United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, Complainant, v. HALL TRUCKING, INC., Respondent.	OSHRC Docket No. 23-0764

Appearances:

Alicia W. Truman, Esq., Department of Labor, Office of Solicitor, Denver, Colorado
For Complainant

Shea Miller, Esq., Ebeltoft Sickler Lawyers, PLLC, Dickinson, North Dakota
For Respondent

Before: Judge Joshua R. Patrick – U. S. Administrative Law Judge

DECISION AND ORDER

I. Introduction

On November 2, 2022, one of Respondent's employees was fatally struck by a flatbed truck while participating in a rig move near Epping, North Dakota. The truck, which was owned by Respondent, was backing up through the worksite after unloading equipment for the construction of a drilling rig. Respondent notified Complainant of the fatality, and Complainant initiated an inspection the very next day. As a result of his inspection, Compliance Safety and Health Officer (CSHO) Brian Trondson issued a Citation and Notification of Penalty, which alleges Respondent violated section 5(a)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq*. (the Act), also known as the general duty clause.

Complainant contends Respondent failed to adequately protect its employees on foot, who work around operating vehicles and equipment. To address this hazard, Complainant proposed Respondent develop and implement an internal traffic control plan, which includes a comprehensive training program. Respondent argues its existing policies and programs are sufficient to address the hazard and that Complainant failed to establish their inadequacy. Further, Respondent contends Complainant inadequately defined the required components of an internal traffic control plan; failed to establish the effectiveness of such a plan; and failed to submit evidence that conscientious experts in the oil drilling rig industry would have prescribed an internal traffic control plan to address the struck-by hazard.

Based on what follows, the Court finds Complainant established a violation of the general duty clause.

II. Procedural History

On April 20, 2023, Complainant issued a Citation and Notification of Penalty alleging a single violation of the general duty clause and proposing a penalty of $10,938. Respondent filed a timely notice of contest on May 12, 2023, which brought this matter before the Commission. Complainant filed an *Unopposed Motion to Amend Complaint and Citation No. 1, Item 1*, which the Court ultimately granted on February 14, 2024.

The Court held a two-day trial in Bismarck, North Dakota on October 10-11, 2024. The following individuals testified: (1) CSHO Brian Trondson; (2) Patrick Goertz, truck pusher for Respondent; (3) Jeff Hall, owner of Respondent; and (4) Kenneth Shorter, Complainant's designated expert. Both parties timely submitted post-trial briefs for the Court's consideration.

III. Stipulations and Jurisdiction

Complainant and Respondent reached several stipulations prior to trial, both factual and legal, which the Court will incorporate by reference.[1] Those stipulations include: (1) the Commission has jurisdiction over this matter under section 10(c) of the Act, and (2) Respondent is an employer engaged in a business affecting interstate commerce within the meaning of section 3(5) of the Act. (Jt. Stip. Nos. 1, 6).

IV. Factual Background

A. Respondent's Business

Respondent is a heavy haul trucking company that specializes in moving oil and gas drilling rig equipment.[2] (Tr. 35-36, 215). Respondent employs approximately 100 employees, including, as is relevant to this case, swampers, truck pushers, and truck drivers. (Tr. 46-47, 244). Swampers are laborers who work on the ground alongside heavy equipment and trucks. (Tr. 47, 158). In some cases, the swamper also serves as a spotter and/or rigger for the truck drivers, who are all required to have a commercial driver's license. (Tr. 178, 268). The truck pusher is the supervisor, whose principal job is to plan and coordinate the removal and/or set-up of a drilling rig. (Tr. 40, 148). All employees work together to facilitate the rig move, which Respondent defines as "a well-planned, almost choreographed operation where everyone should know what to do, how to do it, and when to do it." (Ex. R-7 at 64).

Respondent is owned by Jeff Hall, who started the company with a single truck. (Tr. 244). According to Hall's testimony, he now takes a more hands-off approach to ownership: he does not go out on many rig moves and does not appear to have a firm grasp on the contents of the policies

[1] Where applicable, the Court shall cite those stipulations as follows: Jt. Stip. No. ___.
[2] Respondent also performs other specialized moves, such as transporting windmill parts or natural gas compressors; however, rig moves are its primary business. (Tr. 215).

and procedures that govern the work of moving drilling rigs. (Tr. 220-30, 282). Instead, much of the responsibility for coordinating rig moves, ensuring compliance with company policy and safety regulations, and on-the-job training is the province of Patrick Goertz, Respondent's truck pusher. (Tr. 148-49). According to Goertz, he was responsible for how equipment would be laid out, organizing where trucks went after they entered the site, and where the rig sections would be placed; however, he also testified he did not plan this out in advance. (Tr. 148-49). According to Goertz, this was due to the fact that the rig move environment was constantly changing. (Tr. 161, 179, 216). As such, most of the rig move process is controlled and coordinated by Goertz on what appears to be an *ad hoc* basis.

B. The Fatal Back-Over Incident

In a typical rig move, there are many moving pieces of equipment, including haul trucks, gin pole trucks, bobcats, and skid steers. (Tr. 149). There are also employees/swampers who are on foot while working around trucks and moving equipment. (Tr. 69-70). In that respect, November 2, 2022, was a typical day: Respondent was in the process of moving a drilling rig to a new location in Epping, North Dakota.[3] (Tr. 36-37, 152). The location in Epping was set up with a drilling pad in the center of the site with a ring road running around the perimeter. (Tr. 380; Ex. C-5).

On the day of the incident, Goertz started the day with a Rig Move Safety Meeting, which includes filling out a JSA (job safety analysis) for the day's work. (Tr. 152; Ex. R-1 at 1-4). According to Goertz, truck drivers do not typically attend such meetings because it would be infeasible to get all truck drivers on site simultaneously. (Tr. 197-98). This is due to the

[3] Respondent does not participate in drilling or extraction of oil and gas; instead, Respondent is hired to transport and either help build up or break down the rig. (Tr. 150).

unpredictable timing of deliveries and the difficulties of finding locations for as many as twenty trucks to park. (Tr. 197-98). The swampers, including two employees involved in the incident, AC and HC,[4] attended the safety meeting. (Ex. R-1 at 3). The basic content of these meetings appears to be fairly consistent across worksites; however, according to Goertz, the structure of the rig move must adapt to the layout of the worksite. (Tr. 199). As such, Goertz testified that certain policies, like maintaining buffer zones, cannot be strictly defined in advance. (Tr. 201-02).

AC was a fairly new swamper on November 2, 2022. (Tr. 188-89, 230). He had been hired less than two months before and had only participated in ten rig moves. (Tr. 218). Due to his status, AC was considered a Short Service Employee, or SSE. (Tr. 230-31; *see* Ex. C-19). According to Respondent's New Hire and Short Service Employee Program, AC should have been assigned a green hardhat to identify him on the worksite; however, Respondent claims it could not procure green hardhats and relied instead on green stickers. (Tr. 250-51; Ex. C-19 at 2). Further, AC was assigned a mentor, HC, who was also his older brother. (Tr. 190; Ex. C-19 ("SSE employees will be involved in the mentor program and will be assigned a mentor . . . and will not be permitted to work alone."). A review of the mentor program and corresponding policy does not reveal the parameters of the mentor-mentee relationship or the employees' respective obligations when taking part in the program. (Ex. C-19). Respondent submits that much of the training is done on the job and is not specifically defined by policy. (Tr. 185).

Tragically, AC was struck by Hall flatbed truck # 3015 while the truck was backing up. (Tr. 54; Ex. R-11). Almost the entire incident leading to the fatal collision was recorded on the dash cam of truck #4513, which was positioned behind truck #3015 before it began to back up. (Ex. R-11, C-4). At the beginning of the video, you see HC on the left of the screen, AC on the right of

[4] The names of the employees have been redacted for privacy purposes.

the screen, and truck #3015 in the middle. (Ex. R-11). HC is the designated spotter for truck #3015. (Tr. 63). Truck #3015 begins backing up and veering to the right of the screen (i.e. the passenger side of truck #3015) toward a choke point created by truck #4513, a Connex box, and another pickup truck. (Ex. R-11). Both AC and HC are walking in the same general direction as the truck, each with their back turned. (Ex. R-11). HC walks to the left side of the screen, stepping to the driver's side of truck #4513. (*Id.*). AC walks to the right side of the screen into the choke point. (*Id.*). Ten seconds into the video, truck #4513 backs up slightly to provide additional room for truck #3015 to pass through the choke point. (*Id.*). HC reappears on the left-hand side of the screen and waves to truck #3015, presumably meaning to indicate a clear path of travel. (*Id.*). However, at that moment, AC was in the path of travel and HC had his back turned to the truck for the majority of its backward travel towards the choke point. Shortly after AC disappears to the right-hand corner of the screen, the truck travels through the choke point and eventually stops. AC had been fatally struck by truck #3015 as it was backing up. (*Id.*; *see* Ex. C-4 for a diagram of the relative paths of travel).

C. Complainant's Inspection

CSHO Trondson initiated his inspection the day after the fatal incident. (Tr. 36). After arriving on site, CSHO Trondson held an opening conference with Respondent; the leaseholder, Hess Corporation; and the rig owner, Nabors Drilling. (Tr. 39-40). Although other contractors were also onsite in some capacity, CSHO Trondson only opened an inspection of Respondent because the incident only involved Hall trucks and Hall employees. (Tr. 39).

CSHO Trondson conducted a walk-around of the site, which included an aerial video of the location using a drone. (Tr. 42; Exs. C-4, C-5). He conducted interviews with members of management, as well as rank-and-file employees, and requested numerous documents, including

traffic control plans and training and disciplinary records. (Tr. 43-44). CSHO Trondson also received dashcam video footage from trucks #3015 and #4513. (Tr. 44-45; Exs. R-11, R-12). Due to the proximity in time between the incident and the inspection, the trucks involved—with the exception of the pick-up truck—were in roughly the same position they were in at the time of the incident. (Tr. 53; Ex. C-4).

At the conclusion of his inspection, CSHO Trondson recommended, and Complainant issued, a single-item Citation and Notification of Penalty, which alleges Respondent violated section 5(a)(1) of the Act for its failure to adequately protect its employees from struck-by hazards while performing rig moves. (Tr. 66-67). Complainant proposed a penalty of $10,938. As noted previously, the Court finds Complainant established a violation of the general duty clause.

V. Analysis

Complainant alleged a serious violation of the Act in Citation 1, Item 1 as follows:

> Section 5(a)(1): The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to struck-by hazards:
>
> a) On November 2, 2022, at or near, GO-RON-VIALL-156-982513H in Epping, North Dakota, an employee working on moving an oil rig, was fatally injured after being struck by a Kenworth Twin-Steer C500 Gin Pole Truck.
>
> Abatement Note:
>
> Among other methods, one feasible and acceptable method to correct the hazard would be for the employer to:
>
> > Develop and implement an internal traffic control plan applicable to most work sites that addresses and minimizes struck-by hazards for personnel on the ground by vehicles and equipment operating within the worksite. The plan should include an employee training program for supervisors, drivers, and ground crew members.

See Amended Citation and Notification of Penalty.

The general duty clause provides that "[e]ach employer . . . shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." 29 U.S.C. § 654(a)(1). To prove a violation, the Secretary must establish that: (1) a condition or activity in the workplace presented a hazard; (2) the employer or its industry recognized the hazard; (3) the hazard was causing or likely to cause death or serious physical harm; and (4) a feasible and effective means existed to eliminate or materially reduce the hazard. *Arcadian Corp.*, 20 BNA OSHC 2001, 2007 (No. 93-0628, 2004). The Secretary must also show that the employer knew or, with the exercise of reasonable diligence, could have known that the hazardous condition existed at its worksite. *Tampa Shipyards, Inc.*, 15 BNA OSHC 1533, 1537 (No. 86-0360, 1992) (consolidated).

The primary dispute in this case involves abatement: whether Respondent adequately addressed the recognized hazard through its policies and practices and, failing that, whether Complainant established a feasible means to abate that hazard. Respondent contends its policies and procedures are adequate to address the struck-by hazard in light of the dynamic nature of rig moves. Alternatively, Respondent argues Complainant's proposed abatement is not recognized or utilized by the oil and gas industry or by haul trucking companies that perform rig moves. As discussed below, the Court finds Respondent's procedures were insufficient to address the struck-by hazard and that, irrespective of whether other similarly situated trucking companies have a formal "internal traffic control plan" (ITCP), it was feasible for Respondent to implement a policy or set of policies to address the struck-by hazard.

