-75). Ozuna testified that six Patterson employees were working stacking pipe on the rig floor, which was muddy and kind of slippery, and that an employee leaning against the chain could go over or under it (Tr. 71, 73, 76, 78). Ozuna stated that an employee slipping through the V-door would fall 20 feet down the chute (Tr. 77). No Patterson employees had ever fallen through the V-door (Tr. 78).

**Discussion**

It is clear that the single chain guarding the V-door did not meet the specifications set forth at §1910.23(e)(3)(iv). In its brief, Patterson suggests that compliance with the cited standard would

prevent the accomplishment of its work. In support, however, Patterson states only that a toeboard would be crushed by the weight of pipe being dragged across it. Citation 1, item 5 contains no mention of a toeboard. Respondent has raised no cognizable defense to the cited violation, and item 5 will be affirmed.

Penalty

A penalty of \$1,500.00 was proposed for this item. Ozuna believed that the likelihood of an accident occurring was high, despite the employer's provision of alternative, though not equivalent, protection (Tr. 78). Patterson is a large company, with over two thousand employees (Tr. 79). CO Ozuna testified that Patterson had no prior citations, and was afforded credit for good history (Tr. 79). Ozuna also reduced the gravity based penalty by 15% based on Patterson's good faith (Tr. 79).

Taking into account the relevant factors, I find that the gravity of the violation is overstated. Patterson departed from the standard to the extent that the top rail sagged six inches, and there was no midrail. No employee had ever sustained injury as a result of the nonconforming guard rail. A penalty of \$500.00 is appropriate.

**Alleged Violation of §1910.151(c)**

Citation 1, item 7, as amended, alleges:

29 CFR 1910.151(c): Where employees were exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body were not provided within the work area for immediate emergency use:

At the rig site, the employer did not have an eyewash station for quick rinse when working with barite and caustic, exposing the employees to a serious eye injury, nor did the employer have a suitable facility for quick drenching of the face and body when exposure to caustic soda may occur.

The cited standard provides:

Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

Facts

During his inspection, CO Ozuna noted 50 to 100 pound bags of caustic stored on the Patterson work site (Tr. 82). Patterson uses caustic soda, or sodium hydroxide, to mix with its drilling mud (Tr. 82, 94). Patterson stipulates that exposure to sodium hydroxide constitutes a severe health hazard (Tr. 134-35). CO Ozuna testified that where it contacts the eyes or skin, caustic causes severe burns (Tr. 83). Robert Hudgens, an OSHA industrial hygienist, testified that caustic soda, or sodium hydroxide is

an alkaline, which causes severe eye and skin burns when it touches the body (Tr. 135). In the eye, damage begins within seconds and can cause the lid to fuse to the eye (Tr. 136; Exh. C-4 through C-6).

Ozuna did not observe Patterson employees mixing the caustic; however, Mark Cullifer, Patterson's vice president, stipulated at the hearing that one employee was exposed to the cited hazard every three to six hours (Tr. 143-144). Patterson uses the caustic to adjust the pH level of the water in the drilling pipes to prevent corrosion (Tr. 142). Approximately every three to six hours, an employee cuts open a bag of caustic and dumps it into a 40 gallon tank of water before mixing it with the drilling mud (Tr. 84, 97, 104, 143-44). CO Ozuna testified that the probability of exposure was high, because of the likelihood of splash back when the caustic is mixed, and the exposed employee's proximity to the undiluted caustic (Tr. 100).

Cullifer testified that employees are required to wear safety goggles, as well as an apron and banded protective gloves when handling the caustic (Tr. 103, 145). Ozuna admitted that although personal protective equipment is not 100% effective in preventing exposure, it would be difficult for an employee to get caustic soda in his eyes while wearing the protective goggles (Tr. 102, 130). Ozuna noted that the goggles did not cover all of the employee's face; splash back from the caustic could strike the employees face and/or neck (Tr. 129-30). Hudgens also testified that goggles don't always fit snugly, and can leak (Tr. 165). Cullifer admitted that Patterson had one injury attributable to the caustic soda, when the caustic went down an employee's glove (Tr. 145, 147, 153).

Ozuna stated that Patterson had a single eyewash bottle, 3/4 full, 30 to 40 feet from the mud tank (Tr. 85). Cullifer testified that Patterson normally has two 32-ounce bottles available (Tr. 148). Ozuna testified that either one or two eyewash bottles were unsuitable, because they could not provide a stream of water for at least 15 minutes, as is required by the Material Safety Data Sheet provided for the caustic (Tr. 85, 90-91; Exh. R-6). Hudgens testified that the eyewash bottles were inadequate because an affected employee could not raise the lids of his eyes while using the bottles to flush his eyes (Tr. 160). Hudgens testified that industry standards recognized by the American Petroleum Institute require that an eyewash be capable of flushing both eyes simultaneously, and provide approximately a half gallon of water per minute to the affected area (Tr. 161-64; Exh. C-8). There were no quick drenching facilities in the work area (Tr. 126-27).

Ozuna testified that it was possible to bring in enough potable water to provide a self contained eye wash facility at the rig (Tr. 95, 126).

### Discussion

It is admitted that Patterson employees were exposed to the cited hazard. Patterson argues that the eyewash bottle provided was suitable, however, given that the probability of injury was remote due to the use of personal protective equipment.

Patterson relies on a March 8, 1982 OSHA directive providing guidelines regarding certain eye wash facilities (Exh. R-2). The guidelines require safety or health compliance officers to evaluate the potential for employee exposure to electrolytes in electric storage battery charging and maintenance areas, taking into account employee functions, use of personal protective equipment, and other precautions intended to prevent exposure. The guidelines specifically state that in areas where the extent of possible exposure to electrolytes is small, “an appropriate portable eye wash device containing not less than one gallon of potable water which is readily available and mounted for use is considered to provide minimum employee protection when proper personal protective equipment is used” (Exh. R-2, ¶2.b.).

In this case the CO testified that, even with Patterson’s precautions in place, employees were likely to be exposed to the cited hazard because of the nature of sodium hydroxide and the way in which the caustic is handled. No facilities can be deemed “suitable,” therefore, which do not provide a means for quick drenching of the face and neck. No such quick drenching facilities were provided; only a single 32 oz. bottle was provided for flushing the eyes. The single 32 oz bottle, moreover, is not an adequate eyewash under the 1982 guidelines, which specify delivery of at least a gallon of potable water from an “appropriate” eye wash. Both of the Secretary’s witnesses testified convincingly that an appropriate eyewash must be capable of delivering water to both eyes simultaneously.

I find that Patterson failed to provide suitable quick drenching and/or eyewash facilities in the work areas; and that the Secretary has proven the cited violation.

### Penalty

A penalty of \$2,625.00 is proposed for this item. CO Ozuna testified that both the severity of any injury, and the probability of an employee sustaining such an injury were high, because of the exposed employee’s proximity to the undiluted caustic (Tr. 100).

Ozuna, however, did not see the caustic used, and failed to take into account Patterson’s use of protective equipment, and so overstated the gravity of the violation. I find that the proposed penalty is excessive, a penalty of \$1,200.00 is appropriate and will be assessed.

**ORDER**

1. Citation 1, item 5, alleging violation of §1910.23(c)(1) is AFFIRMED, and a penalty of \$500.00 is ASSESSED.
  
2. Citation 1, item 7, alleging violation of §1910.151(c) is AFFIRMED, and a penalty of \$1,200.00 is ASSESSED.

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James H. Barkley  
Judge, OSHRC

Dated: