



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION  
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SECRETARY OF LABOR  
Complainant,  
v.  
PATTERSON DRILLING CO., INC.  
Respondent.

OSHRC DOCKET  
NO. 93-1371

NOTICE OF DOCKETING  
OF ADMINISTRATIVE LAW JUDGE'S DECISION

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on June 9, 1994. The decision of the Judge will become a final order of the Commission on July 11, 1994 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before June 29, 1994 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary  
Occupational Safety and Health  
Review Commission  
1120 20th St. N.W., Suite 980  
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Petitioning parties shall also mail a copy to:

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Room S4004  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.  
Executive Secretary

Date: June 9, 1994

DOCKET NO. 93-1371

NOTICE IS GIVEN TO THE FOLLOWING:

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Stanley M. Schwartz  
Administrative Law Judge  
Occupational Safety and Health  
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SECRETARY OF LABOR,

Complainant,

v.

PATTERSON DRILLING COMPANY,  
INC.,

Respondent.

OSHRC DOCKET NO. 93-1371

APPEARANCES:

Ernest A. Burford, Esquire  
Dallas, Texas  
For the Complainant.

Lealand W. Greene  
Snyder, Texas  
For the Respondent, *pro se*.

Before: Administrative Law Judge Stanley M. Schwartz

DECISION AND ORDER

This is a proceeding brought before the Occupational Safety and Health Review Commission ("the Commission") pursuant to section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* ("the Act").

The Occupational Safety and Health Administration ("OSHA") inspected a drilling site of Respondent, Patterson Drilling Company ("Patterson"), on February 9 and 10, 1993, after an accident on February 7, 1993, which caused the death of an employee; the site, called the "Texas Two Step," was located approximately twenty miles south of Gonzales, Texas. As a result of the inspection, Patterson was issued a serious citation with eight items and an "other" citation with two items. The parties settled the "other" citation and all but two items of the serious citation, and the executed settlement agreement is incorporated

herein by reference.<sup>1</sup> A hearing regarding the unresolved items, items 6 and 7 of citation 1, was held March 8, 1994; these items allege that Patterson did not have a written plan or train employees designated as first aid providers, in violation of 29 C.F.R. 1910.1030, the standard addressing occupational exposure to bloodborne pathogens.

### Background

Patterson was involved in horizontal drilling at the site, and had a rig and about five employees on the job at the time of the accident; the accident occurred when some equipment fell on a worker, causing a fatal crushing injury. The employee performing driller duties had had first aid training pursuant to Patterson's practice of providing Red Cross training to its drillers and having a driller with such training at remote worksites, as required by 29 C.F.R. 1910.151(b); however, when the accident happened it was not the driller but workers who had not had first aid training who went to the assistance of the injured employee.<sup>2</sup> A helicopter arrived about thirteen minutes after Patterson called for emergency medical assistance, and employees helped to get the injured worker aboard; he was taken to a hospital in San Antonio, where he arrived approximately forty minutes after the accident. (Tr. 11-19; 24-31; 37; 41; 44-45; 58-61; 66-69).

### The Positions of the Parties

Patterson contends that it was not required to comply with 1910.1030 because it was not reasonably anticipated that its employees would come into contact with bloodborne pathogens within the meaning of the standard. (Tr. 6-7). In this regard, Mark Cullifer, Patterson's safety director, testified he interpreted the standard to apply primarily to emergency response and health care workers, and that oil field workers would not reasonably anticipate responding to medical emergencies as that is not their normal work; he further testified that OSHA Publication 3130, which addresses exposure precautions for

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<sup>1</sup>The settled items are reflected in my Conclusions of Law and Order, *infra*.

<sup>2</sup>The record indicates there may actually have been two drillers with first aid training at the site at the time of the accident. (Tr. 44-45; 58-59; 69).

emergency responders, nowhere mentions oil field or similar workers among those required to comply with the standard. (Tr. 10-11; 16-19; 67-68).

The Secretary contends Patterson was required to comply with 1910.1030 because it had employees trained in first aid. (Tr. 5-6; 21-22). James Butler, the OSHA compliance officer (“CO”) who inspected the site, testified all employers having employees with a potential for exposure to blood or body fluids must comply with 1910.1030. He said it was reasonably probable Patterson’s first aid providers would come into contact with blood or body fluids due to J-1, the company’s 1993 injury log, and the nature of oil field work; he also said that only first aid providers would be required to use protective equipment such as gloves, masks and aprons, and that other workers responding to medical emergencies would not due to the “Good Samaritan” exception. Butler noted this was the first drilling site he had inspected since the standard was issued, and he knew of no instructions on the applicability of 1910.1030 to drilling sites; he was unfamiliar with R-1, an interpretation of the applicability of 1910.1030 to first aid providers from OSHA’s Kansas City regional office. (Tr. 23-56).

#### Discussion

It is clear from the foregoing that the parties have differing interpretations of the standard, and that the issue in this case is whether 1910.1030 applies to the circumstances at the subject site. Neither party submitted a post-hearing brief. The question, as noted above, concerns the proper interpretation of the subject standard. The undersigned will accordingly look to the language of the standard, and, if that is not dispositive, to the legislative history; if the legislative history is likewise not dispositive, then deference will be given to the Secretary’s interpretation of the standard, as long as it is reasonable. *See Kiewit Western Co.*, 16 BNA OSHC 1689, 1693, 1994 CCH OSHD ¶ \_\_\_\_ (No. 91-2578, 1994), and cases cited therein.