A. Complainant Proved the Existence of a Recognized Hazard

To prove a violation of the general duty clause, Complainant must define the hazard "in a way that apprises the employer of its obligations, and identifies conditions and practices over

which the employer can reasonably be expected to exercise control." *Arcadian Corp*., 20 BNA OSHC at 2007. The hazard must be defined "in terms of the physical agents that could injure employees rather than the means of abatement." *Chevron Oil Co*., 11 BNA OSHC 1329, 1331 n.6 (No. 10799, 1983).

Complainant defined the hazard as the possibility of employees on foot being struck by mobile equipment while working in the same area. Respondent does not, indeed could not, dispute the existence of this struck-by hazard. At the worksite, there were multiple large trucks and pieces of heavy equipment moving around the site in proximity to workers on foot. According to the Tenth Circuit, "[A] safety hazard at the worksite is a condition that creates or contributes to an increased risk that an event causing death or serious bodily harm to employees will occur." *Baroid Div. of NL Indus., Inc. v. OSHRC*, 660 F.2d 439, 444 (10th Cir. 1981). There are a number of reasons why this condition "contributes to an increased risk" of an event resulting in serious or fatal injuries, including: (1) the video of the incident shows just how close workers and mobile equipment are to one another within the worksite (Ex. R-11); (2) NIOSH statistics show that conditions such as this result in numerous fatalities each year (Ex. C-13); and (3) trucks, like the ones operating at the worksite, have substantial blindspots, which impact the ability of the drivers to see workers on foot (Ex. C-14). Thus, the Court finds Complainant established the existence of the hazard.

"Establishing that a hazard was recognized requires proof that the employer had actual knowledge that the condition was hazardous or proof that the condition is generally known to be hazardous in the industry." *Kelly Springfield Tire Co. v. Donovan*, 729 F.2d 317, 321 (5th Cir. 1984). Alternatively, there are instances where the hazard is so obvious that its existence cannot reasonably be denied. *See id.* ("[W]here a hazard is 'obvious and glaring', the Commission may

determine that the hazard was recognized without reference to industry practice or safety expert testimony." (quoting *Tri-State Roofing v. OSHRC*, 685 F.2d 878, 880 (4th Cir. 1982)); *see also Wiley Organics, Inc.*, No. 91-3275, 1996 WL 139738, at *8 (OSHRC, Mar. 25, 1996) (affirming ALJ's determination that discharge of hazardous chemicals into an employee work area is "an obvious hazard for which no particular expertise is necessary to establish recognition"). Whether based on industry practice, Respondent's individual understanding, expert testimony, or the nature of the condition itself, the Court finds Complainant established the hazard was recognized.

Prior to addressing the question of industry recognition, the Court must first establish what the appropriate industry is. Respondent contends the appropriate industry is the oil drilling rig industry because it is hired to transport and assemble oil drilling rig components. Complainant argues the appropriate industry is heavy haul trucking because Respondent does not perform oil and gas drilling. As noted by Complainant, Respondent was not hired to perform drilling, and the worksite was still in the process of being set up. (Tr. 46, 150). Further, the oil and gas industry is only relevant to the extent that the incident occurred on an oil and gas lease: truck #3015 was delivering rig components and backing out of the worksite when it struck AC. Regardless of the location where this type of incident occurs—a massive construction site, a highway project, or an oil and gas lease—a company whose sole business is using heavy duty trucks to transport equipment, regardless of type, is a trucking company. As such, the Court agrees with the conclusion of Complainant's expert, Frank Shorter, that the relevant industry is trucking. (Tr. 327).

Governmental organizations and multiple industry associations recognize the above-described hazard. To start, Respondent requires its truck drivers to have a commercial driver's license. (Tr. 178). In North Dakota, where Respondent is located, the Commercial Driver's License Manual identifies backing as "always dangerous" and instructs drivers to avoid it whenever they

can. (Ex. C-9 at 4). The NIOSH Science Blog published an article discussing construction equipment visibility, which identifies the substantial hazard faced by ground workers when working near construction equipment or vehicles in construction zones. (Ex. C-13). Specifically, it noted that from 1995 to 2002, a highway ground worker was just as likely to be struck by construction equipment as a vehicle traveling on the highway. (*Id.* at 1). Further, it noted 50% of the fatalities from being run over by construction equipment resulted from backing. (*Id.*).

Even if the relevant industry was oil and gas, the hazard was nevertheless recognized. OSHA has provided guidance regarding struck-by hazards to the oil and gas drilling industry. (Exs. C-14, C-15). In its eTool for Well Drilling and Servicing, OSHA not only identifies the struck-by hazard alleged by Complainant, but also provides concrete examples of how that hazard has come to fruition on well sites, including swampers being backed over by trucks. (Ex. C-15 at 2). In fact, the oil and gas industry, itself, has provided guidance on such struck-by hazards in the context of rig moves. (Ex. C-16). Like OSHA, the International Association of Drilling Contractors identified moving vehicles, blind spots, and truck traffic as hazards associated with rig moving; provided concrete examples of situations where such hazards arise; and proposed corrective action. (*Id.*). Thus, even if the relevant industry was oil and gas, the Court finds: (1) that industry also recognizes the hazard alleged by Complainant; and (2) the hazard does not change based on the type of equipment the haul truck company is moving.

Finally, it is also worth noting that Respondent itself recognizes the hazard of ground workers being struck by mobile equipment or trucks. Goertz and Hall both testified that mobile equipment is one of the biggest hazards on the worksite. (Tr. 149, 236-37). Respondent also has policies that identify mobile equipment as a potential hazard, including: (1) the Control of Traffic

Flow Policy; (2) the Danger Zone JSA; and (3) the Safe Backing Trucks & Equipment JSA. (Exs. R-9, R-20, R-21).

Based on the foregoing, the Court finds Complainant established the existence of a recognized hazard. Further, in light of Respondent's own policies, as well as the testimony of Goertz and Hall, the Court finds Respondent knew or, with the exercise of reasonable diligence, could have known of the hazardous condition. *See Tampa Shipyards, Inc.*, 15 BNA OSHC at 1537.

B. Respondent's Employees Were Exposed to a Hazard That Was Likely to Cause Death or Serious Physical Harm

As the dashcam video illustrates, Respondent's employees were exposed to a struck-by hazard that was likely to—and, in this case, did—cause death or serious physical harm. (Ex. R-11). AC and HC were both on foot as truck #3015 backed up in proximity to them. The fatal injuries suffered by AC are a stark and unfortunate example of the seriousness of the hazard alleged by Complainant in this case.

