

No. 96527-7

No. 76717-8-I
(Linked with No. 76893-0-I)

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

GILDARDO CRISOSTOMO VARGAS, an incapacitated person, by and through WILLIAM DUSSAULT, his Litigation Guardian ad Litem; LUCINA FLORES, an individual; ROSARIO CRISOSTOMO FLORES, an individual; and PATRICIA CRISOSTOMO FLORES, a minor child by and through LUCINA FLORES, her natural mother and default guardian,

Appellants,

v.

INLAND WASHINGTON, LLC, a Washington limited liability company,

Respondent,

and

INLAND GROUP P.S., LLC, a Washington limited liability company, RALPH'S CONCRETE PUMPING, INC., a Washington corporation, and MILES SAND & GRAVEL COMPANY d/b/a CONCRETE NOR'WEST, a Washington corporation;

Defendants.

BRIEF OF APPELLANTS

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I. INTRODUCTION

Plaintiff / Appellant Gildardo Crisostomo Vargas suffered severe injuries including traumatic brain injuries when he was hit on the head by a pressurized concrete hose during a concrete pour on a jobsite for which Inland Washington, LLC, was the general contractor. A combination of a clogged hose and pressurized air in the system caused the end hose to whip violently, hitting Mr. Vargas. Plaintiffs / Appellants sued the general contractor for his injuries, alleging he was injured as a result of breaches of duties owed by a general contractor on a construction site. These duties include statutory duties under Washington Industrial Safety and Health Act, Chapter 49.17 RCW (“WISHA”), common law duties under the retained control doctrine, and duties owed to an invitee on premises.

A general contractor has the ultimate responsibility for workplace safety on its jobsite, over which it has *per se* control under Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 788 P.2d 545 (1990). These duties are also non-delegable, such that a general contractor (or equivalent) is vicariously for injuries resulting from the breach of any of these duties. Afoa v. Port of Seattle (II), 198 Wn. App. 206, 393 P.3d 802 (2017). Appellants Vargas allege a cause of the hose whip injury was the attempt to pump concrete with aggregate rocks of 1.5 inches or greater in size through a three inch diameter hose, in violation of WISHA standards limiting rock size to one third of the diameter of the hose. Appellants Vargas also allege that Inland failed to establish and enforce an accident

prevention program that would have kept workers including Mr. Vargas out of the “danger zone” area around the concrete hose when pumping started, as required by industry standards and the pump truck manufacturer’s manual. Other allegations include that Inland failed to ensure properly maintained equipment was in use, and that air was improperly allowed to get in the system. These allegations are supported by evidence in the record.

Inland argues that despite the *per se* control of a general contractor under Stute, that it was not shown to have sufficient control for the duties to attach. Despite this Court’s holding in Afoa II, Inland contends that vicarious liability does not apply. Inland also argues that Appellants Vargas failed to present sufficient evidence that Mr. Vargas was injured as a result of a WISHA violation. The trial Court erroneously granted Inland’s summary judgment motion for dismissal, which the Vargas family appeals.

II. ASSIGNMENTS OF ERROR

A. Assignments of error

1. The trial court erred in its Order Granting Defendant Inland Washington, LLC’s Motion for Summary Judgment of Dismissal dated March 21, 2017, including any finding that the case involved no genuine issue of material fact opposing the conclusion that summary judgment of dismissal was appropriate, and in the trial Court’s April 21, 2017 order denying reconsideration thereof.

B. Issues pertaining to assignments of error

1. Whether the dismissal of Plaintiffs / Appellants Vargas's claims against undisputed general contractor Defendant / Respondent Inland Washington, LLC should be reversed when a general contractor has *per se* control over a construction site under Stute v. P.B.M.C., or whether a showing of a general contractor's actual control is needed despite the holding of Stute and its progeny.
2. Whether a general contractor is vicariously liable for breaches of statutory duties under WISHA and common law duties under the retained control doctrine under Washington law, including this Court's March 20, 2017 opinion in Afoa v. Port of Seattle (II).
3. Whether Plaintiffs / Appellants Vargas have set forth sufficient evidence to show Mr. Vargas was injured as a result of at least one WISHA violation or of at least one breach of a common law duty to raise a genuine issue of material fact precluding summary judgment dismissal of Inland Washington.

III. STATEMENT OF THE CASE

A. Facts Regarding the Parties

Plaintiff / Petitioner Gildardo Crisostomo Vargas was hit in the head by a pressurized concrete hose while working on a construction project on or near 1220 NE 175th Street, in Shoreline, Washington known as the North City Apartment complex.¹ Due to his traumatic brain injury,

¹ CP 1742 (Plaintiffs' Complaint)

William Dussault was appointed as his Litigation Guardian ad Litem and brings his claims on his behalf.² Mr. Vargas' wife and children bring loss of consortium claims.³

At the time of his injury, Mr. Vargas was working for Hilltop Concrete Construction, Inc. ("Hilltop"), his direct Title 51 RCW direct employer. It is established that defendant Inland Washington, LLC ("Inland Washington" or "Inland") was the general contractor on the project who subcontracted with Hilltop to install concrete.⁴ Ralph's Concrete Pumping, Inc. ("Ralph's") was called to pump concrete into wooden forms built by Hilltop carpenters.

Defendant Miles Sand and Gravel Co. d/b/a Concrete Nor'west ("Miles") provided the Redi-mix concrete, which it brought on site with concrete trucks.⁵ In order to build concrete walls, Miles' operator would pour the Redi-mix concrete from Miles' truck into the hopper of Ralph's pump truck, which would pump the concrete through a 46 meter boom to a flexible hose at the end. Hilltop's carpenters, including Mr. Vargas, would use the hose to put concrete into the wooden wall forms. Ralph's

² CP 1740 (Plaintiffs' Complaint)

³ CP 1754-1755 (Plaintiffs' Complaint)

⁴ See CP 2455-2458 (Order Granting Plaintiffs' Motion for Partial Summary Judgment) Defendant Inland Group, LLC ("Inland Group") is the parent company of Inland WA, but also provided the safety plan that general contractor Inland WA used on this project, which was not site-specific and was used on many Inland Group projects. CP 238. Inland Group filed a motion for summary judgment dismissal in 2015, which was denied on June 26, 2015. CP 725-727. After Plaintiffs and Ralph's filed their present petitions for review, and prior to this Court's July 21, 2017 rulings granting review, Inland Group brought a second motion for summary judgment before the trial court, which was granted on July 14, 2017. CP 2528-2530

⁵ Defendant Miles also filed a motion for summary judgment for dismissal, which was denied on October 28, 2016, and is not part of this appeal. See CP 728-742 (Miles' Motion) and CP 899-917 (Plaintiffs' Response)

operator, Antony Howell, controlled the boom and the operation of the pump by remote control.

B. Facts of the Incident

Mr. Vargas was knocked unconscious and sustained a permanent brain injury from a pressurized concrete pump hose, which violently whipped and hit him in the head. Details of the exact cause are disputed, but involve a combination of a clog or plug in the hose, air getting into the system, and high pressure being applied.⁶

Anthony Howell was Ralph's concrete pump operator at the time of the incident; he set up the pump truck and hooked up the end hose.⁷ Mr. Howell went to the site at about 7:00 a.m., checked in with Matt Skoog of Hilltop and perhaps also with Inland superintendent Steve Miller, who told him where to set up the pump and showed him the walls they were pumping that day.⁸ It took Mr. Howell about 45 minutes to set up the pump, which included putting out his outriggers, unfolding his boom, and getting his slurry ready for the Redi-mix concrete truck from Miles to show up at 8:00.⁹ Slurry is a material used to lubricate the lines before the concrete goes through.¹⁰ The concrete truck operator then pours the concrete into the hopper of the pump truck, which is pumped through the boom and ultimately through the end hose. Mr. Howell also hooked up

⁶ See CP 1989-1900 (Accident Investigation Report of Matt Skoog); CP 2001-2012 (Deposition of Gordon Skoog, pages 53-64); CP 2055, 2066-2067 (Deposition of Steve Miller, page 37:2, 60-61); CP 1980-1981, 1987-1988 (Deposition of Tim Henson, pages 24-25 and 98-99)

⁷ CP 1902, 1908, 1910-11 (Deposition of Anthony Howell, pages 16, 22, 27-28)

⁸ CP 1902 (Deposition of Anthony Howell, page 16)

⁹ CP 1903 (Id., page 17)

¹⁰ CP 1909 (Id., page 26)

the hose at the end of the boom, which is where the concrete comes out.¹¹ After slurring the pump, Mr. Howell kinked the hose and put a “halo” ring on the hose to keep concrete from dripping out.¹² He then laid the boom out flat and laid the hose on top of the wall form, which he had to do because the boom he had wasn’t long enough.¹³ Mr. Howell indicates Hilltop ordered a 46 meter boom truck but that Hilltop hoped Ralph’s would provide a 55 meter boom truck.¹⁴

After the halo ring was taken off and the hose was unkinked, Mr. Howell turned the pump on for the first pour of the day.¹⁵ Mr. Howell was with Hilltop supervisor Matt Skoog on the floor of the building when he started to pump.¹⁶ Mr. Howell reports three hilltop workers, including Mr. Vargas, were on the scaffolding by the hose, with Mr. Vargas about 12 feet from the end of the hose¹⁷ Mr. Howell controlled the boom and the pump by a wireless remote control.¹⁸

According to Mr. Howell, after two strokes of the boom, the remote control signal to the truck was lost, resulting in an automatic shutdown of the pump.¹⁹ Mr. Howell moved to re-establish a connection with the truck, then signaled to the Hilltop workers that they were going

¹¹ CP 1908 (Id., page 22)

¹² CP 1910 (Id., page 27)

¹³ CP 1911 (Id., page 28)

¹⁴ Id.

¹⁵ CP 1911-1912 (Id., page 28-29)

¹⁶ Id.

¹⁷ See CP 1913 and 1923 (Id., pages 30 and 40); See CP 1951(Ex. 1 to Howell deposition, photo showing Mr. Vargas’ location)

¹⁸ CP 1924 (Id., page 31)

¹⁹ Id.

to start the pump kit back up.²⁰ He “took one full stroke and it went off like a shotgun.”²¹ Mr. Howell testifies he saw the hose strike Mr. Vargas in the head rendering him unconscious.²²

Derek Mansur was the driver of the Miles concrete delivery truck that poured concrete into the pump truck hopper at the time.²³ Mr. Mansur testified he heard the RPMs of the concrete pump rev up twice, but that the actual amount of concrete pumped was less than one stroke.²⁴ Mr. Mansur testified that the hopper was full.²⁵

C. Facts Regarding Aggregate Rock Size Being Too Big For the Three Inch Hose

It is undisputed that the aggregate in the concrete mix included rocks of up to 1.5 inches in size or greater,²⁶ which was being pumped through a delivery system that was reduced to a 3 inch end hose. Miles assistant general manager testified that Miles’ proprietary concrete mix code “0260A” conformed to the ASTM C33 number 57 standard for wall mix, which includes rocks up to 1.5 inches or greater in size.²⁷ He also testified that “7/8 #57” listed on the mix ticket referred to the “57”

²⁰ See CP 1917 and 1922 (Id., pages 34 and 39) and CP 1951, 1952 (Ex. 1 to Howell deposition, photos showing locations)

²¹ CP 1922 (Id., page 39:7-8)

²² CP 1930, 1931 (Id., pages 48:21-49:2)

²³ CP 2095 (Deposition of Derek Mansur, page 20.)

²⁴ Id.

²⁵ CP 2107 (Id., page 62)

²⁶ Prior to the December 12, 2016 depositions of Miles’ general manager Brad Barton and Miles’ assistant general manager Dave Enders, the rock size was disputed. Plaintiff’s photogrammetry experts measured the rocks from photos taken at the scene and compared them to testimony and known lumber dimensions. See CP 2208-2249 (Photos, depositions, and exhibits related to the rock size question). This question was settled with the testimony of the Miles managers explaining the mix code and the ASTM standard.

²⁷ CP 2255-2267 (Deposition of Dave Enders, pages 32-44)

standard but that “7/8 doesn’t mean anything.”²⁸ But the fact that rocks could be 1.5 inches or greater was not communicated to the people directly involved in the pour. Hilltop’s foreman Matt Skoog did not know what the rock sizes were.²⁹ Miles concrete truck driver Derek Mansur did not know the rock size either.³⁰ They both thought 7/8 inch was the maximum rock size.

D. Facts Regarding the Pump Truck’s Broken Antenna and Missing Vibrator

Ralph’s pump operator Anthony Howell completed a Driver Equipment Report on May 24, 2013, the day after the subject incident of May 23, 2013 reporting the pump truck needed a new antenna for the radio receiver and that it needed a new vibrator installed for the hopper.³¹ Defendant Miles’s concrete truck operator Derek Mansur reports he heard Ralph’s pump operator say he had to replace the batteries in his remote control.³² Although Mr. Howell denies that the loss of radio contact was caused by the broken antenna,³³ Thomas Hurley, the CR 30(b)(6) designee of pump truck manufacturer Putzmeister America, Inc. testified a broken antenna may make it more likely for radio signals to be lost.³⁴

²⁸ CP 2260 and 2267 (Id., page 37:23-25 and 44:2-3)

²⁹ CP 2203-2204 (Deposition of Matt Skoog (Vol. 2), pages 106:23-107:10.)

³⁰ CP 2096-2097 and 2101-2102 (Deposition of Derek Mansur, pages 21-22 and 26-27.)

³¹ CP 1932-1935 (Deposition of Anthony Howell, pages 76-79) and CP 1962 (Anthony Howell’s Driver Equipment Report).

³² CP 2133-2134 (Derek Mansur’s Witness Statement)

³³ CP 1932-1935 (Deposition of Anthony Howell, pages 76-79)

³⁴ CP 2327 (Deposition of Thomas Hurley, CR 30(b)(6) designee of Putzmeister America, Inc., Page 48:12-21)

Mr. Howell testifies the truck was bought used by Ralph's, and that there was no vibrator on the hopper.³⁵ He explains the purpose of the vibrator as follows:

you need the vibrator on the hopper to get the mud [concrete] to come through the grate because it only allows certain sized rock to go through the grate, then it will just sit and pile up on top of the grate and you can't pump the mud.

CP 1939 (Deposition of Anthony Howell, Page 95:20-24). He also testified that the vibrator "helps not to get air into" the concrete. CP 1940 (Id. page 96:2).

E. Facts Regarding the "Danger Zone" Requirements of the Putzmeister Pump Truck Manufacturer

The manufacturer's manual for the Putzmeister truck-mounted concrete pump that Ralph's was using addresses the potential for hose injuries and cautions there is "considerable risk of injury from the end hose striking out when starting to pump."³⁶ It defines a "danger zone" for the end hose as having a diameter of "twice the end hose length" and requires the pump operator "[e]nsure that no-one is standing in the danger zone."³⁷ It specifically prohibits allowing workers to hold or be near the hose when pumping is started.³⁸ Thomas Hurley, Putzmeister America, Inc.'s CR 30(b)(6) designee testified Putzmeister defines "starting to pump" as follows:

The term "starting to pump" is the same in all instances in this manual. It describes the time period from when you

³⁵ CP 1939 (Deposition of Anthony Howell, page 95.)

³⁶ CP 1964 (Putzmeister Manual, Sec. 2, page 14.)

³⁷ CP 1966 (Id. Sec. 2, page 36.)

³⁸ CP 1971 (Id. Sec. 2, page 77.)

begin to move concrete with the pump, to the time you have a continuous flow of concrete from the end hose.

CP 2311-2312 (Deposition of Thomas Hurley, pages 28:1-5 and 29:8-10).

F. Facts Regarding Lack of Site-Specific Safety Plans on the Jobsite

There was no site-specific safety plan on this project that addressed the hazards involved with pump hoses or how to prevent hose injuries such as detailed in the Putzmeister manual. The Washington Department of Labor and Industries (“L&I”) investigated the incident and found Hilltop’s safety plan did not address the hazards.³⁹ In response to L&I’s post-incident inspection, Hilltop owner Gordon Skoog typed up an “addition” to Hilltop’s deficient safety book which he states put his previously verbal training in writing.⁴⁰ This “addition” addresses clogged hoses and counsels workers to “duck and cover” and to “yell clog and everybody immediately move away from the hose” whenever “you hear or sense a plug.”⁴¹

Ralph’s general manager Tim Henson reviewed Hilltop’s post-incident addition and found it to be inadequate.⁴² For its part, Ralph’s did not have a site specific safety plan, was not provided with any safety plans by either Inland or Hilltop, and was not required by either Inland or Hilltop to provide a site specific safety plan.⁴³ Ralph’s training materials

³⁹ CP 2027-2028 (Deposition of Gordon Skoog, pages 76-77.)