1910.1030(a) provides that “[t]his section applies to all occupational exposure to blood or other potentially infectious materials as defined by paragraph (b) of this section.” “Occupational Exposure,” in turn, is defined at 1910.1030(b) as “reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious

materials that may result from the performance of an employee's duties." These provisions, standing alone, do not demonstrate the applicability of 1910.1030 to the subject site, and a review of the rest of the standard indicates its primary coverage is directed towards health care and other occupations where employees are exposed to blood and body fluids as a regular part of their duties.

The preamble to the standard appears at 56 Fed. Reg. 64,004 *et seq.* (December 6, 1991). The industries identified as those in which employees contact or handle blood or other body fluids are health care and related industries, funeral homes, law enforcement, fire and rescue, correctional institutions, schools for the mentally retarded, lifesaving and regulated waste handlers. *Id.* at 64,038-53. The preamble makes clear that these industries are not exclusive, and that coverage extends to any employee with a reasonable likelihood of exposure to bloodborne pathogens. *Id.* at 64,089. However, the only reference to first aid providers is at 56 Fed. Reg. 64,101-02, in the section of the preamble discussing the "Good Samaritan" exception. That section states as follows:

In addition to being reasonably anticipated, the contact must result from the performance of an employee's duties. An example of a contact with blood and other potentially infectious materials that would not be considered to be an "occupational exposure" would be a "Good Samaritan" act. For example, one employee may assist another employee who has a nosebleed or who is bleeding as the result of a fall. This would not be considered an occupational exposure unless the employee who provides assistance is a member of a first aid team or is otherwise expected to render medical assistance as one of his or her duties.

The preamble then goes on to note that the definition for "occupational exposure" in the proposed standard included a second sentence which was omitted from the final standard because commenters perceived it as confusing, contradictory or redundant; that sentence reads as follows:

The definition excludes incidental exposures that may take place on the job and that are neither reasonably nor routinely expected and that the worker is not required to incur in the normal course of employment.

*Id.* at 64,102. R-1, noted above, was apparently derived from the foregoing; it states as follows:

Due to the number of informational calls and letters that have been received by the Regional Office on the above subject, the following interpretation is being provided.

It is not OSHA's intent to in any way discourage employers from providing their employees with first aid training paid for by the company. Employees receiving this training, however, may not be covered by the standard. First, the employee must reasonably be expected to come into occupational contact with blood or other potentially infectious materials (OPIM), and secondly, the employee must be a member of a first aid team or is otherwise expected and/or is designated by his/her employer to render medical assistance as one of his or her duties. Unless the employee providing this assistance meets both of these conditions, the individual would not have "occupational exposure" and thus would not be covered by the standard.

Any humanitarian gesture by this individual, such as assisting another employee who has a nosebleed or who is bleeding as the result of a fall, would be considered to be a "Good Samaritan" act and would not be considered to be "occupational exposure" despite having had first aid training.

After considering the foregoing, I find the last paragraph of R-1 best serves the purposes of the Act; accordingly, this is the interpretation I adopt. Stated another way, circumstances such as those at the subject site do not constitute occupational exposure as contemplated by the standard. Rather, the act of responding to an emergency, under the facts of this case, is a "Good Samaritan" act, and the fact that the individual has had first aid training does not require compliance with 1910.1030; in this regard, I note the workers who responded to the accident had not had first aid training, and that the CO himself acknowledged that such individuals are not required to comply with the standard. I also note that while employee and equipment falls are among the types of accidents which can occur on drilling sites, the Secretary's interpretation of the standard, without proper notice specifically including situations similar to the one in this case, does not require deference. The Secretary's interpretation is accordingly rejected, and items 6 and 7 of citation number 1 are vacated.

#### Conclusions of Law

1. Respondent, Patterson Drilling Company, Inc., is engaged in a business affecting commerce and has employees within the meaning of section 3(5) of the Act. The Commission has jurisdiction of the parties and of the subject matter of the proceeding.

2. Respondent was not in violation of section 5(a)(1) of the Act, and was not in violation of 29 C.F.R. §§ 1910.184(e)(1), 1910.1030(c)(1)(i) and 1910.1030(g)(2)(i).

3. Respondent was in serious violation of 29 C.F.R. §§ 1910.27(b)(1)(iv), 1910.27(f) and 1910.1200(h).

4. Respondent was in nonserious violation of 29 C.F.R. §§ 1904.5(b), 1910.23(a)(10) and 1910.141(b)(1)(vi).

Order

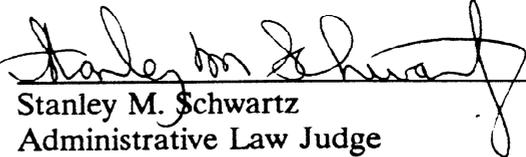
On the basis of the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Items 1, 5, 6 and 7 of serious citation 1 are VACATED.

2. Items 3, 4 and 8 of serious citation 1 are AFFIRMED. A single penalty of \$500.00 is assessed for items 3 and 4, and a penalty of \$400.00 is assessed for item 8.

3. Item 2 of serious citation 1 is AFFIRMED as a nonserious violation, and a penalty of \$400.00 is assessed.

4. Items 1 and 2 of "other" citation 2 are AFFIRMED; a penalty of \$400.00 is assessed for item 1, and no penalty is assessed for item 2.

  
Stanley M. Schwartz  
Administrative Law Judge

Date: JUN 2 1994