C. Complainant Established a Feasible Means of Abatement

To prove feasibility, Complainant must "specify the proposed abatement measures and demonstrate both that the measures are capable of being put into effect and that they would be effective in materially reducing the incidence of the hazard." *Beverly Enters., Inc.*, No. 91-3144, 2000 WL 34012177, at *34 (OSHRC, Oct. 27, 2000) (consolidated) (first citing *Nat'l Realty*, 489 F.2d 1257, 1267 (D.C. Cir. 1973); then *Waldon Healthcare Ctr.*, 16 BNA OSHC 1052, 1062 (89-2804, 1993) (consolidated); and then *Cardinal Operating Co.*, 11 BNA OSHC 1675, 1677 (No. 80-1500, 1983)). To be capable of being put into effect means economically and technologically capable of being done. *Baroid Div. of NL Industries, Inc.*, 660 F.2d at 447 (citing *Am. Textile Mfgr. Inst., Inc. v. Donovan*, 452 U.S. 490 (1981)). "Feasible means of abatement are those regarded by conscientious experts in the industry as ones they would take into account in 'prescribing a safety

program.'" *Beverly Enters.,* 2000 WL 34012177, at *34 (quoting *Nat'l Realty*, 489 F.2d at 1266). "The Secretary must specify the particular steps a cited employer should have taken to avoid citation, and demonstrate the feasibility and likely utility of those measures. The question is whether a precaution is recognized by safety experts as feasible, and not whether the precaution's use has become customary." *Id.* (citations omitted).

Much of what has been discussed to this point was largely undisputed by Respondent; however, the crux of this case is whether Complainant proved: (1) Respondent's existing policies and procedures were insufficient to address the hazard; and (2) an internal traffic control plan is capable of being put into effect and effective at reducing the incidence of the hazard. With respect to (1), Respondent contends its policies are more than adequate to address the hazard in light of the dynamic nature of the work environment. With respect to (2), Respondent argues that neither CSHO Trondson nor Shorter described with specificity the particular components Respondent should have as a part of its ITCP. Further, Respondent contends Complainant failed to prove "conscientious experts in the oil drilling rig industry would have prescribed an internal traffic control plan like those used in the construction and transportation industry . . . ." *Resp't Br.* at 11-12. The Court disagrees.

i. Respondent's Existing Policies and Procedures Were Insufficient

As a threshold matter, if an employer has implemented methods, practices, or procedures to address the hazard, it is incumbent upon Complainant to show those methods are insufficient. *See U.S. Postal Svc.*, No. 04-0316, 2006 WL 6463045, at *8 (OSHRC, Nov. 20, 2006). To determine whether a company's safety program was sufficient to protect its employees from exposure to the hazard, the Court must consider whether the employer "has established workrules designed to prevent exposure, has properly communicated those rules to its employees, has taken

steps to discover noncompliance with the rules, and has effectively enforced its rules in the event of noncompliance." *Ala. Power Co.*, No. 84-357, 1987 WL 89119, at *4 (OSHRC, Apr. 17, 1987) (citations omitted).

First, the Court will look to Respondent's safety policies and practices to determine whether it had an adequate work rule designed to prevent exposure to the struck-by hazard. During the course of his inspection, CSHO Trondson gathered various policies and materials related to the movement of vehicles and ground workers during a rig move. Based on what was produced to OSHA and presented at trial, it is clear that Respondent has a lot of policies written down. The problem, however, is that none of those policies provided specific instructions to ground workers on how to avoid being struck by mobile equipment and trucks. Though Respondent claims much of this is handled through on-the-job (OJT) training, none of the witnesses testifying on Respondent's behalf could explain the scope of the OJT program, what was covered, or how it addresses the struck-by hazard beyond general admonitions. (*See, e.g.,* Tr. 210-11). Further, as will be discussed below, there is no indication Respondent's employees were trained on this policy, that worksites were audited or inspected for compliance, or that employees were disciplined for their failure to comply.

At trial, Respondent introduced its entire safety manual to establish the existence of safety rules, training, inspections, and discipline. (Ex. R-5). The problem is that Respondent's safety program is incomplete, at best, and merely an unrealized, unimplemented paper program, at worst. With respect to the incident in question, there is nothing in the manual, beyond non-specific admonitions, that directs employees on foot how to stay safe while working. For example, Respondent has a Safe Driving policy, but it appears limited to driving on roads and does not address the hazards present at the worksite in this case. (Tr. 279-280; Ex. R-5 at 323). Respondent

also has a Danger Zone and Safe Backing Trucks & Equipment JSA, which is more directly connected to the issues in this case.[5] However, the parties stipulated that neither this policy, nor many of the others contained in the manual, were provided to drivers or ground workers during orientation, nor were they provided to them at any time thereafter. (Stip. Nos. 7, 8).

The closest Respondent gets to having a specific rule or rules for ground employees exposed to the struck-by hazard is in the Swamper Training series of slides and the Daily Safety Meeting form. (Ex. R-7). The training slides identify the types of hazards to which swampers are exposed, including moving vehicles and multiple backup alarms, which, in Respondent's own words, cause swampers to "get complacent . . . because they hear them all the time." (Ex. R-7 at 41). Of course, the "rule" to address this hazard is to "stay alert and look around when you hear a back up alarm." (*Id.*). Further on in the document, similarly general rules are identified. For example:

> (1) With respect to "other vehicles and equipment", the training module states, "always watch out for other vehicles and equipment and where they are in relation to your work." (*Id.* at 72).
>
> (2) With respect to "changing hazards", the module states to "keep in mind" that "all types of vehicles and equipment will be moving around the site" and to "watch for . . . vehicles moving backward and forward." (*Id.* at 74).
>
> (3) With respect to "position equipment & guide movements", the module is equally general. It states, "It is also up to you to stay in constant contact with the driver/operator as they do their job. . . . Always maintain eye contact and be aware of where you are in relation to other equipment, vehicles and buildings. . . . While you are doing all of this you must also make sure you are keeping the vehicles, equipment, fellow workers and yourself away from any hazards." (*Id.* at 76).

It should be noted that the swamper training module, which is 128 slides long, was provided to AC during orientation. (Tr. 255; Ex. R-7). AC purportedly completed this module, in addition to

[5] Respondent refers to some of its policies as JSAs, which are typically site-specific analyses of hazards.

twelve other training modules, in 18 minutes. (Ex. C-20). According to Hall, nobody checked to ensure the training was read and understood.[6] (Tr. 235).