⁴⁰ Id.; (CP 1992) (Id. Ex. 78 - Hilltop’s addition to safety book); See CP 2052 (Inland superintendent Steve Miller identifies Gordon Skoog as a Hilltop owner).

⁴¹ Id. (underline in original); See also CP 2011-2012 (Deposition of Gordon Skoog, pages 61-64)

⁴² CP 1985-1986 (Deposition of Tim Henson, pages 38:24-40:9)

⁴³ CP 1978-1979 and 1982-1986 (Id., pages 19-20 and 36-40)

included a document signed by Anthony Howell dated June 20, 2012 entitled “Air Pocket Trapped in Concrete Policy.”⁴⁴ This called for the pump operator to “keep everyone a minimum of 25 feet away from the tip hose” while “slurring,” after reversing the pump to clear a blockage, and after folding up and moving to a new location.⁴⁵ However, this was not communicated to Inland or Hilltop. Inland superintendent Steve Miller testified that he had no knowledge of safety plans or training that addressed the risks of pressurized concrete hoses on the project.⁴⁶

G. Safety Expert Rick Gleason Describes Hose Whip Injury Causes Including Lack of Coordination, Poor Safety Culture, and Inadequate Accident Prevention Programs Under WAC 296-155-110

Construction safety expert Rick Gleason testifies that hose whip injuries can be caused by introducing air in the system by allowing the hopper to run low, by a clog or plug resulting in excessive pressure in the system that explodes when released, or a combination of the two.⁴⁷

Whether or not the violent hose whip injury was caused by air, by a plug, or by a combination, Mr. Gleason testifies that the incident was ultimately caused by a lack of coordination on the jobsite, failure to establish and

⁴⁴ CP 1812 (“Air Pocket Trapped in Concrete Policy”)

⁴⁵ Id.

⁴⁶ CP 2061-2065 (Deposition of Steve Miller, pages 52-56)

⁴⁷ See CP 2139-2146 (Deposition of Rick Gleason (Vol. 1), pages 44, 62-63, 75-78, and 105); See also CP 2157-2165 (May 1, 2015 Report of Rick Gleason) See also CP 2166-2173 (American Concrete Pumping Association bulletin) and CP 2163 (American Concrete Pumping Association graphic incorporated on page 7 of Mr. Gleason’s report.)

enforce an adequate accident prevention program under WAC 296-155-110, and a poor safety culture established or allowed by Inland.⁴⁸

H. Relevant Procedural History.

Inland Washington, Inland Group, and Ralph's brought summary judgment motions for dismissal from this matter back in 2015. All three motions were denied.⁴⁹ Ralph's first sought review of the trial court's denial of its motion for dismissal on June 1, 2015.⁵⁰ This Court assigned Case Number 73503-9-I to Ralph's first appeal, and denied Ralph's petition for review.⁵¹

In denying Inland Washington's first summary motion for dismissal, Judge Carol Schapira found that Inland Washington owes non-delegable duties under Stute," but that Inland Washington was "not vicariously liable."⁵² The finding on vicarious liability was made after Division III's decision in Millican,⁵³ but before this Court's decision in Afoa II.⁵⁴ In March of 2017, after the case had been transferred to Judge

⁴⁸ See CP 2347-2380 (Deposition of Rick Gleason (Vol. 2), pages 113-116, 120-122, 127-136, 142-143, 147-149, 259-266, and 315-18)

⁴⁹ CP 1666-1667 (June 26, 2015 Order Denying Defendant Inland Washington's Motion for Summary Judgment.); CP 725-727 (June 26, 2015 Order Denying Defendant Inland Group's Motion for Summary Judgment); CP 569-570 (April 30, 2015 Order Denying Defendant Ralph's Motion for Summary Judgment. Defendant Miles sought summary judgment dismissal in 2016, which was denied. See CP 728-1218. Review of the orders on Defendant Miles' Motion has not been sought.

⁵⁰ CP 613-617

⁵¹ CP 2381-2391. Ralph's filed a Motion to Modify the Commissioner's ruling on September 30, 2015, which was denied on December 29, 2015. A Certificate of Finality on Ralph's first appeal was issued on February 5, 2016.

⁵² CP 1667; Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 788 P.2d 545 (1990). In a previous order on Inland Washington's motion, Judge Schapira found defendant Inland Washington owed no "duty as a possessor of land." CP 565-566

⁵³ Millican v. N.A. Degerstrom, Inc., 177 Wn. App. 881, 313 P.3d 1215 (2013) *review denied*, 179 Wn.2d 1026, 320 P.3d 718 (2014)

⁵⁴ Afoa v. Port of Seattle (II), 198 Wn. App. 206, 393 P.3d 802 (2017), the Supreme Court of Washington accepted review "as to the issue of allocation of fault to a nonparty

Jeffrey M. Ramsdell, Inland Washington, LLC brought a second motion for summary judgment seeking dismissal.⁵⁵ Ralph's also brought a second motion for dismissal.⁵⁶ At that time, Plaintiffs brought a motion for partial summary judgment, which was granted with respect to the collateral source rule and the effect of Title 51 immunity on liability apportionment.⁵⁷ The order granting Plaintiffs' motion also established, by Inland Washington's admission, that Inland Washington was the general contractor on the project.⁵⁸

On March 31, 2017, the trial court granted Inland Washington's motion for summary judgment dismissal,⁵⁹ but denied Ralph's.⁶⁰ On July 21, 2017, this Court granted discretionary review of both the dismissal of Inland Washington and the denial of Ralph's motion for dismissal.⁶¹ Subsequent to this Court's accepting review of those orders, the trial court dismissed Plaintiffs' claims against defendant Inland Group, P.S. on the same grounds as its dismissal of Inland Washington.⁶²

and the assertion of an empty chair defense" on Oct. 5, 2017, Supreme Ct. Case No. 94525-0.

⁵⁵ CP 1639-1659

⁵⁶ CP 1231-1253

⁵⁷ CP 2455-2458

⁵⁸ CP 2457

⁵⁹ CP 2508-2511

⁶⁰ CP 2512-2514

⁶¹ Plaintiff also sought review of discovery orders regarding immigration issues, which was denied as moot. This Court's order also linked No. 76717-8-1 (Plaintiffs' petition) and No. 76893-0-1 (Ralph's petition)

⁶² See CP 2528-2530. Plaintiffs have not sought discretionary review of this order, but plan to seek relief from the trial court in the event that the dismissal of Inland Washington is reversed.

IV. ARGUMENT

On a motion for summary judgment, the moving party has the burden of showing the absence of a genuine issue of material fact and an entitlement to judgment as a matter of law. CR 56. Summary judgment is proper when reasonable minds could reach but one conclusion regarding the material facts. Stokes v. Bally's Pacwest Inc., 113 Wn. App. 442, 444-445, 54 P.3d 161 (Div. 1, 2002). In an action for negligence a plaintiff must prove four basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause. Tincani v. Inland Empire Zoological Soc'y, 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). "A duty can arise either from common law principles or from a statute or regulation. A duty can also arise contractually." Kennedy v. Sea-Land Service, Inc., 62 Wn. App. 839, 816 P.2d 75 (Div. 1, 1991) The existence of a duty is a question of law, while breach and proximate cause are generally questions of fact for a jury. Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). The facts and reasonable inferences from those facts are considered in a light most favorable to the nonmoving party. Babcock v. Mason County Fire Dist. No. 6., 144 Wn.2d 774, 784, 30 P.3d 1261 (2001). "The standard of review on appeal of a summary judgment order is de novo; that is, the appellate court conducts the same inquiry as the trial court." Mahoney v. Shinpoch, 107 Wn.2d 679, 683, 732 P.2d 510, 512 (1987) *citing* Hartley v. State, 103 Wn.2d 768, 774, 698 P.2d 77 (1985). Accordingly, no deference is due to the

trial Court's granting of summary judgment dismissal, or to its findings that Inland owed no duties as a possessor of land or that Inland has no vicarious liability for breaches of duties under WISHA or under the retained control doctrine.⁶³

A. Inland Washington, as the general contractor, had *per se* control of the work under *Stute v. P.B.M.C.*, and owed non-delegable duties to provide workers with a safe workplace free of WISHA violations.

Mr. Vargas claims he was injured as a result of breaches of 1) duties under WISHA, 2) duties under the retained control doctrine, and 3) duties owed by a possessor of land. The seminal case for duties under WISHA is *Stute v. P.B.M.C. Inc.*, 114 Wn.2d 454, 788 P.2d 545 (1990). Duties to provide a safe workplace under the retained control doctrine are described as set forth in *Kelley v. Howard S. Wright Const. Co.*, 90 Wn.2d 323, 582 P.2d 500, 505 (1978). The three duties owed by a general contractor or equivalent, including duties owed by a possessor of land, are described in the *Afoa I* decisions of this Court and the Washington Supreme Court. *Afoa v. Port of Seattle (I)*, 176 Wn.2d 460, 296 P.3d 800 (2013); *Afoa v. Port of Seattle (I)* 160 Wn. App. 234, 247 P.3d 482 (Div. 1, 2011).

For duties under WISHA and under the retained control doctrine to attach, the defendant must retain the right to control the manner and

⁶³ A court may also grant summary judgment for the non-moving party where from the record there is no genuine issue of material fact and the non-moving party is entitled to judgment as a matter of law. *Impecoven v. Dep't of Revenue*, 120 Wn.2d 357, 841 P.2d 752 (1992); *Leland v. Frogge*, 71 Wn.2d 197, 201, 427 P.2d 724 (1967); *Rubenser v. Felice*, 58 Wn.2d 862, 365 P.2d 320 (1961); *Washington Ass'n of Child Care Agencies v. Thompson*, 34 Wn. App. 225, 234, 660 P.2d 1124 (Div. 2, 1983). Thus, a ruling that vicarious liability does apply to Inland is appropriate here.

instrumentalities of the work. Afoa v. Port of Seattle (I), 176 Wn.2d 460, 296 P.3d 800 (2013); Kamla v. Space Needle Corp., 147 Wn. 2d 114, 52 P.3d 472 (2002). Even if no specific WISHA violation were found, Inland Washington also owed Mr. Vargas the common law duty to provide a safe workplace as described in Kelley and Afoa I, for which there is evidence of breach.

1. Inland Washington admits it was the general contractor; thus it has *per se* control of the site under *Stute*, and the *Kamla* analysis does not apply.

It is admitted and established that Inland Washington was the general contractor on the project. Under Stute, a “general contractor’s supervisory authority is *per se* control over the workplace, and the [non-delegable duty to provide a safe place to work for employees of subcontractors] is placed upon the general contractor as a matter of law.” Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 463-464, 788 P.2d 545 (1990). Since control is established *per se*, the analysis as applied in cases such as Kamla, Afoa, and Arnold v. Saberhagen Holdings, Inc., which involved jobsite owners who were not general contractors on construction sites, does not apply. Kamla v. Space Needle Corp., 147 Wn. 2d 114, 52 P.3d 472 (2002); Afoa v. Port of Seattle (I), 176 Wn.2d 460, 296 P.3d 800 (2013); Arnold v. Saberhagen Holdings, Inc., 157 Wn. App. 649, 666, 240 P.3d 162 (Div. 2, 2010) *review denied*, 249 P.3d 1029 (2011)

The defendants in Kamla, Afoa, and Arnold were not general contractors on construction sites. The defendant in Kamla was the owner

of the Space Needle who had hired the plaintiff's direct employer, subcontractor Pyro, to set up a fireworks display. The defendant in Afoa was the Port of Seattle, who controlled, but did not directly hire the plaintiff's direct employer EAGLE, for ground services. The defendant in Arnold was a shipbuilder who hired the plaintiff's employer to install insulation, during which time the plaintiff was exposed to asbestos. In those cases, the retained control analysis was needed to show the defendants retained control comparable to that of a general contractor. This control was shown in Afoa and Arnold, but not in Kamla. Here, where defendant Inland Washington was the general contractor, control is *per se* under Stute, and no showing of control is needed.

2. In addition to having per se control, evidence shows Inland Washington retained and exercised actual control over the work on its job site.

Even if a showing of retained or even actual control were required, despite the *per se* control of general contractors under Stute, such a requirement would be met in this case. Evidence shows that Inland superintendent Steve Miller retained and exercised this control. Hilltop owner Gordon Skoog testifies:

[Steve Miller's] got an office that he sits in and he answers the questions that we have about plans, he organizes the job site, he takes care of the paperwork, he goes outside and looks at what we're doing to make sure it's all done right. He just manages the job site.

CP 1997 (Deposition of Gordon Skoog, page 30:15-19). With respect to Safety, Gordon Skoog testifies that Mr. Miller "manages the overall safety

of the whole project.” CP 1997 (Id. page 30:24) In addition to Mr. Miller, Inland had another “safety guy that comes out every so often and does the safety check and inspection,” as well as other Inland project managers. CP 1998 (Id., page 31:4-11). Steve Miller described his duties as follows:

Just coordinating the job. Most of my time is sitting at a desk with a computer working out schedules, making sure all the parts and pieces fit, the plumber can get through the slab at a certain point and all that, scheduling all these pieces to come together, have a safety meeting every Tuesday, a subcontractor meeting every Tuesday, play babysitter when somebody cries, solve problems that arise.

CP 2057 (Deposition of Steve Miller, page 42:2-8)

Hilltop foreman Matt Skoog testified that Inland determined what concrete mix was to be used and directed Hilltop to order the specific mix from Miles, though without informing Hilltop that the mix would contain rocks of 1.5 inches in size or larger. CP 2185-2187 (Deposition of Matt Skoog, pages 77-79.) When asked about the rock sizes being too big for the three inch hose, Miles’ assistant general manager Dave Enders testified “The general contractor is the overall one in charge and he’s supposed to coordinate those type of things.” CP 2262 (Deposition of Dave Enders, page 39:5-6.)

3. The “common work area” described in the pre-*Stute* case of *Bozung* is not required under *Stute* and *Weinert*; any such requirement is satisfied in this case.

Inland Washington argues that it has no duty based on its contention that the incident did not occur in a “common work area,” as follows:

Here, the specific work area where the Incident occurred, namely an elevated scaffold on which Hilltop was pouring concrete into a wall form, was not a common work area of the Project. Rather, the scaffold was being used solely by Hilltop's employees, with no other trades working on the scaffold on the day of the Incident. This means that Inland Washington did not owe a duty of care to Gildardo Vargas.

CP 1648 (Inland's Motion for Summary Judgment, Page 10:19-23). This argument fails both factually and legally.

Factually, the subject incident occurred in a common work area.

The project itself was a multi-story, multi-unit development involving all common construction trades. At the time of the incident itself, there were at least four employers involved in the concrete pouring operations: Hilltop, Ralph's, Miles, and Inland Washington; there were five if Inland Group is counted separately. In addition, Hilltop owner Gordon Skoog testified that other subcontractors were on the job, including "a plumber, an electrician, you'd have sprinkler, depending on what you put in the slab whether you have conduits for securities." CP 1999 (Deposition of Gordon Skoog, page 34:11-15.)

Under Inland's formulation of a "common work area," an imaginary circle of immunity could be drawn around each worker such that every general contractor would be immunized from any claim of duty owed the moment a worker is injured. Here, Inland arbitrarily draws a circle around the scaffold that included only Hilltop workers, excluding workers from Ralph's, Miles, and Inland who not only were on site, but were actively involved in the pour. Allowing general contractors to avoid

their safe workplace duties in this manner would encourage them to employ artful scheduling to make sure that only one subcontractor was on the job at any given time, instead of encouraging them to keep their jobsites safe. Such artful scheduling to avoid liability would result in needless delays, expenses, inefficiencies in the construction industry.

Legally, Inland's argument fails because it is contrary to Washington law under the Supreme Court's 1990 Stute decision. Inland's argument is based on the 1985 holding of Division II in Bozung v. Condo Builders, Inc., 42 Wn. App. 442, 711 P.2d 1090 (1985). In Bozung, the plaintiff, an employee of subcontractor Tucci & Sons, Inc., was injured when the Caterpillar scraper he was driving rolled over. Id. at 444 He sued the defendant general contractor, alleging his injuries were caused by a failure to equip the scraper with rollover protection as required by WISHA. Id. The Bozung court noted "At the time of the accident, Tucci was the only subcontractor at the site and [general contractor] Builders was doing no work of its own at the site." Id.

The Bozung court found the general contractor had no duty because it did not retain control, and that the work site was not in a common work area:

Builders neither exercised control over nor retained any right to control the method of Tucci's work or Tucci's safety practices. The contract between the parties is entirely silent as to safety practices. Builders' actual supervisory control over Tucci's work, as evidenced by the contract, appears limited to that which is usually reserved to general contractors.

...

Further, the work site in the present case was not a common work site because Tucci was the only contractor active on the site at the time of the accident. Thus, the policy justification for placing ultimate responsibility on the general contractor for job safety in common work areas is not present here.

Bozung v. Condo Builders, Inc., 42 Wn. App. at 447, *citing*

Kelley v. Howard S. Wright Const. Co., 90 Wn.2d at 331 *and* Funk v.

General Motors Corp., 392 Mich. 91, 104, 220 N.W.2d 641 (1974).

While the Stute Court did not discuss or even cite Bozung, the Stute Court also examined the Washington Supreme Court opinion in Kelley and the Michigan Supreme Court opinion in Funk, but reached the opposite conclusion:

Regarding the duty of a general contractor, in Kelley we approved of the approach taken by the Michigan Supreme Court in Funk v. General Motors Corp., 392 Mich. 91, 220 N.W.2d 641 (1974). “Recognizing the authority a general contractor has to influence work conditions on a construction site, the Michigan Supreme Court has moved forthrightly to place ultimate responsibility for job safety in all common work areas on the general contractor.” Kelley, 90 Wn.2d at 331, 582 P.2d 500. The Michigan Court determined that the best way to assure that safety precautions are taken is to make the general contractor responsible. Kelley, 90 Wn.2d at 331, 582 P.2d 500. The Michigan Supreme Court stated:

The policy behind the law of torts is more than compensation of victims. It seeks also to encourage implementation of reasonable safeguards against risks of injury.

Placing ultimate responsibility on the general contractor for job safety in common work areas will, from a practical, economic standpoint, render it more likely that the various subcontractors being supervised by the general contractor will implement or that the general contractor will himself implement the necessary precautions and provide the necessary safety equipment in those areas.

Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 461, 788 P.2d 545 (1990).

Accordingly, the Stute Court held: “A general contractor’s supervisory authority is *per se* control over the workplace, and the duty is placed upon the general contractor as a matter of law.” Id. at 464.

Likewise, contrary to Bozung, the Stute Court did not find any requirement of a “common work area” precluded the general contractor from owing safe workplace duties to an employee of a subcontractor where the subcontractor was the only contractor active on the site.⁶⁴ Moreover, in Weinert v. Bronco Nat’l Co., a case decided about four months after the Stute decision, this Court found both an owner / developer and a siding subcontractor owed duties under Stute despite no evidence the subject fall happened in a “common area.” Weinert v. Bronco Nat’l Co., 58 Wn. App. 692, 693-694, 795 P.2d 1167 (Div. 1, 1990).⁶⁵

⁶⁴ The Stute Court described the facts as follows:

P.B.M.C., Inc., a general contractor, contracted with Lincoln Highland Village Associates to construct a condominium complex. P.B.M.C. orally subcontracted with S & S Gutters to install gutters and downspouts. On March 13, 1984, Mr. Stute, an employee of S & S Gutters, was installing gutters and slipped off the roof, falling three stories.

Stute v. P.B.M.C. Inc., 114 Wn.2d at 456

⁶⁵ The Weinert Court described the facts as follows:

Bronco National Company (Bronco) was the owner/developer. D & D Siding and Construction (D & D) was the subcontractor for siding. D & D employed Adrey Construction (Adrey) to assist with the siding. Weinert was an employee of Adrey.

...

At the time of his injury, Weinert was working 20 feet above the ground, supported by scaffolding brought onto the job and erected by Adrey employees. There is no direct evidence Bronco or D & D participated in the erection of the scaffolding or had knowledge of the alleged defects in the scaffolding. **Nor is there any evidence to support a finding that the place of Weinert’s fall was a “common area,”** as that term is defined in Kelley v. Howard S. Wright Constr. Co., 90 Wn.2d 323, 582 P.2d 500 (1978).

Weinert v. Bronco Nat’l Co., 58 Wn. App. at 693-694 (emphasis added)

Although Bozung was not discussed or cited in either Stute or Weinert, it is evident there is no “common area” requirement for general contractors to owe safe workplace duties. Alternatively, any such requirement is satisfied when the worker is an employee of a subcontractor working on a general contractor’s jobsite. Those were the facts in both Kelley and Funk. In Kelley, an employee of a metal decking subcontractor fell off a slippery roof without fall protection. Kelley, 90 Wn.2d at 331. In Funk, an employee of a plumbing contractor fell through a hole in the roof while installing pipes. Funk, 392 Mich. at 100.⁶⁶

B. General contractors owe non-delegable duties to all workers on their jobsites, concurrent with those duties owed by other employers on their jobsites, and are vicariously liable for their breach under Washington law including *Millican and Afoa II*.

General contractors and those found to have comparable control owe non-delegable duties to all workers on their jobsites as discussed above. These duties are owed concurrently along with other employers on site, within the scope of each employer’s control. Weinert v. Bronco Nat’l Co., 58 Wn. App. 692, 795 P.2d 1167 (Div. 1, 1990). These duties are concurrent and non-delegable, and general contractors are vicariously liable for their breach. They may also be found liable for acting in concert

⁶⁶ The Funk court described the unsuccessful argument of General Motors, who was found to have owed safe workplace duties:

The immediate cause of the accident was the manner in which Funk chose to complete the assigned task. By removing the roof slabs, he opened a hole in the roof and then slipped and fell through the opening. This case, says General Motors, “is a classic example of the man who, in a sense, dug a hole and regrettably fell into it.”

Funk, 392 Mich. at 100

in a negligent or unlawful manner with other employers on their jobsites that breach these duties.

1. General contractors are vicariously liable for breaches of non-delegable duties under *Millican* and *Afoa II*.

Under Washington law, Inland is vicariously liable for the acts and omissions of its subcontractors. In 2013, Division III examined general contractors' duties under Stute and explained that general contractors are vicariously liable for damages caused by breaches of non-delegable duties by subcontractors such that independent negligence of the general contractor need not be shown. Millican v. N.A. Degerstrom, Inc., 177 Wn. App. 881, 313 P.3d 1215, (2013) *review denied*, 179 Wn.2d 1026, 320 P.3d 718 (2014). The Millican court examined Stute, Kelley, and other Washington workplace safety cases, as well as relevant provisions of the Restatement (Second) of Torts, and proclaimed:

In Washington, then, a general contractor not only has direct liability for a breach of its common law duties arising from retained control, but when it comes to violations of WISHA, **vicarious liability for breach of a duty that is nondelegable**. A violation of WISHA by a subcontractor's employee is therefore not only chargeable to the subcontractor, it is also chargeable to a general contractor—"the primary employer," whose supervisory authority "places the general in the best position to ensure compliance with safety regulations."

Millican, 177 Wn. App. at 883, *quoting Stute*, 114 Wn.2d at 463

(emphasis added). The Millican court observed general contractors' workplace safety duties were an exception to the general rule of a

principal's non-liability for independent contractors' negligence, and explained:

Two categories of exceptions to this general rule exist at common law, the first being exceptions that subject the principal to liability for its own negligence and the second being **exceptions that subject the principal to liability for its contractor's tortious conduct even if the principal has itself exercised reasonable care.** Compare Restatement (Second) §§ 410–415 (direct liability) with §§ 416–429 (vicarious liability). **The latter category of exceptions giving rise to vicarious liability comprise duties said to be nondelegable,** as explained by the Restatement:

The rules ... do not rest upon any personal negligence of the employer. **They are rules of vicarious liability, making the employer liable for the negligence of the independent contractor, irrespective of whether the employer has himself been at fault.** They arise in situations in which, for reasons of policy, the employer is not permitted to shift the responsibility for the proper conduct of the work to the contractor. The liability imposed is closely analogous to that of a master for the negligence of his servant.

The statement commonly made in such cases is that the employer is under a duty which he is not free to delegate to the contractor. **Such a “non-delegable duty” requires the person upon whom it is imposed to answer for it that care is exercised by anyone, even though he be an independent contractor,** to whom the performance of the duty is entrusted.

Millican, 177 Wn. App. at 890-891, *quoting Restatement (Second) of Torts* (emphasis added). Further, the Millican court explained how the term “nondelegable duty” equated to “vicarious liability” under the Restatement (Third) of Torts:

The label “nondelegable duty” does not mean that an actor is not permitted to delegate the activity to an independent contractor. Rather, the term signals that the actor will be **vicariously liable for the contractor’s tortious conduct** in the course of carrying out the activity.

Millican, 177 Wn. App. at 896 *quoting* Restatement (Third) of Torts:

Liability for Physical and Emotional Harm § 57 cmt. b (2012) (emphasis added).

This comports with longstanding Washington law as affirmed by the Washington Supreme Court in Afoa I. The Afoa I Court cited the 1951 case of Myers v. Little Church by the Side of the Road with approval and explained how the workplace safety doctrine has developed:

Historically, our common law workplace safety doctrine has its roots in the master-servant relationship. At common law, a “master” has a duty to its “servants” to maintain a reasonably safe place to work. Over time, we have expanded the doctrine beyond the narrow confines of the master-servant relationship.

Afoa I, 176 Wn.2d at 475 (citations omitted) *citing* Myers v. Little Church by the Side of the Road, 37 Wn.2d 897, 901-2, 227 P.2d 165 (1951). In Myers, the Court found that the defendant employer, or “master,” was properly found to have breached its non-delegable duty to provide a safe workplace when its servant was injured by a faulty elevator. The defendant employer argued it should not be liable when its independent contractor elevator company had notice of the problem but that the defendant employer did not. The Court rejected that argument as an improper delegation of a non-delegable duty:

The elevator company, with notice of the difficulty, inspected the mechanism, but failed to make the required correction in a manner which would prevent recurrence of the trouble. The jury could reasonably find, on the basis of these facts, that the elevator company did not use reasonable care in ascertaining the cause of the trouble and in making repairs. It was not necessary to establish negligence by direct and positive evidence.

...

The master's duty to provide the servant with a reasonably safe place to work is nondelegable. Therefore respondent cannot escape liability for the negligence of the elevator company on the theory that the latter was an independent contractor-and no such contention has been advanced. For the same reason, **respondent cannot insulate itself from liability proving that it used reasonable care in selecting the elevator company which was to perform respondent's duty of making reasonable repairs.** This would no more release the master from liability than were he to prove that an employee who had been negligent in repairing the elevator had been selected for that purpose with reasonable care.

Myers, 37 Wn. 2d at 903-4 (citations omitted)(emphasis added).

Washington Courts have also discussed the vicarious nature of non-delegable duties in the context of non-delegable duties owed to an invitee on premises. For example, in the premises case of Blancher v. Bank of California, The Supreme Court of Washington described the effect of non-delegable duties as a form of vicarious liability:

“Some common law duties are also non-delegable. Thus the land occupier's duty of care of keep the premises reasonably safe for invitees may not be avoided by the employment of independent contractors. **In all these cases the employer is as liable for the conduct of the contractor as though it were his own.**”

Blancher v. Bank of California, 47 Wn. 2d 1, 8, 286 P.2d 92 (1955)

quoting Vicarious Liability, 28 Tulane L.Rev. 204 (emphasis added).

A general contractor's vicarious liability was recently affirmed by this Court in Afoa II, finding vicarious liability applies to both the common law and statutory duties:

The Port maintains that even if it had a nondelegable duty, RCW 4.22.070(1) still requires allocation of fault. But “[n]ondelegable duties involve a form of vicarious liability.” As Division III of this court noted in Millican v. N.A. Degerstrom, Inc., ““The label “nondelegable duty” does not mean that an actor is not permitted to delegate the activity to an independent contractor. Rather, the term signals that the actor will be vicariously liable for the contractor’s tortious conduct in the course of carrying out the activity.”” Therefore, when it comes to breach of common law duties arising from **retained control and violations of WISHA, a jobsite owner has vicarious liability** for breach of duties that are nondelegable.

Afoa v. Port of Seattle (II), 198 Wn. App. 206, 231-232, 393 P.3d 802 (Div. 1, 2017) (emphasis added). As a general contractor with per se control, Inland is vicariously liable for the acts and omissions of Hilltop, Ralph’s, and Miles. Inland cannot absolve itself of any liability by arguing it reasonably relied on the competence of Hilltop, Ralph’s or Miles, for this would be an impermissible delegation of its non-delegable duties. Inland cannot avoid liability by introducing concepts such as non-existent notice requirements that are incompatible with the essence of non-delegable duties.

2. Inland’s duties are concurrent with those of other employers on its jobsite.

Inland’s safe workplace duties are concurrent with those of other employers on its jobsite. Following Stute, Division II in Solitt found that in the context of an indemnification claim, although the general contractor

had the primary responsibility for keeping the workplace safe, the duty was concurrent with that of its subcontractors. See George Sollitt Corp. v. Howard Chapman Plumbing & Heating, Inc., 67 Wn. App. 468, 836 P.2d 851 (Div. 2, 1992). The Sollitt court explained:

In Stute, the Supreme Court held that a general contractor has a duty to comply with WISHA regulations for the protection of all employees on the jobsite, whether its own or those of an independent subcontractor. Stute does not, however, change the law regarding the duty to defend. Although it states that the general contractor is liable for the enforcement of WISHA regulations, it does not remove responsibility from the employer and other subcontractors. **Thus, under Stute we still have concurrent negligence, not sole negligence.**

Sollitt, 67 Wn. App. at 473-474 (emphasis added).

In Gilbert H. Moen Co. v. Island Steel Erectors, Inc., the Supreme Court upheld the reasoning of both Stute and Sollitt and found it to apply even after passage of the 1986 Tort Reform Act which included the enactment of RCW 4.22.070, as follows:

The duties of the general and subcontractor are concurrent. The analysis of the Court of Appeals in Sollitt remains the correct reading of the law after the 1986 Tort Reform Act. Accordingly, while **Moen as the general contractor may not delegate away its general duty to ensure safety on the jobsite**, Island is not thereby relieved of its concurrent workplace safety duty.

Gilbert H. Moen Co. v. Island Steel Erectors, Inc., 128 Wn.2d 745, 758, 912 P.2d 472 (1996) (emphasis added).

It is important to remember that both the Sollitt court and the Moen court accepted as given the mandate of Stute to hold general contractors ultimately fully responsible for workplace safety on their jobsite. In this

context, the Moen court acknowledged that it “is well settled that *both* a general contractor and a subcontractor are responsible to ensure compliance with safety regulations within their areas of control.” Moen, 128 Wn.2d at 757. (emphasis in original). Also in this context the Sollitt and Moen courts approved of contractual agreements allocating risk between the general contractor and the subcontractor with respect to these shared concurrent duties. However, this does not change the fact that the general contractor’s duty is primary and non-delegable, as required under Stute, which reasoned:

A general contractor’s supervisory authority places the general in the best position to ensure compliance with safety regulations. For this reason, **the prime responsibility for safety of all workers should rest on the general contractor.**

Stute, 114 Wn.2d at 463 (emphasis added). To allow general contractors to delegate safety responsibility to its subcontractors or to impose notice requirements or other aspects of independent negligence would eviscerate the policy of Stute by encouraging willful ignorance or a “see-no-evil” approach to workplace safety.

3. Inland may be liable for acting in concert with other defendants in a negligent and unlawful manner.

RCW 4.22.070 (a) provides for joint liability against defendants who were acting in concert.⁶⁷ Yong Tao v. Heng Bin Li, 140 Wn. App. 825, 166 P.3d 1263 (Div. 3, 2007), *review denied*, 163 Wn.2d 1045, 187

⁶⁷ RCW 4.22.070 (a) provides:

A party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

P.3d 271 (2008). To be liable for “acting in concert” they must be consciously acting together in an unlawful or negligent manner which was a proximate cause of the plaintiff’s injuries; intent to harm the plaintiff is not required.⁶⁸ In this case, a jury may find that Inland, Ralph’s, Miles, and / or Hilltop were all acting together in a concrete pumping operation, the manner of which was negligent and unlawfully violated WISHA.⁶⁹

C. **Sufficient evidence supports a finding that Mr. Vargas was injured by at least one WISHA violation or breach of a common law duty.**

Evidence shows that Mr. Vargas’s injuries resulted from a violation of at least one WISHA regulation. Part O of WISHA’s Safety Standards for Construction Work sets forth requirements for concrete construction. It is undisputed that 1.5 inch rocks were forced through a 3 inch end hose. This clearly violated WAC 296-155-682 (8)(b)(xv)(C), which provides: “Aggregate should not exceed 1/3 the diameter of the delivery system.” There is evidence that the broken antenna or the missing vibrator caused the incident, which would violate the requirement under WAC 296-155-682 (8)(b)(iii) that equipment be safe. There is evidence the pump operator was unfamiliar with the safety requirements set forth in the Putzmeister manual, including the need to keep workers out of the danger zone when pumping is started. A jury could find this to

⁶⁸ RCW 4.22.070(1)(a); Yong Tao v. Heng Bin Li, 140 Wn. App. 825, 166 P.3d 1263 (Div. 3 2007), *review denied*, 163 Wn.2d 1045, 187 P.3d 271 (2008); Kottler v. State, 136 Wn.2d 437, 448, 963 P.2d 834 (1998); Gilbert H. Moen Co. v. Island Steel Erectors, Inc., 75 Wn. App. 480, 487-88, 878 P.2d 1246 (1994), *rev’d on other grounds*, 128 Wn.2d 745, 912 P.2d 472 (1996)).

⁶⁹ Under RCW 4.22.070, and as set forth in the Order granting Plaintiffs’ Motion for Summary Judgment, for which review was not sought, no liability may be apportioned to Hilltop or to anyone else found to have Title 51 immunity. CP 2455-2458

be a violation of WAC 296-155-682 (8)(c)(iii)(G), which requires operators to be familiar with applicable safety requirements.

WISHA also requires employers “Develop, supervise, implement, and enforce safety and health training programs that are effective in practice.” WAC 296-800-14020.⁷⁰ Employers in construction are required to develop a “formal accident-prevention program, tailored to the needs of the particular plant or operation and to the type of hazard involved.” WAC 296-155-110. A jury may find that any accident prevention programs that were in place were inadequate, not enforced, and not effective in practice because they failed to address the hazards of end hoses, failed to conform to American Concrete Pumping Association (“ACPA”) industry standards, and failed to include Putzmeister’s requirements that workers must be kept out of the danger zone when starting to pump. A jury may agree with the Putzmeister representative and find that the “duck and cover” plan, even if it existed, was ineffective and dangerous.⁷¹

Even if no specific WISHA regulation were found to be violated, a jury could find that the common law duty to provide a safe workplace was breached. A jury may find that Mr. Vargas was injured by Inland’s failure to ensure that concrete workers were kept out of the danger zone when

⁷⁰ See also WAC 296-800-11035 (“You must: Establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice.”)

⁷¹ WISHA regulations governing accident prevention programs also include WAC 296-800-140, WAC 296-800-14005, and WAC 296-800-14025. WISHA also requires that safety information and training be provided through safety meetings. WAC 296-800-130, WAC 296-800-13020, and WAC 296-800-13025. A jury could find one or more of these rules to have been violated.

pumping started. A jury may find that Mr. Vargas was injured by Inland's failure to ensure that the hose was big enough to pump the rock without causing a plug. A jury may find Inland failed to ensure proper equipment was used, including a pump truck with a boom of adequate length, a functioning antenna, and a vibrator to help keep air out of the system.

Inland also owed duties of a possessor of land to an invitee on premises. Afoa I, 176 Wn.2d at 478-479. General contractors are also liable for injuries caused by a dangerous condition on the land "while the work is in his charge." Williamson v. Allied Group, Inc., 117 Wn. App. 451, 456-457, 72 P.3d 230 (2003) (citing Restatement (Second) of Torts § 384 (1965)). "The owner's duty is to exercise reasonable care for the invitee's protection. That obligation extends 'to everything that threatens the invitee with an unreasonable risk of harm.'" Barker v. Skagit Speedway, Inc., 119 Wn. App. 807, 812, 82 P.3d 244, 247 (Div. 1, 2003) quoting W. Page Keeton et al., Prosser and Keeton on Torts § 61, at 425 (5th ed.1984). In Afoa I, the Supreme Court found that cluttered equipment left on the tarmac was sufficient evidence from which a jury could find the duty was breached. In Arnold, the Court found asbestos could be properly considered a condition on the land:

A possessor of land is not liable to his [or her] invitees for physical harm caused to them by **any activity or condition on the land** whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

Arnold v. Saberhagen Holdings, Inc., 157 Wn. App. at 666–68 *quoting*
Restatement (Second) of Torts § 343A, at 218 (emphasis added).⁷²

Arguably, a jury could find that the unsafe pumping procedures used constituted an unreasonably dangerous activity on the land by which Mr. Vargas was injured.

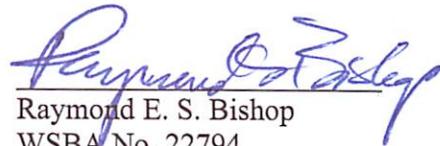
V. CONCLUSION

For the reasons set forth above, Plaintiffs / Appellants Vargas respectfully request that the trial court’s dismissal of their claims against admitted general contractor Inland Washington LLC be reversed, and that they be awarded costs on appeal.

Respectfully submitted this 20th day of October, 2017.



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⁷² Cf. Morris v. Vaagen Bros. Lumber, Inc., 130 Wn. App. 243, 250, 125 P.3d 141 (Div. 3, 2005) (finding equipment involved in a building collapse to not be a condition of the land); distinguished by the Arnold court. Arnold, 157 Wn. App at 667-668.

VI. APPENDIX

- A. Scene Photos from Anthony Howell's Deposition (Annotated)
(CP 1950-1954 and 1961)**
- B. Putzmeister BSF 46 Pump Truck Manual Excerpts
(CP 1963-1972)**
- C. ACPA January 2010 Safety Bulletin Re: "Hose-Whipping"
(CP 2168-2173)**
- D. Hilltop's "Duck and Cover" Subsequent Addition to Safety Book
(CP 1991)**
- E. Miles' May 23, 2013 Mix Ticket for the Subject Concrete Load
(CP 2131)**
- F. Anthony Howell's May 24, 2013 Driver Equipment Report
(CP 1962)**
- G. WAC 296-155-110**
- H. WAC 296-155-682**
- I. WAC 296-800-11035**
- J. WAC 296-800-130**
- K. WAC 296-800-13020**
- L. WAC 296-800-13025**
- M. WAC 296-800-140**
- N. WAC 296-800-14005**
- O. WAC 296-800-14020**
- P. WAC 296-800-14025**

APPENDIX A

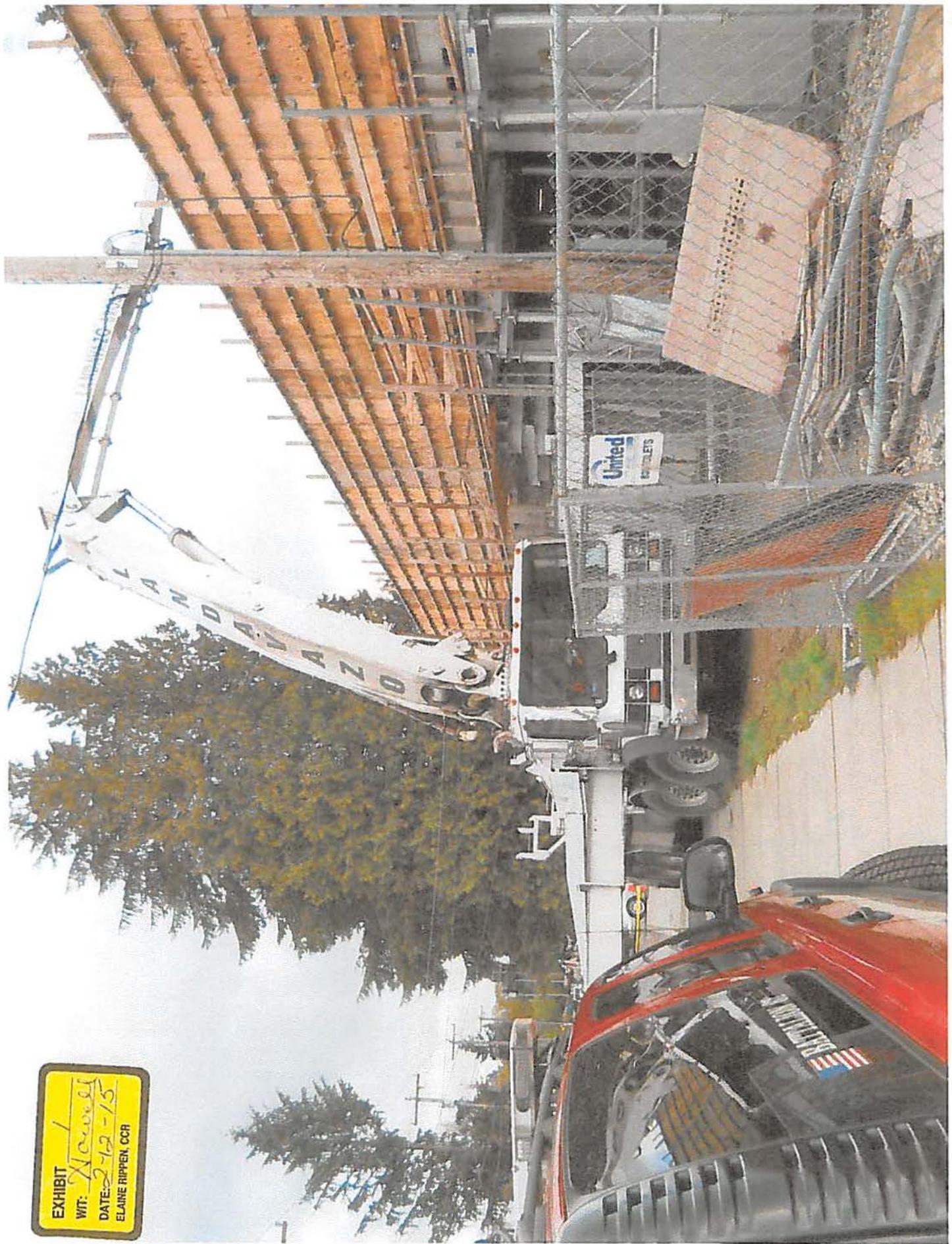


EXHIBIT 1
WIT: Howell
DATE: 2-12-15
ELAINE RIPPEN, CCR









7



APPENDIX B

Operating Instructions

for machine operator and maintenance staff

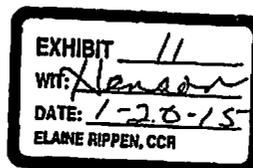
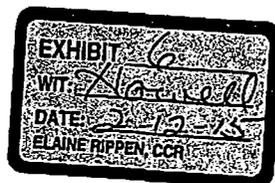
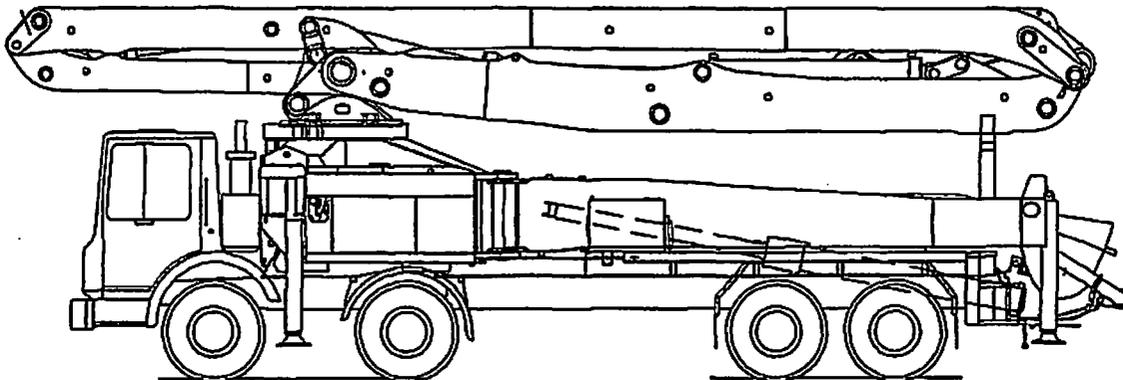
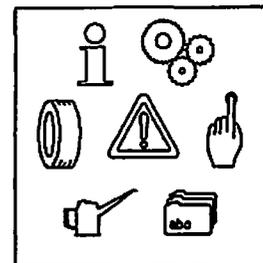
always keep by the machine

Truck-mounted
concrete pump

BSF46

Machine no.

Boom no.



P/N A820085
Rev. B
September 2002



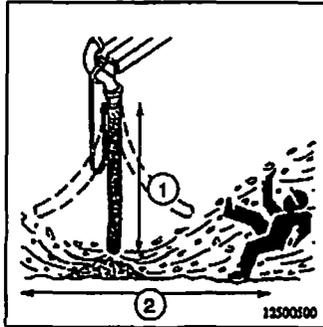
Safety regulations



Injuries caused by falling boom arms if isolators are opened without first ensuring that the appropriate boom arm is secured.

Injury may be caused by the hose operator being struck by the end hose if this has become trapped in the reinforcement and suddenly jumps out on further movement of the boom. This danger also exists if a blockage is suddenly released. There is also a considerable risk of injury from the end hose striking out when starting to pump and during washing out as a result of entrapped air or sudden boom movements.

2.4.2 Danger zone



The danger zone when starting to pump and during washing out procedures is the area around end hose in which the end hose can strike out. The diameter of the zone is twice the end hose length.

- 1 Maximum end hose length 4 m
- 2 Danger zone = 2 × end hose length = 8 m

Injuries caused by the pump rolling because of brakes or support legs releasing.



Safety regulations



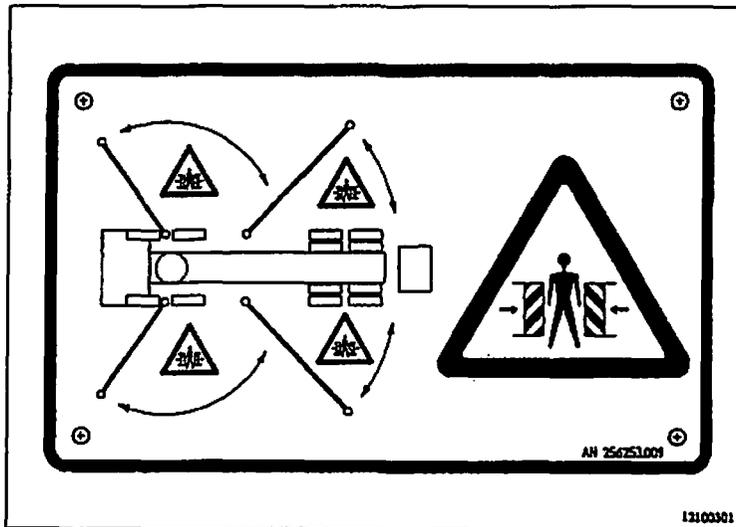
2.8 Danger zones

Unauthorized presence in the danger zone of the machine is forbidden. Warn persons present in the danger zone. Cease operations if such persons do not leave the danger zone despite a warning. The machine operator must be capable of seeing the danger zone at all times and under all circumstances. If necessary he must appoint an assistant to supervise the danger zone.

The machine operator is responsible for safety in the working area (danger zone) of the machine whilst the machine is in use.

The danger zone changes as the activities change.

2.8.1 Support legs



The danger zone when setting out the machine supports is the zone in which the supports are swung out or extended.



Danger of crushing

There is a danger of crushing in the area through which the supports may be swung out or extended.

You should therefore secure the danger zone.

Keep the danger zone under constant observation.

*You must halt work immediately and press the **EMERGENCY SHUT-DOWN** button if anyone enters the danger zone.*



Safety regulations



2.8.3 End hose



The danger zone when starting to pump and during washing out is the area around the end hose in which the end hose can strike out. The diameter of the zone is twice the end hose length.

- 1 Maximum end hose length 4 m
- 2 Danger zone = 2 x end hose length = 8 m



Danger

There is a risk of injury in the area around the end hose if the end hose strikes out when starting to pump, after a blockage has been freed or during washing out. This zone is twice the end hose length in diameter.

The end hose must be allowed to hang freely.

Ensure that no-one is standing in the danger zone. Keep the danger zone under constant observation.

*You must halt work immediately and press the **EMERGENCY SHUT-DOWN** button if anyone enters the danger zone.*



Safety regulations



2.14 Pumping operations

Make sure that nobody is at risk from the running machine before switching the machine on or setting it in motion.

Start machines from the driver's seat only. The driver's cab must be locked when you are operating the machine from the remote control to prevent unauthorized starting of the engine.

Always watch the control displays in accordance with the Operating Instructions during start-up and shut-down procedures.

2.14.1 Place of work



It is forbidden to climb onto the machine when it is in the ready mode.

The place of work during pumping operations is at the remote control. It is forbidden to climb onto the machine when it is in operation.



2.14.2 Responsibility

The machine operator is responsible for the entire operational area while the machine is in use. It must be possible for him to observe this area in its entirety, otherwise a signaller is required.

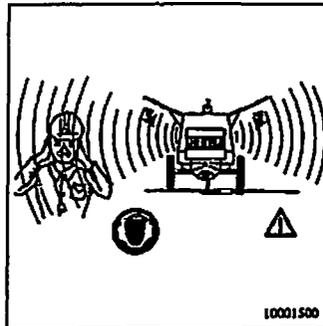
Avoid any method of operation that might be prejudicial to safety.

Secure yourself against falls by means of a safety harness and similar securing devices during any work on scaffolding, bridges and other parts of a building.

Avoid any method of operation that might be a risk to machine stability.

2.14.3 Noise

Keep all access covers, maintenance flaps, etc closed and locked during operation. There is a risk of injury on moving parts of the machine and a risk of damage caused by the increased noise stress.



Close access covers



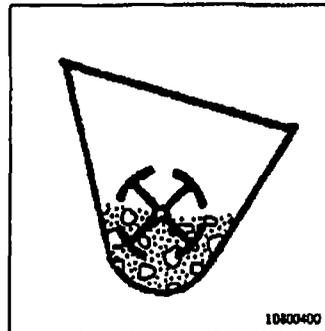
2.14.13 Truck mixer drivers

As the machine operator, it is your role to instruct the truck mixer driver delivering the concrete to you. Only allow the truck mixer drivers to work alone once you are certain that the truck mixer drivers have understood your instructions.

Make sure that no-one stands between the approaching truck mixer and the machine, there is a danger of crushing.

There is a risk of injury if persons become trapped by the truck mixer or parts of it (chute).

The agitator hopper must always be filled with concrete up to the mixer shaft to prevent concrete being sprayed because air has been sucked in.

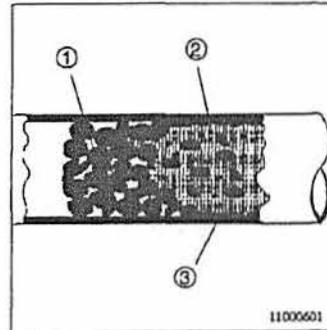


Always fill the agitator hopper with concrete up to the mixer shaft.



2.14.15 Blockages

Avoid blockages. A properly-cleaned delivery line is the best insurance against the formation of blockages. Blockages increase the risk of accidents.



- 1 Wedged aggregate
- 2 Cement paste
- 3 Boundary layer



Danger

Never attempt to blast out a blockage with compressed air. There is a lethal danger as the delivery line might burst.

Injury may be caused by the force of bursting couplings, bursting pipes or plugs being rapidly ejected from delivery lines, end hose and pump hopper.

Always try to remove the blockage by reverse pumping and then re-starting forward pumping.

If the blockage is not removed, relieve the pressure on the entire system, and particularly on the delivery line, and then remove the section of delivery line concerned.



2.14.17 End hose

The end hose must hang freely each time you start pumping, when you start pumping again after blockages, and during washing out procedures. No-one may stand within a radius of the end hose length. Do not guide the end hose when pumping is started. The end hose can swing out or stones may be ejected and cause an accident.

2.14.18 Danger zone



The danger zone when starting to pump and during washing out is the area around the end hose in which the end hose can strike out. The diameter of the zone is twice the end hose length.

- 1 Maximum end hose length 4 m
- 2 Danger zone = 2 x end hose length = 8 m



Danger

There is a risk of injury in the area around the end hose if the end hose strikes out when starting to pump, after a blockage has been freed or during washing out. This zone is twice the end hose length in diameter. The end hose must be allowed to hang freely. Ensure that no-one is standing in the danger zone. Keep the danger zone under constant observation. You must halt work immediately and press the EMERGENCY SHUT-DOWN button if anyone enters the danger zone.

Injury may be caused by the hose operator being struck by the end hose if this has become trapped in the reinforcement and suddenly jumps out on further movement of the boom. This danger also exists if a blockage is suddenly released. There is also a considerable risk of injury from the end hose swinging out violently when pumping is started.

A hose guide on the end hose makes the work easier and protects against injuries.

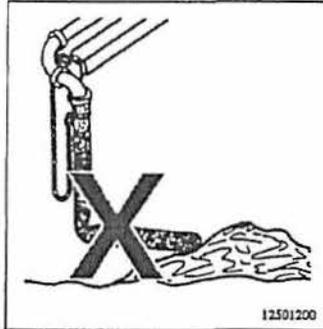


Safety regulations



2.14.19 Bending

Never bend the end hose over. Never attempt to straighten a bent end hose by increasing the pressure.



Do not bend the end hose

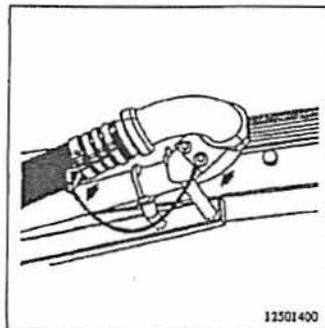
The end hose must not be inserted in the concrete.



End hose not inserted in the concrete

2.14.20 Securing

The end hose must be secured against falling.



Secure the end hose

APPENDIX C



Safety Bulletin Hose-Whipping

Background Information

Air ingestion to concrete pumping delivery pipelines has revealed itself as a considerable hazard under certain circumstances. Injuries to placing crew personnel have been sustained when trapped air is momentarily compressed, then released, causing the end hose to whip violently. The list of circumstances leading to hose whipping continues to evolve as knowledge is gathered from the field. Presently, we know there are three factors that must come together for a hose whipping hazard to exist:

1. There must be air in the delivery system,
2. There must be something pushing on the air, and
3. There must be restriction near the hose causing the air to compress.

Air in the delivery system by itself poses no particular hazard; e.g. whenever delivery system is cleaned out, it's full of air. It's only when the air is compressed, thereby storing energy, that the hazard may exist.

Avoiding Hose-Whipping Accidents

To avoid injury by a hose moving from release of trapped air, personnel must be out of the end-hose movement area.

Because the conditions creating the hazard (air is being pushed by the material being pumped) don't usually result in hose whipping, knowing when the hose will whip is not feasible. It is possible, however, to be aware that the conditions creating the hazard are present and warn personnel in the discharge area to remain away until the conditions no longer exist.

Debris coming from the hose during release of trapped compressed air can also be a hazard. To protect against the debris, personnel should move a prudent and reasonable distance beyond the end-hose movement area or the point of discharge, and Personal Protective Equipment (PPE) should be worn.

The end-hose movement area is defined as the area within the radius of the last flexible (non-steel) piece of delivery system. For example, if ten feet of rubber hose is attached to a pipeline, personnel standing more than ten feet away from the point of attachment are outside the end-hose movement area. See figure 1.

This may appear to be in conflict with other safety publications, which have stated that personnel should remain back fifty feet whenever air is in the system. In fact, fifty feet was used in documents intended to be distributed to job-site personnel and their supervisors simply as a nominal figure easily remembered. If there is only ten feet of flexible delivery system attached, personnel positioned eleven feet away should not be hit by the hose, although the hazard of flying debris remains for some distance around the point of discharge.

How Air Gets in the Delivery System

Listed below are the ways air can be introduced into the delivery system. These are situations making the hazard possible, and it is when these situations are encountered that personnel should be warned to clear the discharge area.

1. **The delivery system is void of concrete, and is therefore full of air.** Examples:
 - 1.1 when **first starting**, or
 - 1.2 when **restarting after moving**.

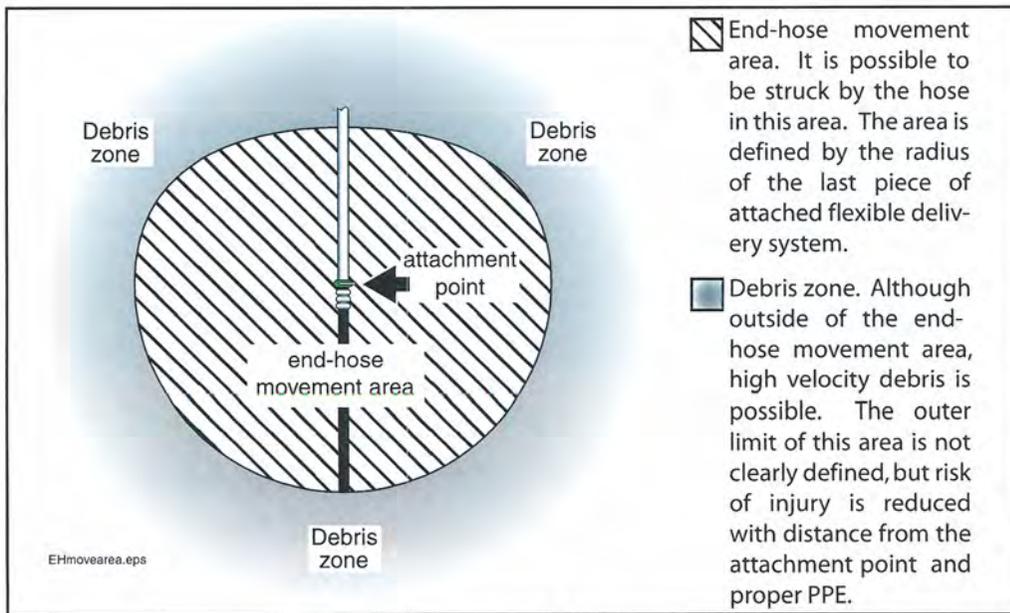


Figure 1
End-hose movement area

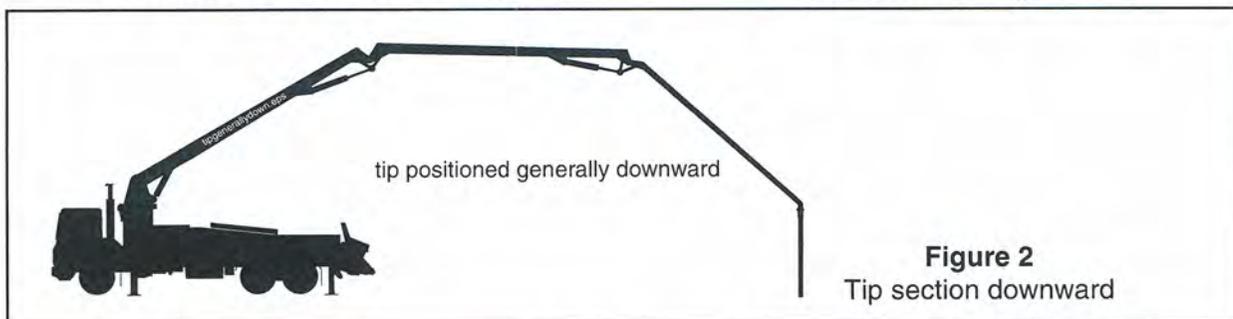
2. The pump sucks air into the material cylinders through the hopper. Air ingress through the hopper happens when:

- 2.1 the pump is first started at the beginning of the job, or
- 2.2 the hopper goes empty because the pump is pumping faster than concrete is being delivered, or
- 2.3 the hopper goes empty because the pump continues to pump after the ready-mix truck stops delivery or after it's completely discharged, or

2.4 the concrete is so stiff that air is being taken into the material cylinders with the concrete. In this case the concrete must be so stiff that bridging is occurring.

3. Air is introduced through the tip hose. This type of ingress happens when:

- 3.1 the pump is operated in reverse for any reason, or
- 3.2 the pump is shut off during pumping, and the boom's tip section is in a generally down position, such as that shown in figure 2, or



3.3 a blockage has been successfully removed by performing the operation known as "rocking the concrete."

3.4 the concrete being pumped borders on "unpumpable," As the operator frequently changes between forward and reverse in an attempt to "rearrange

the rocks”, the concrete is coming out in jerks. In the time between squirts of concrete, air is filling the gaps.

4. **Air is introduced into the interior of the pipeline, other than at either end.** This happens when:
 - 4.1 the **pump is operated in reverse, or stopped** while concrete is in the pipeline, and **one or more pieces of pipe have a hole in them, or**
 - 4.2 the **pump is operated in reverse, or stopped** while concrete is in the pipeline, and **gaskets at the clamp joints are missing or badly damaged, or**
 - 4.3 the **pipeline is disassembled, then reassembled.** This is a common occurrence when removing pieces of pipe from a horizontally laid pipeline during the course of a day. The hoses are disconnected, one or more pieces of pipe are removed, then the hoses are reattached, or
 - 4.4 a **blockage has been manually removed** from a reducer, hose, pipe, or elbow, after which the pipeline is reassembled.

Pressurizing the Air Pocket

How much pressure it takes to move concrete in a pipeline depends on several factors:

- The distance the concrete must travel.
- The diameter of the delivery line.
- The composition of the delivery line (hose or pipe, how many elbows, radius of the elbows).
- The pumping rate (100 yards per hour takes much more pressure than 50 yards per hour).
- The composition of the concrete (pumpability and dryness).
- The vertical level difference between the point of placement and the pump (each foot of level difference adds 1.1 PSI, regardless of the angle creating the level difference).

Assuming a pipeline is laid horizontally, the pressure required to push concrete is a linear function of the distance the concrete must be pushed. In other words, at halfway to the end, it only requires half the pressure to move the concrete, as shown in figure 3.

Once inside the pipeline, the air is pushed by the concrete coming behind it, and, in turn, pushes the concrete in front of it. Within moments, the air pressurizes to the same pressure required to push the concrete in front of it. When the air pressurizes, it takes less space, in much the same way a spring takes less space when a force is applied.

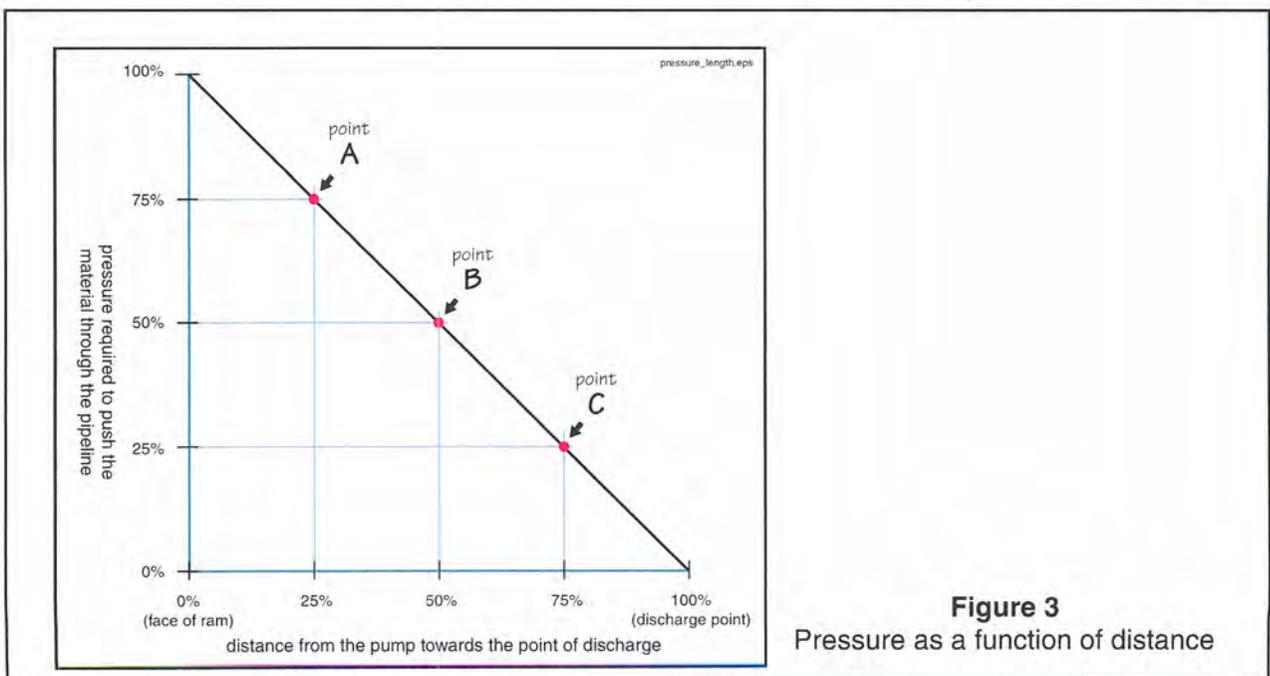


Figure 3
Pressure as a function of distance

As the air travels through the pipeline, it takes less and less pressure to push the concrete in front of it, (because there's less and less concrete in front of it). As the pressure drops, the air expands, taking more space than it had a moment before. As it expands, the concrete in front of it must move faster to accommodate the ever-expanding air pushing it. See figure 5.

The vast majority of the time, concrete accelerating in front of the air pocket results in a harmless escape; the concrete squirts out rapidly, there's a small "puff" as the air escapes, and the concrete behind the air resumes flowing normally. Perhaps the hose gives a small jerk and there's some splattering by the air/concrete mixture. No one is at risk in this case.

A small percentage of the time, the material accelerating in the delivery system gathers in the hose or reducer and forms a blockage. The fact that air is forcing the material to accelerate rapidly may cause some segregation of the material components, thereby increasing the chances of blockage formation. In addition, any folds or kinks in the delivery hose could create a blockage. Whatever

the cause, once a blockage has formed in front of air, the hazard is in place.

In the best-case scenario, the blockage releases with minimal pressure increase, or the blockage is so complete that even when the pump reaches maximum pressure, it does NOT release. In the latter case, there is no expulsion, the pump stops moving material as the hydraulic relief systems are activated, and the operator can relieve the pressure before looking for the plug.

In the worst-case scenario, high pressure is exerted on the air pocket before the blockage releases, and the reaction of the air escaping at high velocity causes the hose to whip violently. See figure 4.

Remedial Measures

Hose whipping accidents can be avoided if people take the proper precautions when air has been taken into the delivery system. Each person involved has to know what to do, and knowing is a matter of education. Everyone needs specific knowledge, and each person has to heed the warnings to protect themselves. Communication between the personnel is crucial.

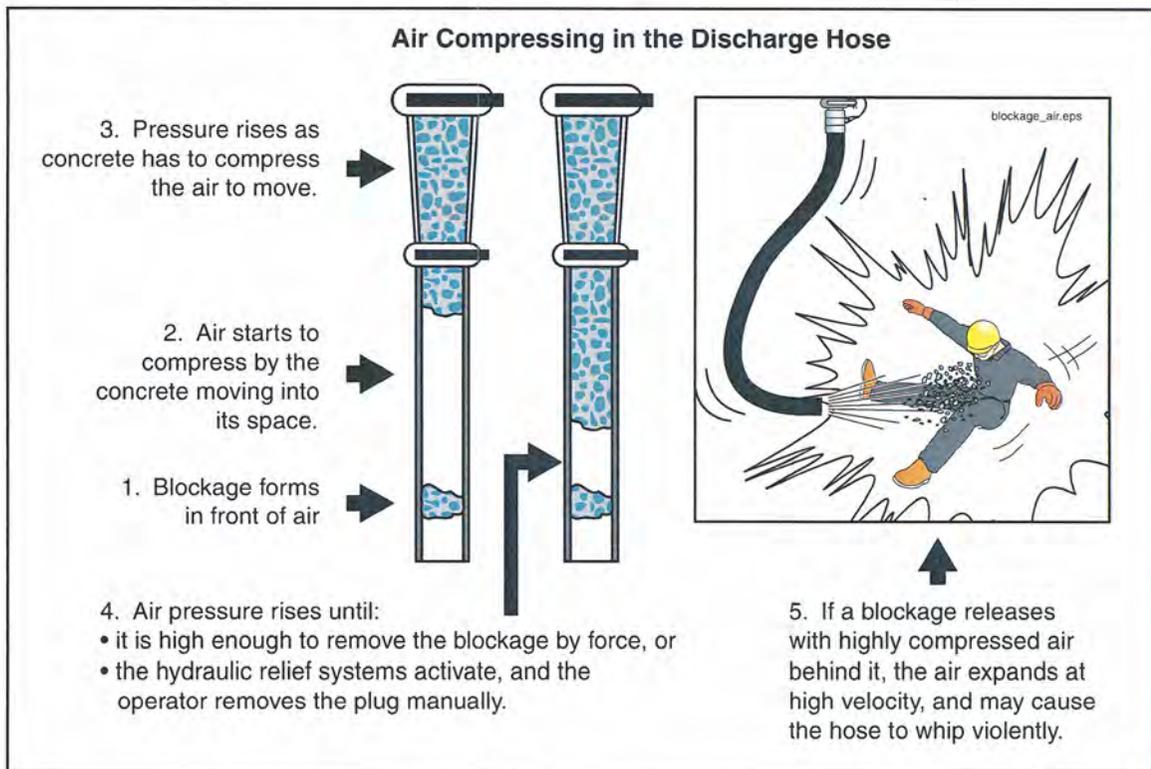


Figure 4
When air compresses in or near the tip hose

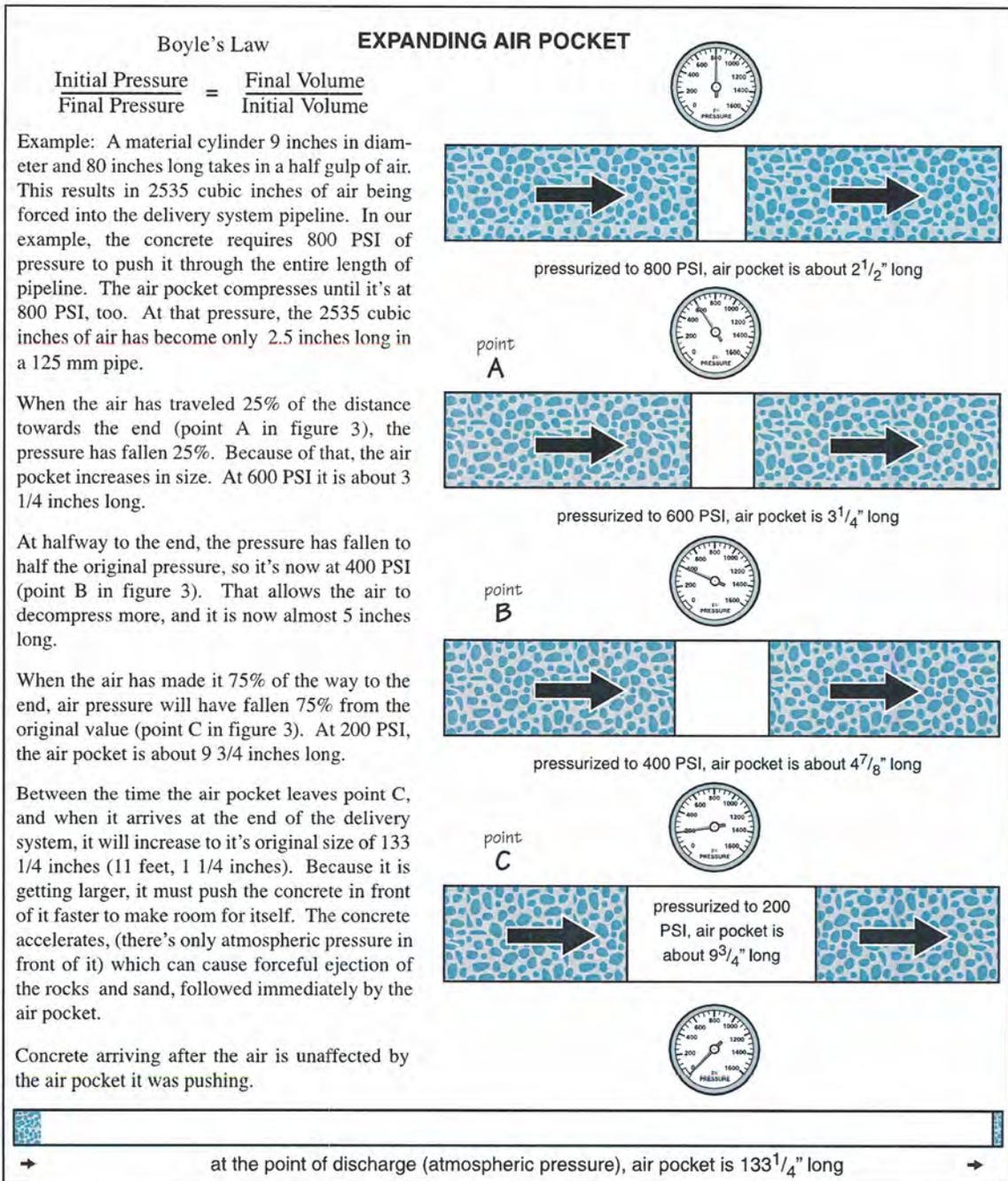


Figure 5
Air expands as pressure drops

1. Operators:
 - 1.1 Must know how air enters the delivery system, and the severity of the hazard to the placing crew.
 - 1.2 Must know to warn personnel to stay away from the discharge whenever air is known to be in the delivery system.
 - 1.3 Must communicate the hazard and its severity to the placing crew and laborers, or verify that they already know it.

- 1.4 Must communicate the hazard and its severity to the ready-mixed concrete truck drivers so they'll know to take preventive action if air enters the system through the hopper, or verify that they already know it.
 - 1.5 Must know to minimize the chances of developing blockages when air is known to be in the system; for example, slowing the strokes per minute.
 - 1.6 Must know how to minimize the effects of air in the delivery system, such as reversing the pump if air was introduced into the system through the hopper, and pumping slowly until the air is expelled.
2. Laborers assigned to work at the pump:
 - 2.1 Must know the hazard, its severity, and the methods of air ingress.
 - 2.2 Must know how to alert the operator or stop the pump if they see that air has entered the system through the hopper.
3. The placing crew:
 - 3.1 Must know the severity of the hazard.
 - 3.2 Must know how to recognize clues that air may be in the system. For example, they must know that every time they remove a piece of pipe from a system, air is introduced, and that there's always air when first starting or restarting after moving.
 - 3.3 Should know the telltale signs of a blockage in a hose and what to do if they suspect a blockage in a hose has occurred.
 - 3.4 Must heed the warnings from others and remain away from the point of discharge until the operator verifies that the hazard has been eliminated.
 - 3.5 Must not cause the delivery hose to kink.
4. Ready-mixed concrete truck drivers:
 - 4.1 Must know to keep the hopper level full, and to alert the operator or stop the machine if air is taken into the pump.
 - 4.2 Must know the severity of the hazard if they are to be expected to take this responsibility seriously.
 - 4.3 Must know how the operator would prefer to be notified in an emergency, and how to activate the emergency stop switches if they cannot get the operator's attention.
 - 4.4 Must minimize mix segregation when feeding the concrete pump.
5. Contractors:
 - 5.1 Must know how air enters the delivery system, and the severity of the hazard to the placing crew.
 - 5.2 Must know to warn personnel to stay away from the discharge whenever air is known to be in the delivery system.
 - 5.3 Must communicate the hazard and its severity to their foreman, the placing crew and laborers, or verify that they already know it.
 - 5.4 Must know the contribution that mix composition, condition and mix delivery intervals have in increasing the likelihood of blockages.

Summary

Every person in the chain of a pumping job has a responsibility to help protect the hose person and other nearby personnel from hose whipping accidents. Education is the key, followed closely by diligent watchfulness and PPE. Educational materials are available from the ACPA, but the people in the industry who know of the hazard must take steps to make the supervisors of the other industries aware that the problem exists and that there are materials available to teach avoidance.

- By Robert Edwards,

Edited by the ACPA.

APPENDIX D

Safety practices for pouring concrete with a concrete pump

This will be safety practices for all employees involved with the concrete pump or in an area close to the pump. Not following these procedures could cause serious injury or even death.

- 1) Stay clear of the pump and the hose while the pump operator is priming the pump. Do not be involved in this process. You are not trained to prime the pump.
- 2) Do not allow the operator to prime out into the area where the concrete will be poured.
- 3) When the time comes to pour the concrete, take the halo off the hose carefully while moving away slightly from the hose. If at any time you hear or sense a plug, duck and cover. Do not try to unclog the hose. Move away from the hose. This includes the hose man, vibrator operators and any other people near the hose.
- 4) Never try to unclog the hose. That is the pump operators responsibility.
- 5) Any time you sense or hear a plug, yell clog and everybody immediately move away from the hose.

| | |
|--------------------|----------------|
| EXHIBIT | <u>3</u> |
| WIT: | <u>Henson</u> |
| DATE: | <u>1-20-15</u> |
| ELAINE RIPPEN, CCR | |

OCT 08 2013
Production Services

PRR 97551 3

APPENDIX E

| | | |
|-------|----------|--------------------------|
| 0260A | 10.50 yd | 0260A |
| 5300 | 10.50 CY | ENVIRONMENTAL COMPLIANCE |
| 5401 | 1.00 LD | FUEL SURCHARGE-READY MIX |

LIABILITY STATEMENT - SEE BACK FOR WARNING!
 WE MAKE DELIVERIES INSIDE THE CURB LINE AND ON THE LOT, AT CUSTOMER'S RISK ONLY, AND ACCEPT NO RESPONSIBILITY FOR DAMAGES RESULTING FROM SUCH DELIVERIES.

IF THIS MATTER IS PLACED IN THE HANDS OF AN ATTORNEY FOR COLLECTION, WITHOUT REGARD TO WHETHER SUIT IS INSTITUTED, PURCHASER HEREBY AGREES TO PAY A REASONABLE ATTORNEY FEE FOR THE COSTS OF COLLECTION OF THIS ACCOUNT. BECAUSE IT IS IMPOSSIBLE TO ESTIMATE COLLECTION COSTS, INCLUDING ATTORNEY FEES, THE UNDERSIGNED HEREBY PROMISES TO PAY A MINIMUM OF \$500 AS ATTORNEY FEES TOGETHER WITH COSTS OF COLLECTION.

X

I HAVE READ THE FOREGOING AND ACKNOWLEDGE RECEIPT OF GOODS.

WALL Pour full load @ top soil

| | | |
|-------|------|--------------|
| SLUMP | 4 | TICKET TOTAL |
| 7:03 | 8:10 | 8:55 |
| C140 | 1 | 10.5 |

THE LEGAL MAXIMUM FINANCE CHARGE WILL BE CHARGED ON ALL ACCOUNTS 30 DAYS PAST DUE.