With respect to the daily safety/tailgate meetings, Goertz testified they discussed the plans for the rig move, including any potential hazards. (Tr. 192-93). It was during these meetings that Goertz purportedly discussed buffer zones for ground employees. (Tr. 155, 192). A "buffer zone" is a term used to define the distance from a hazard, such as a moving vehicle, suspended load, or crane boom. Respondent did not define a specific distance, stating that doing so would be nearly impossible with the different types of equipment and movement on site. (Tr. 188). So, Goertz testified how he addresses these issues in the morning meetings by discussing the hazards associated with a particular type of equipment. (Tr. 186-87).

While Respondent has more specific rules and precautions designed to address the struck-by hazard, Complainant's expert, Frank Shorter, identified multiple gaps in the rules that exposed the ground workers to the very hazard that came to fruition in this case. To start, Shorter praised Respondent for its implementation of back-up cameras, but noted that, in situations such as this, the camera is not a silver bullet. (Tr. 368, 373). According to the testimony, the driver of truck #3015 had sun glare shining through the back-up camera, which rendered him unable to use it. (Tr. 66, 171). This, of itself, is not a problem so long as other safeguards are in place to address the driver's inability to see to the rear while backing up. The inadequacies in Respondent's program stem from the lack of these other safeguards or, at a minimum, the failure to properly implement them.

[6] This practice has since changed at Hall Trucking. According to Hall, all new employees have to take a test to illustrate understanding of the material. (Tr. 240).

Respondent has two JSAs that should address this very issue: the Danger Zone JSA and the Safe Backing Trucks & Equipment JSA. (Exs. R-20, R-21). As noted previously, however, these policies were not provided to employees, nor were they discussed at new employee orientation. This much was acknowledged by Hall during his testimony, during which he also testified that he was not entirely familiar with the contents of the JSAs. (Tr. 279). The same goes with Goertz, who was unaware of his company's own policy requiring drivers to back up to the driver's side (or "view side"). (Tr. 178; Ex. R-21 at 1). Likewise, Hall was not aware the Safe Backing JSA also recommends doing a circle check around the vehicle and using a spotter to "prevent incidents". (Tr. 288; Ex. R-21 at 1).

Having a policy is only one part of an effective program. *See CF&T Available Concrete Pumping, Inc.*, 15 BNA OSHC 2195, 2198 n.9 (No. 90-239, 1993) ("The mere existence of a safety program on paper does not establish that the program was effectively implemented on the worksite, as required."). Respondent not only failed to provide these policies to its employees, but the management team responsible for implementing those policies was not aware of their contents. Along similar lines, the Court notes Respondent actually has a Control of Traffic Flow JSA, but Respondent claims that it is only relevant to their highway trucking operations and is not enforced on Respondent's worksites. In fact, Goertz and Hall both testified they were unaware of the policy. Thus, even if the policies sufficiently addressed the hazard—they do not—the failure to implement them is the same as not having them at all.

It is unclear how, to what extent, or even whether any of this information was conveyed to Respondent's employees. The on-the-job mentoring program was discussed only in the most cursory terms. When called upon to discuss the on-the-job/mentoring program, Goertz testified they were always trying to "show them where not to stand, where to walk, not to get under

suspended loads, tag lines, to stay away from moving vehicles, to stay in the line of sight of drivers, never to walk in front of moving trucks . . . where the pinch points are, where the hazards are . . . ." (Tr. 184). According to Goertz, however, Respondent does not track an employee's progress through the mentoring program to ensure necessary topics are covered, nor was there evidence of an audit or inspection program to ensure employees—new or experienced—complied with company safety rules. (Tr. 180-81). Further, given Goertz and Hall's lack of knowledge regarding certain policies, like the Safe Backing and Danger Zone JSAs, it would be difficult for them to ensure compliance in the first instance.

In addition to the foregoing policies, Respondent implemented a number of safety precautions to address the hazard, including: back-up alarms, high-visibility gear, and back-up cameras. The problem, as Complainant has identified it, is that Respondent's safety precautions are insufficient by themselves without a cohesive plan to control traffic on their worksite. As previously discussed, the back-up camera was not effective in this instance due to glare. This scenario required alternative precautions to ensure safe travel. Back-up alarms did not suffice, as Respondent testified, because ground workers can become accustomed to the sound and ignore it. (Tr. 236-37). Respondent opted for orange coveralls to make their employees visible; however, as the video illustrated, and as Shorter testified, the coveralls utilized by Respondent neither complied with its own policy nor rendered the employees easy to see. (Tr. 391-92).

The absence, or insufficiency, of these engineering controls highlight the importance of administrative controls, such as a comprehensive plan to address traffic flow within the worksite, training on that plan, and subsequent inspection and enforcement. This incident, in particular, underscores the collective importance of those controls, especially when one or more of them is ineffective or unavailable. For example, Shorter testified HC did not exhibit any of the proper

characteristics or behaviors of a trained and experienced spotter. (Tr. 373-74, 389-90). During the dashcam video, HC can be seen walking with his back to truck #3015, which prevents him from seeing whether the path of travel is clear and whether anyone is exposed to a potential hazard. (Tr. 61, 63, 170, 217; Exs. C-6, R-11). This is in direct violation of Respondent's own Danger Zone JSA, Safe Backing JSA, and standard industry practice. (*See* Ex. R-20 ("Spotter to have positioning to be able to have eye contract with operator 100% of the time . . . during vehicle movement . . .").

At bottom, the Court finds Respondent's existing program insufficient. While Respondent has some rules governing the movement of trucks, mobile equipment, and ground workers, they are: (1) incomplete; (2) part of disparate policies, not a cohesive plan; and (3) not conveyed to the employees in a meaningful way to ensure comprehension. Further, Respondent does not have an inspection or audit regime to ensure compliance with the policies; instead, nearly all of the responsibility to both ensure safety and coordinate the rig move resides in Goertz. Goertz, it should be remembered, was not aware of the contents of all relevant policies nor was he familiar with the training or orientation regime his new employees went through. These failures illustrate that Respondent's existing program was insufficient to address the alleged hazard.

ii. An Internal Traffic Control Plan is Feasible

In order to address the hazard, Complainant proposed the implementation of an Internal Traffic Control Plan "applicable to most sites". Respondent argued the proposed abatement was infeasible because similarly situated rig move trucking companies did not utilize ITCPs. However, Respondent did not detail how, exactly, implementing an ITCP would be infeasible or ineffective. As noted above, Respondent contends Complainant inadequately defined the required components of an internal traffic control plan; failed to establish the effectiveness of such a plan; and failed to

submit evidence that conscientious experts in the oil drilling rig industry would have prescribed an internal traffic control plan to address the struck-by hazard. The Court finds this dispute, for the most part, is the result of a conflict between what Complainant and Shorter mean by an ITCP and what Respondent perceives it to mean. Based on the evidence presented, the Court finds an ITCP is a feasible means of abatement in light of the hazard identified by Complainant.