Truck C140 Driver 2319 User user Disp Ticket Num 141903 Ticket ID 41357 Time Date 7:03 5/23/13

Load Size 10.50 CY Mix Code 0260A Returned Qty Mix Age Seq Load ID 42128

| Material | Description | Design Qty | Required | Batched | % Var | % Moisture | Actual | Wgt |
|------------|--------------|------------|-----------|-----------|--------|------------|--------|-----|
| BAND CLS 2 | BAND CLASS 2 | 1340 lb | 14375 lb | 14360 lb | -0.79% | 6.02% A | 100 | gl |
| 7/8 #57 | 7/8 #57 | 1050 lb | 19523 lb | 19560 lb | 0.19% | 0.52% M | 12 | gl |
| TYPE 10 | CEM | 554 lb | 5972 lb | 5930 lb | 0.14% | | | |
| WATER 1 | WATER 1 | 30 gl | gl | gl | | | | |
| MBAE50 | MBAE50 | 4.00 oz | 42.00 oz | 42.00 oz | 0.00% | | | |
| MB 200 N | MB 200 N | 23.00 oz | 241.50 oz | 240.00 oz | -0.62% | | | |
| HOT WATER | HOT WATER | % # | gl | gl | | | | |
| WATER 2 | WATER 2 | % # | gl | gl | | | | |
| WATER | WATER | 100.0 % # | 178.8 gl | 179.5 gl | 0.40% | | 179.5 | gl |

Actual Load 41663 lb Slump: 4.00 In

Design W/C: 0.443 Titm Water: -1.5 gl / CY

Water/Cement: 0.420 A Design 315.0 gl Actual 299.2 gl To Add 15.1 gl

EXHIBIT 15
 WIT: Mansur
 DATE: 05-24-16
 Brandice L. Pivar, CCR

APPENDIX F

RALPH'S CONCRETE PUMPING

Driver Equipment Report

| | | | | |
|--|---|--|---|--|
| Date 5-24-13 | Equipment No. P# 208 | Odometer Reading | Pre-Trip OK <input checked="" type="checkbox"/> Not OK <input type="checkbox"/> | After-Trip <input type="checkbox"/> <input type="checkbox"/> |
| Drivers Signature X [Signature] | | | | |
| Pre-Trip Inspection - Check following Items (X) | | | | |
| <input checked="" type="checkbox"/> General Condition & Equipment numbers <input checked="" type="checkbox"/> Leaks - Oil, Coolant Fuel, Air <input checked="" type="checkbox"/> Tires <input type="checkbox"/> Mirrors & Reflectors <input type="checkbox"/> <input type="checkbox"/> Hydraulic Fluid | <input checked="" type="checkbox"/> Doors & Seals <input type="checkbox"/> Lights - Incl. Stop & Turn Signals <input checked="" type="checkbox"/> Fuel Quantity <input checked="" type="checkbox"/> Engine Oil Level <input type="checkbox"/> <input checked="" type="checkbox"/> Coolant Level <input type="checkbox"/> <input type="checkbox"/> Speedometer | <input checked="" type="checkbox"/> Emergency Equipment <input type="checkbox"/> Seat Belt <input checked="" type="checkbox"/> Oil Pressure <input checked="" type="checkbox"/> Windshield Wipers <input checked="" type="checkbox"/> Horn <input checked="" type="checkbox"/> Safety Straps | <input checked="" type="checkbox"/> Tachometer <input checked="" type="checkbox"/> Air Pressure <input checked="" type="checkbox"/> Brake Action FM VSS 12 Braking <input checked="" type="checkbox"/> Windshield - Cleanliness & Condition <input type="checkbox"/> Cab Heater | |
| After-Trip Check Items Needing Attention (X) | | | | |
| Engine <input type="checkbox"/> Knocks <input type="checkbox"/> No Power <input type="checkbox"/> Overheats <input type="checkbox"/> Noisy <input checked="" type="checkbox"/> Leaks Oil <i>Small</i> <input type="checkbox"/> Oil Pressure Clutch <input type="checkbox"/> Slips <input type="checkbox"/> Grabs <input type="checkbox"/> Chatters <input type="checkbox"/> Free Travel Transmission <input type="checkbox"/> Noisy <input type="checkbox"/> Disengages <input type="checkbox"/> Leaks Fluid <input type="checkbox"/> Shift Control | Steering <input type="checkbox"/> Wanders <input type="checkbox"/> Shimmy <input type="checkbox"/> Tramps <input type="checkbox"/> Hard <input type="checkbox"/> Free Play Brakes <input type="checkbox"/> Grab <input type="checkbox"/> Squeal <input type="checkbox"/> Air Pressure <input type="checkbox"/> Don't Release <input type="checkbox"/> Pedal Travel Electrical <input type="checkbox"/> Lights <input type="checkbox"/> Horns <input type="checkbox"/> Battery <input type="checkbox"/> Alternator <input type="checkbox"/> Starter <input type="checkbox"/> Wiring | Fuel System <input type="checkbox"/> Tanks <input type="checkbox"/> Pump <input type="checkbox"/> Lines <input type="checkbox"/> Leaks Cooling System <input type="checkbox"/> Leaks <input type="checkbox"/> Plugged <input type="checkbox"/> Fan <input type="checkbox"/> Fan Belt Emergency Equipment <input type="checkbox"/> Fuses <input type="checkbox"/> Flag <input type="checkbox"/> Flares <input type="checkbox"/> Fire Extinguisher <input type="checkbox"/> Seat Belt <input type="checkbox"/> Triangle <input type="checkbox"/> Cones | Wheel Assemblies <input type="checkbox"/> Wheels <input type="checkbox"/> Hubs <input type="checkbox"/> Bearings <input type="checkbox"/> Tires Vehicle Structure <input type="checkbox"/> Axle and Spring Assys <input type="checkbox"/> Cab Damage Exhaust System <input type="checkbox"/> Muffler <input type="checkbox"/> Tailpipe Concrete Pump <input checked="" type="checkbox"/> Hydraulic Leaks <i>Small</i> <input type="checkbox"/> Pump Kit Greased <input type="checkbox"/> Drain Water Box Instruments <input type="checkbox"/> Tachometer <input type="checkbox"/> Oil <input type="checkbox"/> Water <input type="checkbox"/> Air | |
| Comments Needs New Windshield wiper, Blades Needs a New R-Side Windshield Needs a New antenna for the Radio Receiver Needs a New O-Ring from the transition elbow to the 6"x6" box Needs a Vibrator Installed for the Hopper | | | | |
| Date 5-24-13 | Equipment No. TR-208 | Odometer Reading | | |

APPENDIX G

WAC 296-155-110

Accident prevention program.

(1) **Exemptions.** Workers of employers whose primary business is other than construction, who are engaged solely in maintenance and repair work, including painting and decorating, are exempt from the requirement of this section provided:

(a) The maintenance and repair work, including painting and decorating, is being performed on the employer's premises, or facility.

(b) The length of the project does not exceed one week.

(c) The employer is in compliance with the requirements of WAC **296-800-140** Accident prevention program, and WAC **296-800-130**, Safety committees and safety meetings.

(2) You must develop a formal accident-prevention program, tailored to the needs of the particular plant or operation and to the type of hazard involved. The department may be contacted for assistance in developing appropriate programs.

(3) The following are the minimal program elements for all employers:

A safety orientation program describing the employer's safety program and including:

(a) How, where, and when to report injuries, including instruction as to the location of first-aid facilities.

(b) How to report unsafe conditions and practices.

(c) The use and care of required personal protective equipment.

(d) The proper actions to take in event of emergencies including the routes of exiting from areas during emergencies.

(e) Identification of the hazardous gases, chemicals, or materials involved along with the instructions on the safe use and emergency action following accidental exposure.

(f) A description of the employer's total safety program.

(g) An on-the-job review of the practices necessary to perform the initial job assignments in a safe manner.

(4) You must outline each accident-prevention program in written format.

(5) You must conduct crew leader-crew safety meetings as follows:

(a) You must hold crew leader-crew safety meetings at the beginning of each job, and at least weekly thereafter.

(b) You must tailor crew leader-crew meetings to the particular operation.

(6) Crew leader-crew safety meetings must address the following:

(a) A review of any walk-around safety inspection conducted since the last safety meeting.

(b) A review of any citation to assist in correction of hazards.

(c) An evaluation of any accident investigations conducted since the last meeting to determine if the cause of the unsafe acts or unsafe conditions involved were properly identified and corrected.

(d) You must document attendance.

(e) You must document subjects discussed.

Note: Subcontractors and their employees may, with the permission of the general contractor, elect to fulfill the requirements of subsection (5)(a) and (b) of this section by attending the prime contractors crew leader-crew safety meeting. Any of the requirements of subsections (6)(a), (b), (c), and (7) of this section not satisfied by the prime contractors safety meetings must be the responsibility of the individual employers.

(7) You must prepare minutes of each crew leader-crew meeting and you must maintain a copy at the location where the majority of the employees of each construction site report for work each day.

(8) You must retain minutes of crew leader-crew safety meetings by the employer for at least one year and you must make them available for review by personnel of the department, upon request.

(9) You must conduct walk-around safety inspections as follows:

(a) At the beginning of each job, and at least weekly thereafter, you must conduct a walk-around safety inspection jointly by one member of management and one employee, elected by the employees, as their authorized representative.

(b) You must document walk-around safety inspections and such documentation must be available for inspection by personnel of the department.

(c) You must maintain records of walk-around inspections until the completion of the job.

[Statutory Authority: RCW **49.17.010**, **49.17.040**, **49.17.050**, **49.17.060**. WSR 16-09-085, § 296-155-110, filed 4/19/16, effective 5/20/16. Statutory Authority: RCW **49.17.010**, [49.17].040, and [49.17].050. WSR 01-11-038, § 296-155-110, filed 5/9/01, effective 9/1/01; WSR 00-08-078, § 296-155-110, filed 4/4/00, effective 7/1/00. Statutory Authority: Chapter **49.17** RCW. WSR 94-15-096 (Order 94-07), § 296-155-110, filed 7/20/94, effective 9/20/94; WSR 92-09-148 (Order 92-01), § 296-155-110, filed 4/22/92, effective 5/25/92. Statutory Authority: RCW **49.17.040** and **49.17.050**. WSR 86-03-074 (Order 86-14), § 296-155-110, filed 1/21/86; Order 74-26, § 296-155-110, filed 5/7/74, effective 6/6/74.]

APPENDIX H

WAC 296-155-682

Requirements for equipment and tools.

(1) **Bulk cement storage.** Bulk storage bins, containers, and silos must be equipped with the following:

- (a) Conical or tapered bottoms; and
- (b) Mechanical or pneumatic means of starting the flow of material.

(2) You must not permit any employee to enter storage facilities unless the ejection system has been shut down and locked out in accordance with WAC **296-155-429**.

(3) You must use harnesses, lanyards, lifelines or droplines, independently attached or attended, as prescribed in chapter **296-155** WAC, Part C-1, Fall protection requirements for construction.

(4) **Concrete mixers.** Concrete mixers with one cubic yard (.8 m³) or larger loading skips must be equipped with the following:

- (a) A mechanical device to clear the skip of materials; and
- (b) Guardrails installed on each side of the skip.

(5) **Power concrete trowels.** Powered and rotating type concrete troweling machines that are manually guided must be equipped with a control switch that will automatically shut off the power whenever the hands of the operator are removed from the equipment handles.

(6) **Concrete buggies.** Concrete buggy handles must not extend beyond the wheels on either side of the buggy.

Note: Installation of knuckle guards on buggy handles is recommended.

(7) **Runways.**

(a) Runways must be constructed to carry the maximum contemplated load with a safety factor of 4, have a smooth running surface, and be of sufficient width for two buggies to pass. Single runs to have a minimum width of 42 inches with turnouts. Runways to have standard railings. Where motor driven concrete buggies are used, a minimum 4-inches by 4-inches wheel guard must be securely fastened to outside edge of runways.

(b) All concrete buggy runways which are 12 inches or more above a work surface or floor, or ramps with more than 4 percent incline are considered "elevated" runways.

Exception: Small jobs utilizing only one concrete buggy, or larger jobs utilizing a "one-way traffic pattern" may be exempt from the requirements for "turnouts" or for "sufficient width for two buggies to pass."

Exemption: Runways less than 12 inches above the floor or ground which are utilized by hard-powered buggies only, may be exempt from the requirements for guardrails and wheelguards.

(8) **Concrete pumps and placing booms.**

(a) **Definitions.**

Concrete delivery hose. A flexible concrete delivery hose which has two end couplings.

Concrete pump. A construction machine that pumps concrete.

Controls. The devices used to operate a machine.

Delivery systems. The pipe, hoses and components, through which the concrete is pumped.

Grooved end. A pipe clamp pipe connection where a groove is machined or rolled directly into the outside of the pipe wall (for example: Victualic).

Material pressure. The pressure exerted on the concrete inside the delivery system.

Placing boom and placing unit. A manual or power driven, slewable working device which:

- Consists of one or more extendable or folding parts for supporting the concrete delivery system, and directs the discharge into the desired location; and
- May be mounted on trucks, trailers, or special vehicles.

Qualified person. Someone who:

- Possesses a recognized degree or certificate of professional standing; or

- Has extensive knowledge, training, and experience; or
- Successfully demonstrated the ability to resolve problems relating to the work.

Restraining devices. A sling, cable, or equivalent device used to minimize excess movement of a delivery system in case of separation.

Whip hoses. A suspended hose that has only one coupling and is used to direct the delivery of concrete.

(b) Equipment requirements.

(i) Equipment identification tag.

You must ensure the following identification is furnished if originally identified by the manufacturer and on all pumps manufactured after January 1, 1998:

- The manufacturer's name;
- The year of manufacture;
- The model and serial number;
- The maximum material pressure;
- The maximum allowable pressure in the hydraulic system; and
- The maximum weight per foot of delivery system including concrete.

(ii) Manufacturer's manual.

You must have the manufacturer's operation/safety manual or equivalent available for each concrete pump or placing boom.

(iii) Unsafe condition of equipment.

If during an equipment inspection a condition is revealed that might endanger workers, you must not return the equipment to service until the condition is corrected.

(iv) Controls.

Controls must have their function clearly marked.

(v) Hydraulic systems.

(A) Concrete pumps and placing booms hydraulic systems must have pressure relief valves to prevent cylinder and boom damage.

(B) Hydraulic systems must have hydraulic holding valves if hose or coupling failure could result in uncontrolled vertical movement.

(vi) Certification.

In the event of failure of a structural member, overloading, or contact with energized electric power lines and before return to service, the equipment must be certified safe by:

- The manufacturer; or
- An agent of the manufacturer; or
- A professional engineer.

(vii) Marking weight. A permanent, legible notice stating the total weight of the unit must be marked on:

- Trailer or skid mounted concrete pumps;
- Placing booms; and
- All major detachable components over 500 pounds.

(viii) Lifting a pump.

A concrete pump must be lifted using the lift points specified by the manufacturer or a professional engineer.

(ix) Emergency shutoff.

A concrete pump must have a clearly labeled emergency stop switch that stops the pumping action.

(x) Inlet and outlet guarding.

(A) The waterbox must have a fixed guard to prevent unintentional access to the moving parts.

(B) The agitator must be guarded with a point of operation guard in accordance with chapter 296-806 WAC, Machine safety, and the guard must be:

- Hinged or bolted in place;
- At least 3 inches distance from the agitator;

- Be capable of supporting a load of 250 pounds.
- (C) A person must not stand on the guard when the pump or agitator is running.
- (xi) Outriggers.
 - (A) You must use outriggers in accordance with the manufacturer's specifications.
 - (B) Concrete pump trucks manufactured after January 1, 1998, must have outriggers or jacks permanently marked to indicate the maximum loading they transmit to the ground.
- (xii) Load on a placing boom.
 - (A) The manufacturer's or a licensed, registered, structural engineer's specifications for the placing boom must not be exceeded by:
 - The weight of the load;
 - The length and diameter of suspended hose;
 - The diameter and weight of mounted pipe.
 - (B) A concrete placing boom must not be used to drag hoses or lift other loads.
 - (C) All engineering calculations regarding modifications must be:
 - Documented;
 - Recorded; and
 - Available upon request.
- (xiii) Pipe diameter thickness. The pipe wall thickness must be measured in accordance with the manufacturer's instruction, and:
 - Be sufficient to maintain a burst pressure greater than the maximum pressure the pump can produce;
 - The pipe sections must be replaced when measurements indicate wall thickness has been reduced to the limits specified by the manufacturer.
- (xiv) Pipe clamps.
 - (A) You must not pump concrete through a delivery system with grooved ends, such as those for Victualic-type couplers.
 - (B) Pipe clamps must have a pressure rating at least equal to the pump pressure rating.
 - (C) Pipe clamps contact surfaces must be free of concrete and other foreign matter.
 - (D) If quick connect clamps are used, you must pin or secure them to keep them from opening when used in a vertical application.
- (xv) Delivery pipe.
 - (A) Delivery pipe between the concrete pump and the placing system must be supported and anchored to prevent movement and excessive loading on clamps.
 - (B) Double ended hoses must not be used as whip hoses.
 - (C) Attachments must not be placed on whip hoses (i.e., "S" hooks, valves, etc.).