1. An ITCP is Not a Highway Traffic Control Plan

An internal traffic control plan is a comprehensive set of policies, procedures, training, and equipment designed to deal with the specific traffic-related hazard *within* a worksite. (Tr. 364). This is different from a traffic control plan, which is designed to address the hazards associated with highway construction. (Tr. 364). Highway construction, of necessity, requires consideration of the driving public in addition to the movement of equipment within the site. (Tr. 364). That is why, according to Shorter, traffic control plans are incredibly complex documents, with multiple pages of diagrams to address traffic movement and signage for multiple sections of roadway. (Tr. 364). On the other hand, an ITCP can be as complex or informal as it needs to be, depending on the nature of the work and the hazards present on the worksite. (Tr. 376; Ex. C-8 at 4).

In order to illustrate what an ITCP is and how it could be implemented at Respondent's worksite, Shorter discussed highway construction industry documents issued by the American Road and Transportation Builders Association (ARTBA), ANSI, and NIOSH. (Exs. C-8, C-13, C-17). ARTBA is a group that professes to "represent all segments of the roadway construction industry". (Ex. C-8 at 25). In ARTBA's document entitled, "Developing Internal Traffic Control Plans for Work Zones", it defined an ITCP as follows:

> An ITCP is a method or protocol to coordinate worker, vehicle, and equipment movements in the activity area of a work zone and to inform all parties operating within the activity area about the locations of others. . . . The ITCP goal is to minimize interaction between workers on foot and vehicles and equipment. ITCPs

> also serve to reduce backing and other maneuvering by large trucks in the activity area.

(Ex. C-8 at 3). The ITCP accomplishes these goals, according to the document, through "designating safe areas for workers and appropriate routes for work vehicles and equipment"; "establishing 'no go' zones for workers, as well as for work vehicles and equipment"; and "defining specific operating procedures for trucks delivering materials in the activity area." (*Id.*). What is most interesting about the ARTBA document, as well as Shorter's recommendations, is that this process need only be as complex as the nature of the hazard. (Tr. 376; Ex. C-8 at 4). That is why ARTBA came up with an eight-step method to develop an ITCP, which is provided below with a brief description of each step:

1. Identify project and ITCP scope
    a. Pre-planning step involving consideration of location size, location-specific hazards, responsibilities, and necessary equipment.
2. Determine construction sequence
    a. Considering what will be built and when.
3. Determine locations and safe movements for vehicles, equipment, and workers within each operation; draw diagram(s).
    a. Identification of blind spots for each vehicle; where each vehicle will be used; identification of pinch points; and locations of no-go or worker-free zones based on those prior considerations.
4. Determine vehicles and equipment movements to and from each operation.
5. Determine safe movements for workers to and from and within each operation.
6. Assess and resolve potential internal traffic conflicts.
7. Identify individuals who will need to understand and use the ITCP.
    a. This step should also include what each individual's duty is with respect to the ITCP.
8. Develop the ITCP communication plan.

a. This is a comprehensive step to ensure the plan is communicated (training), monitored, updated, and enforced along with the overall site safety plan.

(Ex. C-8 at 5-13). The ARTBA process not only illustrates the necessary components of an ITCP based on the operation, but it also shows how Respondent's program failed to consider and include information vital to ensuring a safe work environment. For example, in step three of the ARTBA process, the blind spots, swing radius, and range of movement is considered for each vehicle that will be present at the worksite, along with the particular hazards at the site that may impact operations. This is a stark contrast to Respondent's practice, which relies almost entirely on Goertz's ad hoc judgment on the day of the operation. This level of detail is also reflected in Shorter's expert report, which discusses many of the same elements described in the ARTBA document, as well as ANSI A10.47-2021 Work Zone Safety for Roadway Construction. (*See* Ex. C-12).

The most notable difference between an ITCP and what Respondent does appears to be the level of pre-planning involved in the ITCP and the ability to amend or adapt based on the types of dynamic and site-specific conditions identified by Respondent, such as soft ground, the presence of power lines, and the variety of road configurations at each oil and gas lease. Further, much of the information contained in the ideal ITCP, as illustrated by ARTBA, is already in Respondent's possession: they know what trucks will be used and their blind spots and/or swing radii, how the worksite is laid out, where the equipment will be placed and built, and many other considerations the ARTBA document identifies as necessary to an ITCP. As such, many of these elements can be accounted for prior to the initial morning safety meeting, during which Respondent can adjust based on site-specific conditions.

2. Shorter's Testimony Shows How the ITCP Would Be Effective

"Feasible means of abatement are established if 'conscientious experts, familiar with the industry' would prescribe those means and methods to eliminate or materially reduce the recognized hazard." *Arcadian Corp.*, 20 BNA OSHC at 2011. "Reliable expert testimony is sufficient to establish that an abatement method meets that requirement." *Cedar Springs Hosp., Inc.*, No. 20-0887, 2023 WL 9604921, at *65 (OSHRC, Dec. 22, 2023) (citing *Integra Health Mgmt., Inc.*, No. 13-1124, 2019 WL 1142920, at *13-14 (OSHRC, Mar. 4, 2019)). In *Integra*, the Commission found that reliable expert testimony is sufficient to establish that an abatement method would materially reduce a hazard, even if the expert cannot quantify the reduction. *See Integra Health Mgmt.*, 2019 WL 1142920, at *14 (citing *Beverly Enters.*, 2000 WL 34012177, at *34, where the Commission opined that "[t]he question is whether a precaution is recognized by safety experts as feasible, and not whether the precaution's use has become customary.").

The Court was persuaded by the testimony of Complainant's expert, Frank Shorter, whose education and experience in construction and general industry as it relates to trucks and heavy equipment reflect a wealth of knowledge regarding ITCPs, hazards related to pedestrian safety around worksites with mobile equipment, and safe truck operation. Shorter has a Master of Science Safety Degree from the University of Southern California; is a Certified Safety Professional and an Associate of Risk Management; and is an active member of the American Society of Safety Professionals and a representative thereof on the ANSI Accredited Standards Committee on Safety in Construction and Demolition Operations. (Ex. C-12 at 3). His combination of practical experience and theoretical knowledge is well-suited to the question of whether an ITCP would be effective at abating the struck-by hazards identified by Complainant in this case.

Respondent's principal argument against the use of an ITCP is that the flow of traffic changes multiple times a day, which would either render the ITCP ineffective at the first change or require too many changes throughout the day to be feasibly implemented. This argument, however, relies on the idea of an ITCP as merely a set of static diagrams and one-size-fits-all measures. In reality, as described above, an ITCP is more than diagrams. An ITCP is an entire process that includes: training, site-specific evaluation, auditing/observation, and enforcement of policy and best practices. (*See* Ex. C-8). As illustrated in the ARTBA document, the diagram itself can be fairly elementary. (Ex. C-8 at 4). The vital aspects of an ITCP, as shown in the ARTBA document, include what Shorter characterized as "low-hanging fruit", such as: (1) a robust training program for ground workers, spotters, drivers, and supervisors; (2) extensive use of safeguards, such as high-visibility clothing, back-up alarms, back-up cameras, and back-up procedures to address what happens when those safeguards fail, as was the case with the back-up camera in this case; (3) identifying "worker-free" or "no-go" zones based on the equipment used and on-site hazards; and (4) reducing opportunities for backing-up and/or minimizing ground worker exposure in such circumstances (Tr. 386-98; *see* Exs. C-8, C-12 at 22-23).

Shorter credibly testified that these aspects, if properly implemented, would materially reduce the hazard. (*See also* Ex. C-12 at 22, noting that an ITCP minimizes interaction between workers and trucks, provides traffic plans to explain the flow of traffic, and trains employees on blind spots). Specifically, he testified that his conclusion is based on his personal experience implementing such plans, the fact that the components of such a plan are "the basics of safety management . . . recognized through every industry as being effective", and based on the input of over 100 safety professionals that are a part of the ANSI committee that developed the A20-47-2021 Work Zone Safety for Roadway Construction standard. The Court was particularly convinced

by Shorter's personal experience developing and implementing ITCPs on roadway construction sites. (Tr. 344-46). According to Shorter, an ITCP is the "generally accepted" way to deal with the hazards presented in a work area where trucks and heavy equipment are operating around workers on foot, because the hazards are the same, regardless of what industry the trucking company is hauling equipment for. (Tr. 445).

By way of example, Shorter identified direct comparisons between the internal workings of a highway construction project and the build-up/tear-down of a drilling rig. (Tr. 345). He noted that a highway construction project requires various types of plants, such as concrete plants, crushing plants, and asphalt plants, which need to be built. (*Id.*). This, in turn, requires setting up a pad to build them on; a road to get there; assembling truckloads of equipment for delivery; the use of cranes, haul trucks, and heavy equipment to move equipment around the site; and coordinating the traffic related to those deliveries and equipment movements. (Tr. 345-46). Respondent repeatedly claimed its line of work was different. Other than conclusory statements that an ITCP would be ineffective or incapable of being implemented, however, Respondent failed to credibly undermine Shorter's testimony with concrete facts illustrating how the rig move environment was materially different from the interior work zone of a road construction project. The Court does not doubt the rig move environment is a dynamic one; however, based on Shorter's description of similar environments involving trucks, heavy equipment, and workers on foot, the Court cannot discern any appreciable difference that would render an ITCP ineffective or infeasible during a rig move.

Respondent attempted to undermine Complainant's claim of effectiveness by introducing Exhibit R-26,[7] which is a Request for Information (RFI) entitled, "Reinforced Concrete in Construction, and Preventing Backover Injuries and Fatalities". *See* 77 Fed. Reg. 18973 (Mar. 29, 2012) (hereinafter referred to as "2012 RFI"). In the RFI, OSHA identified ITCPs as "another method used to address backover hazards" and cites to the ANSI standard that was discussed by Shorter. *Id.* at 18982. Respondent's focus, however, was on the last sentence of the passage, which states, "OSHA has no information on the effectiveness of this consensus standard." *Id*. Based on this statement, Respondent argues Complainant cannot establish the effectiveness of an ITCP. The Court disagrees.

First, the 2012 RFI in question is nearly 13 years old. Second, the document was a request for information, so it stands to reason that OSHA, itself, would not have information in its possession that it is attempting to obtain. Third, OSHA's stamp of approval is not the end-all, be-all for effectiveness of abatement measures. As noted previously in this section, the Commission affirmed the ALJ's finding that reliable expert testimony is sufficient to establish that an abatement method would materially reduce a hazard, even if the expert cannot quantify the reduction. *See Integra*, 2019 WL 1142920, at *71 (citing *Morrison-Knudsen*, 16 BNA OSHC 1105, 1122 (No. 88-572, 1993)).

This issue has been addressed by another Commission ALJ under nearly identical circumstances. In *Master Construction Company, Inc.*, No. 18-0170, 2020 WL 1076075 (OSHRCALJ, Jan. 27, 2020), Respondent was hired to expand a two-lane road to a four-lane road. According to the facts, the worksite was closed to the general public; was characterized as

[7] Respondent referenced this document during Shorter's testimony; however, Respondent never attempted to introduce it as an exhibit. Nevertheless, since its contents were discussed during Shorter's testimony, the Court feels obligated to mention it.

"dynamic"; involved a series of machines, mobile equipment, and heavy trucks; and had employees, who were occasionally required to "travel on foot through an area where trucks were entering and exiting the worksite." *Id.* at *2-3. In addition to proffering many of the same arguments Respondent has in the present case, the employer in *Master* cited another case, *The Lane Construction Corporation*, 26 BNA OSHC 2139, 2146 (No. 16-0538, 2017) (ALJ), wherein the ALJ determined OSHA failed to establish the effectiveness of an ITCP based on OSHA's statement in the 2012 RFI. *Id.* at *16-17. Just as the Court does here, Judge Augustine found one notable difference between the facts confronting him in *Master* and the facts presented to the ALJ in *Lane*: expert testimony. *Id.* In *Lane*, there was no expert testimony whatsoever to establish effectiveness. *Id.* at *17 ("Judge Calhoun noted the Secretary failed to introduce expert testimony"). In *Master* and the case at bar, however, Shorter testified regarding the use of ITCPs in the construction industry and his experience that their use is effective at preventing the types of accidents that occurred in *Master*, as well as in this case. *Id.* The Court finds Shorter's combination of practical experience and participation in the development of consensus standards governing the types of hazards present in this case provide a sound basis for his conclusion that ITCPs are an effective means to abate backover and struck-by hazards during a rig move.