Table 1, Nonmandatory
Recommended maximum yards per hour through hose

| Hose Diameter | Hose Length (12' and less) Max. yards per hour | Hose Length (12' and longer) Max. yards per hour |
|---------------|---|---|
| 2" | 30 | 30 |
| 3" | 90 | 50 |
| 4" | 160 | 110 |
| 5" | See manufacturer specs | See manufacturer specs |

- The above figures are based on a minimum of a 4" slump and a 5 sack mix.
- Variables in mix design can have an effect on these ratings.
- Aggregate should not exceed 1/3 the diameter of the delivery system.

(xvi) Restraining. A restraining device must:

- Be used on attachments suspended from the boom tips; and
- Have a load rating not less than 1/5 of its ultimate breaking strength.

(xvii) Equipment inspection.

(A) An inspection must be conducted annually for the first 5 years and semiannually thereafter and must include the following:

- Nondestructive testing of all sections of the boom by a method capable of ensuring the structural integrity of the boom;
- Be conducted by a qualified person or by a private agency.

(B) The inspection report must be documented and a copy maintained by the employer and in each unit inspected. It must contain the following:

- The identification, including the serial numbers and manufacturer's name, of the components and parts inspected and tested;
- A description of the test methods and results;
- The names and qualifications of the people performing the inspection;
- A listing of necessary repairs; and
- The signature of the manufacturer, an agent of the manufacturer, or a qualified person.

Note: See WAC **296-155-628** (8)(d) for the inspection worksheet criteria.

(xviii) Equipment repair.

(A) Replacement parts must meet or exceed the original manufacturer's specifications or be certified by a registered professional structural engineer.

(B) A properly certified welder must perform any welding on the boom, outrigger, or structural component.

(xix) Compressed air cleaning of the piping system. To clean the piping system:

(A) The pipe system must be securely anchored before it is cleaned out.

(B) The flexible discharge hose must be removed.

(C) Workers not essential to the cleaning process must leave the vicinity.

(D) The compressed air system must have a shutoff valve.

(E) Blow out caps must have a bleeder valve to relieve air pressure.

(F) A trap basket or containment device (i.e., concrete truck, concrete bucket) must be available and secured to receive the clean out device.

(G) Delivery pipes must be depressurized before clamps and fittings are released.

(c) Qualification and training requirements.

(i) Operator trainee—Qualification requirements. To be qualified to become a concrete pump operator, the trainee must meet the following requirements unless it can be shown that failure to meet the requirements will not affect the operation of the concrete pump boom.

(A) Vision requirements:

• At least 20/30 Snellen in one eye and 20/50 in the other. Corrective lenses may be used to fulfill this requirement;

• Ability to distinguish colors, regardless of position, if color differentiation is required;

• Normal depth perception and field of vision.

(B) Hearing requirements: Hearing adequate to meet operational demands. Corrective devices may be used to fulfill this requirement.

(ii) Operator trainee—Training requirements. Operator trainee training requirements include, but are not limited to, the following:

(A) Demonstrated their ability to read and comprehend the pump manufacturer's operation and safety manual.

(B) Be of legal age to perform the duties required.

(C) Received documented classroom training and testing (as applicable) on these recommended subjects:

- Driving, operating, cleaning and maintaining concrete pumps, placing booms, and related equipment;

- Jib/boom extensions;
- Boom length/angle;
- Manufacturer's variances;
- Radii;
- Range diagram, stability, tipping axis; and
- Structural/tipping determinations.

(D) Maintain and have available upon request a copy of all training materials and a record of training.

(E) Satisfactorily completed a written examination for the concrete pump boom for which they are becoming qualified. It will cover:

- Safety;
- Operational characteristics and limitations; and
- Controls.

(iii) Operator—Qualification requirements. Operators will be considered qualified when they have:

(A) Completed the operator trainee requirements listed in (c)(i) and (ii) of this subsection.

(B) Completed a program of training conducted by a qualified person, including practical experience under the direct supervision of a qualified person.

(C) Passed a practical operating examination of their ability to operate a specific model and type of equipment. Possess the knowledge and the ability to implement emergency procedures.

(D) Possess the knowledge regarding the restart procedure after emergency stop has been activated.

(E) Possess the proper class of driver's license to drive the concrete pump truck.

(F) Demonstrate the ability to comprehend and interpret all labels, safety decals, operator's manuals, and other information required to safely operate the concrete pump.

(G) Be familiar with the applicable safety requirements.

(H) Understand the responsibility for equipment maintenance.

(d) Concrete pump inspection worksheet criteria. Concrete pump trucks will be inspected using the following criteria: The manufacturer's required inspection criteria will be followed in all instances.

Note: DOT requirements for inspections - Ref. 49.C.F.R.396.11, Driver Vehicle Inspections and 396.13, Driver Pre-Trip Inspections; and WAC **296-155-610** .

(i) Hydraulic systems.

- (A) Oil level;
- (B) Hoses;
- (C) Fittings;
- (D) Holding valves;
- (E) Pressure settings;
- (F) Hydraulic cylinders;
- (G) Ensure that the emergency stop system is functioning properly;
- (H) All controls clearly marked.

(ii) Electrical.

- (A) All systems functioning properly.
- (B) All remote control functions are operating properly. Ensure that the emergency stop system is functioning properly.
- (C) All controls clearly marked.

(iii) Structural.

(A) Visual inspection for cracks, corrosion, and deformations of the concrete pump with placing boom structure, and all load carrying components such as outriggers, cross frames, torsion box beams, and delivery line support structures that may lead to nondestructive testing.

(B) Visual examination of all links, pivots, pins, and bolts.

(C) Vertical and horizontal movement at the turret, turntable, rotation gear lash, bearing tolerances, not to exceed manufacturer's specifications.

(iv) Piping systems.

(A) Wall thickness must not exceed original manufacturer's specifications.

(B) Mounting hardware for attaching delivery system.

(C) Correct clamps and safety pins.

(v) Safety decals.

All safety decals must be in place as required by the manufacturer.

(9) Concrete buckets.

(a) Concrete buckets equipped with hydraulic or pneumatic gates must have positive safety latches or similar safety devices installed to prevent premature or accidental dumping.

(b) Concrete buckets must be designed to prevent concrete from hanging up on top and the sides.

(c) Riding of concrete buckets for any purpose is prohibited, and you must keep vibrator crews out from under concrete buckets suspended from cranes or cableways.

(d) When discharging on a slope, you must block the wheels of ready-mix trucks and set the brakes to prevent movement.

(10) **Tremies.** You must secure sections of tremies and similar concrete conveyances with wire rope (or equivalent materials in addition to the regular couplings or connections).

(11) **Bull floats.** Bull float handles, used where they might contact energized electrical conductors, must be constructed of nonconductive material or insulated with a nonconductive sheath whose electrical and mechanical characteristics provide the equivalent protection of a handle constructed of nonconductive material.

(12) Masonry saws must be constructed, guarded, and operated in accordance with WAC **296-155-367** (1) through (4).

(13) **Lockout/tagout procedures.** You must not permit any employee to perform maintenance or repair activity on equipment (such as compressors, mixers, screens, or pumps used for concrete and masonry construction activities) where the inadvertent operation of the equipment could occur and cause injury, unless all potentially hazardous energy sources have been locked out and tagged in accordance with chapter **296-155** WAC, Part I.

[Statutory Authority: RCW **49.17.010**, **49.17.040**, **49.17.050**, **49.17.060**. WSR 16-09-085, § 296-155-682, filed 4/19/16, effective 5/20/16. Statutory Authority: RCW **49.17.010**, **49.17.040**, **49.17.050**, **49.17.060** and 29 C.F.R. 1926, Subpart M, Fall Protection. WSR 13-04-073, § 296-155-682, filed 2/4/13, effective 4/1/13. Statutory Authority: RCW **49.17.010**, **49.17.040**, **49.17.050**, and **49.17.060**. WSR 04-14-028, § 296-155-682, filed 6/29/04, effective 1/1/05. Statutory Authority: RCW **49.17.010**, [49.17].040, [49.17].050 and chapter **49.17** RCW. WSR 00-21-102, § 296-155-682, filed 10/18/00, effective 2/1/01. Statutory Authority: Chapter **49.17** RCW. WSR 95-10-016, § 296-155-682, filed 4/25/95, effective 10/1/95; WSR 94-15-096 (Order 94-07), § 296-155-682, filed 7/20/94, effective 9/20/94; WSR 91-03-044 (Order 90-18), § 296-155-682, filed 1/10/91, effective 2/12/91; WSR 90-17-051 (Order 90-10), § 296-155-682, filed 8/13/90, effective 9/24/90; WSR 89-11-035 (Order 89-03), § 296-155-682, filed 5/15/89, effective 6/30/89.]

APPENDIX I

WAC 296-800-11035

Establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice.

You must:

- Establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice.

[Statutory Authority: RCW [49.17.010](#), [49.17].040, and [49.17].050. WSR 01-11-038, § 296-800-11035, filed 5/9/01, effective 9/1/01.]

APPENDIX J

WAC 296-800-130

Safety committees/safety meetings—Summary.

Important:

This rule requires you to have a method of communicating and evaluating safety and health issues brought up by you or your employees in your workplace. Larger employers **must** establish a safety committee. Smaller employers have the choice of either establishing a safety committee or holding safety meetings with a management representative present.

There is a difference between a safety committee and a safety meeting.

- A safety committee is an organizational structure where members represent a group. This gives everyone a voice but keeps the meeting size to an effective number of participants.
- A safety meeting includes all employees and a management person is there to ensure that issues are addressed. Typically, the safety committee is an effective safety management tool for a larger employer and safety meetings are more effective for a smaller employer.

Your responsibility:

To establish a safety committee or hold safety meetings to create and maintain a safe and healthy workplace for all employees.

You must:

Establish and conduct safety committees.

[WAC 296-800-13020](#).

Follow these rules to conduct safety meetings.

[WAC 296-800-13025](#).

[Statutory Authority: RCW [49.17.010](#), [49.17].040, and [49.17].050. WSR 02-16-047, § 296-800-130, filed 8/1/02, effective 10/1/02; WSR 01-11-038, § 296-800-130, filed 5/9/01, effective 9/1/01.]

APPENDIX K

WAC 296-800-13020

Establish and conduct safety committees.

You must:

| If: | Then: |
|--|---------------------------------------|
| You employ 11 or more employees on the same shift at the same location | You must establish a safety committee |

(1) Establish a safety committee.

- Make sure your committee:

- Has employee-elected and employer-selected members.

- ♦ The number of employee-elected members must equal or exceed the number of employer-selected members.

Note: Employees selected by the employees bargaining representative or union qualify as employee-elected.

- ♦ The term of employee-elected members must be a maximum of one year. (There is no limit to the number of terms a representative can serve.)

- ♦ If there is an employee-elected member vacancy, a new member must be elected prior to the next scheduled meeting.

- Has an elected chairperson.

- Determines how often, when, and where, the safety committee will meet.

Note:

- Meetings should be one hour or less, unless extended by a majority vote of the committee.
- If the committee cannot agree on the frequency of meetings, the department of labor and industries regional safety consultation representative should be consulted for recommendations. (See the resources section of this book for contacts.)

You must:

(2) Cover these topics:

- Review safety and health inspection reports to help correct safety hazards.

- Evaluate the accident investigations conducted since the last meeting to determine if the cause(s) of the unsafe situation was identified and corrected.

- Evaluate your workplace accident and illness prevention program and discuss recommendations for improvement, if needed.

- Document attendance.

- Write down subjects discussed.

(3) Record meetings.

- Prepare minutes from each safety committee and:

- Preserve them for one year.

- Make them available for review by safety and health consultation personnel of the department of labor and industries.

[Statutory Authority: RCW **49.17.010**, [49.17].040, and [49.17].050. WSR 02-16-047, § 296-800-13020, filed 8/1/02, effective 10/1/02.]

APPENDIX L

WAC 296-800-13025**Follow these rules to conduct safety meetings.**

You must:

| If: | Then: |
|--|---|
| You have 10 or fewer employees OR If you have 11 or more employees that <ul style="list-style-type: none"> • Work on different shifts with 10 or fewer employees on each shift OR <ul style="list-style-type: none"> • Work in widely separate locations with 10 or fewer employees at each location | You may choose to hold a safety meeting instead of a safety committee |

(1) Do the following for safety meetings.

- Make sure your safety meetings:
 - Are held monthly. You may meet more often to discuss safety issues as they come up.
 - Have at least one management representative.

(2) Cover these topics.

- Review safety and health inspection reports to help correct safety hazards.
- Evaluate the accident investigations conducted since the last meeting to determine if the cause(s) of the unsafe situation was identified and corrected.
 - Evaluate your workplace accident and illness prevention program and discuss recommendations for improvement, if needed.
 - Document attendance.
 - Write down subjects discussed.

Note: There are no formal documentation requirements for safety meetings except for writing down who attended and the topics discussed.

[Statutory Authority: RCW **49.17.010**, [49.17].040, and [49.17].050. WSR 02-16-047, § 296-800-13025, filed 8/1/02, effective 10/1/02.]

APPENDIX M

WAC 296-800-140

Accident prevention program.

Summary.

Your responsibility: To establish, supervise and enforce an accident prevention program (APP) that is effective in practice. (You may call this your total safety and health plan.)

You must:

Develop a formal, written accident prevention program (APP).

WAC 296-800-14005.

Develop, supervise, implement, and enforce safety and health training programs that are effective in practice.

WAC 296-800-14020.

Make sure your accident prevention program (APP) is effective in practice.

WAC 296-800-14025.

[Statutory Authority: RCW **49.17.010**, [49.17].040, and [49.17].050. WSR 01-11-038, § 296-800-140, filed 5/9/01, effective 9/1/01.]

APPENDIX N

WAC 296-800-14005

Develop a formal, written accident prevention program.

You must:

- Develop a formal accident prevention program that is outlined in writing. The program must be tailored to the needs of your particular workplace or operation and to the types of hazards involved.

Note: The term "accident prevention program" refers to your written plan to prevent accidents, illnesses, and injuries on the job. Your accident prevention program may be known as your safety and health plan, injury prevention program, or by some other name.

You must:

- Make sure your Accident Prevention Program contains at least the following elements:

- A safety orientation:

- ◆ A description of your total safety and health program.

- ◆ On-the-job orientation showing employees what they need to know to perform their initial job assignments safely.

- ◆ How and when to report on-the-job injuries including instruction about the location of first-aid facilities in your workplace.

- ◆ How to report unsafe conditions and practices.

- ◆ The use and care of required personal protective equipment (PPE).

- ◆ What to do in an emergency, including how to exit the workplace.

- ◆ Identification of hazardous gases, chemicals, or materials used on-the-job and instruction about the safe use and emergency action to take after accidental exposure.

- A safety and health committee.

(WAC **296-800-130**.)

[Statutory Authority: RCW **49.17.010**, [49.17].040, and [49.17].050. WSR 01-11-038, § 296-800-14005, filed 5/9/01, effective 9/1/01.]

APPENDIX O

WAC 296-800-14020

Develop, supervise, implement, and enforce safety and health training programs that are effective in practice.

You must:

- Develop, supervise, implement, and enforce training programs to improve the skill, awareness, and competency of all your employees in the field of occupational safety and health.
- Make sure training includes on-the-job instruction to employees prior to their job assignment about hazards such as:
 - Safe use of powered materials-handling equipment, such as forklifts, backhoes, etc.
 - Safe use of machine tool operations.
 - Use of toxic materials.
 - Operation of utility systems.

[Statutory Authority: RCW **49.17.010**, [49.17].040, and [49.17].050. WSR 01-11-038, § 296-800-14020, filed 5/9/01, effective 9/1/01.]

APPENDIX P

WAC 296-800-14025

Make sure your accident prevention program is effective in practice.

You must:

- Establish, supervise, and enforce your accident prevention program in a manner that is effective in practice.

[Statutory Authority: RCW **49.17.010**, [49.17].040, and [49.17].050. WSR 01-11-038, § 296-800-14025, filed 5/9/01, effective 9/1/01.]

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