Respondent argues that no one in the rig move industry recognizes an ITCP as an appropriate or effective abatement method. While the hazard must be recognized by the employer or the industry, "[t]he means of abatement, unlike the hazard itself, does not have to be recognized by an employer or the employer's industry." *Litton Systs., Inc.*, No. 76-900, 1981 WL 18925, at *3 (OSHRC, Nov. 23, 1981). That is because it is incumbent on employers to take "all feasible steps . . . whenever [an abatement measure] is recognized by safety experts as feasible, even though it is not of general usage in the industry." *Gen. Dynamics Corp. v. OSHRC*, 599 F.2d 453, 464 (1st

Cir. 1979) (citation omitted). Relying on the industry's lack of knowledge or awareness of a particular form of abatement to ascertain its effectiveness or feasibility "would allow an entire industry to avoid liability by maintaining inadequate safety training." *Id.*

Finally, the Court also finds the proposed abatement is economically feasible. According to Shorter, the abatement proposed by Complainant is low-cost, low-hanging fruit. (Tr. 422-25). The Court agrees. Most, if not all, of the elements Shorter has identified as low-cost are policy-based and procedural interventions. With the exception of Shorter's proposal of neon green, high-visibility coveralls, Respondent already possesses and implements many of the engineering controls Shorter recommended. Respondent's costs for the types of improvements suggested here will be the time and effort required to develop a comprehensive plan "applicable to most work sites". This plan can utilize Respondent's existing policies, including its Control of Traffic Flow JSA, to serve as a jumping off point. In addition to the foregoing, Complainant introduced Respondent's *Supplemental Responses to Complainant's First Set of Requests for Admission, Interrogatories, and Requests for Production*, wherein Respondent specifically stated, "Hall Trucking is not contending that compliance with the cited standard and/or abatement measures is not economically feasible at this time." (Ex. C-23 at 19-20). Respondent never submitted an additional supplement to this response.

Based on the foregoing, the Court finds Complainant established a violation of the General Duty Clause.

VI. Respondent Failed to Establish Unpreventable Employee Misconduct

Although Respondent did not pursue this defense in its post-trial brief, it nonetheless asserted the affirmative defense of unpreventable employee misconduct in its *Answer*. The Court will briefly address it here. To establish the defense, Respondent must show it: (1) established

work rules designed to prevent the violation; (2) adequately communicated the rules to its employees; (3) took steps to discover violations of the rules; and (4) effectively enforced the rules when violations were detected." *Rawson Contractors, Inc.*, 20 BNA OSHC 1078, 1081 (No. 99-0018, 2003). The Court has already made this assessment with respect to the question of whether Respondent's existing abatement methods were sufficient. *See* Section V.C.i, *supra*. As such, the Court incorporates Section V.C.i by reference. As illustrated above, Respondent had rules, but those rules had significant gaps when it came to addressing the backover/struck-by hazard. Of the rules it did have, Respondent failed to ensure they were meaningfully communicated to its employees. By Respondent's own admission, it did not perform audits, and there is no evidence to suggest Respondent had a program or personnel to inspect worksites and ensure compliance. Finally, there is no evidence whatsoever that employees were disciplined for violations of the rules. Accordingly, Respondent's affirmative defense fails.

VII. Penalty

The Secretary has the authority to propose a penalty according to Section 17 of the Act. *See* 29 U.S.C. §§ 659(a), 666. The amount proposed, however, merely becomes advisory when an employer timely contests the matter. *Brennan v. OSHRC* (*Interstate Glass*), 487 F.2d 438, 441–42 (8th Cir. 1973); *Revoli Constr. Co.*, No. 00-0315, 2001 WL 1568807, at *5 (OSHRC, Dec. 7, 2001). Ultimately, it is the province of the Commission to "assess all civil penalties provided in [Section 17]", which it determines *de novo*. 29 U.S.C. § 666(j); *see also Valdak Corp.*, No. 93-0239, 1995 WL 139505, at *3 (OSHRC, Mar. 29, 1995), *aff'd*, 73 F.3d 1466 (8th Cir. 1996). "[T]he Act requires that "due consideration" be given to the employer's size, the gravity of the violation, the good faith of the employer, and any prior history of violations." *Briones Util. Co.*, No. 10-1372, 2016 WL 7424575, at *4 (OSHRC, Dec. 14, 2016) (citing 29 U.S.C. § 666(j)).

The penalty factors are not necessarily accorded equal weight. *J.A. Jones Constr. Co.*, No. 87-2059, 1993 WL 61950, at *15 (OSHRC, Feb. 19, 1993) (citation omitted). Rather, the Commission assigns the weight that is reasonable under the circumstances. *See, e.g., Merchant's Masonry, Inc.*, No. 92-424, 1994 WL 723829, at *1 (OSHRC, 1994). It is the Secretary's burden to introduce evidence bearing on the factors and explain how he arrived at the penalty he proposed. *Valdak Corp*., 1995 WL 139505, at *4. "Gravity is typically the most important factor in determining an appropriate penalty and depends upon the number of employees exposed, the duration of the exposure, the precautions taken against injury, and the likelihood that any injury would result." *See, e.g.*, *Capform, Inc.*, No. 99-0322, 2001 WL 300582, at *4 (OSHRC March 26, 2001) (citing *J.A. Jones Constr.*, 1993 WL 61950, at *15).

Complainant proposed a penalty of $10,938, which reflects a 30% penalty reduction for its size. (Tr. 94). Complainant did not propose any additional adjustments for history or good faith in light of Respondent's lack of inspection history and its failure to maintain and implement a sufficient safety and health program. (Tr. 94-95). Respondent did not specifically challenge the penalty or any of the gravity-based factors in its post-trial brief. The Court agrees with Complainant's assessment of the penalty.

Respondent's failure to develop and implement a robust safety and health program that addresses one of the key hazards present during the course of a rig move, coupled with the consequences of that failure—which were fully on display in this case—illustrate the appropriateness of the proposed penalty. Accordingly, Complainant's proposed penalty is AFFIRMED.

VIII. Order

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. Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Citation 1, Item 1 is AFFIRMED as serious, and a penalty of $10,938 is ASSESSED.

SO ORDERED.

/s/ Joshua R. Patrick
Joshua R. Patrick
First Judge, OSHRC

Date: June 10, 2025
Denver, Colorado