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No. 96527-7

[Related to No. 96564-1]

IN THE SUPREME COURT
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

SUPPLEMENTAL BRIEF OF APPELLANTS VARGAS

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TABLE OF CONTENTS

I.	**INTRODUCTION**	**1**
II.	**ISSUES PRESENTED FOR REVIEW**	**3**
III.	**STATEMENT OF THE CASE**	**3**
IV.	**ARGUMENT**	**8**
1.	**Undisputed general contractor Inland had *per se* control over the workplace under *Stute v. P.B.M.C.***	**8**
2.	**Inland's reliance on landowner cases is misplaced; the right to retain control must be proven for landowners, but not for general contractors whose control is *per se* under *Stute*.**	**11**
3.	**Under Washington law including *Afoa II* and *Millican*, general contractors are vicariously liable for breaches of safe workplace duties.**	**14**
4.	**This Court's *Afoa II* ruling or dicta did not overrule *Stute*.**	**15**
5.	**Inland's argument for a new "common work area" element fails in both law and fact.**	**16**
6.	**If control need be shown, evidence supports a finding that Inland controlled the work.**	**18**
7.	**The Court of Appeals' abrupt reversal and finding that review had been improvidently granted in light of this Court's *Afoa II* decision should be reversed.**	**19**
V.	**CONCLUSION**	**20**
VI.	**APPENDIX**	**22**

TABLE OF AUTHORITIES

Cases

Afoa v. Port of Seattle (I), 176 Wn.2d 460, 296 P.3d 800 (2013)	16
Afoa v. Port of Seattle (II), 191 Wn.2d 110, 421 P.3d 903 (2018)	*passim*
Afoa v. Port of Seattle (II), 198 Wn. App. 206, 393 P.3d 802 (Div. 1, 2017)	14
Alber v. Owens, 66 Cal.2d 790, 59 Cal.Rptr. 117, 427 P.2d 781 (1967)	10
Billington v. Schaal, 42 Wn.2d 878, 259 P.2d 634 (1953)	5 n. 5
Bozung v. Condominium Builders, 42 Wn. App. 442, 711 P.2d 1090 (Div. 2, 1985)	12 n.17
Cano-Garcia v. King Cty., 168 Wn. App. 223, 277 P.3d 34 (Div. 2, 2012)	12
Entila v. Cook, 187 Wn.2d 480, 386 P.3d 1099 (2017)	13
Epperly v. Seattle, 65 Wn.2d 777, 399 P.2d 591 (1965)	12
Funk v. General Motors Corp., 392 Mich. 91, 220 N.W.2d 641 (1974)	9, 10, 17
Hadley v. Maxwell, 144 Wn.2d 306, 27 P.3d 600 (2001)	5 n. 5
Hennig v. Crosby Grp., Inc., 116 Wn. 2d 131, 802 P.2d 790 (1991)	12
Kelley v. Howard S. Wright Const. Co., 90 Wn.2d 323, 582 P.2d 500 (1978)	*passim*
Kamla v. Space Needle Corp., 147 Wn. 2d 114, 52 P.3d 472 (2002)	1, 18-19

Knutson v. Macy's W. Stores, Inc., 1 Wn. App. 2d. 543, 406 P.3d 683 (Div. 1, 2017) — 13

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) — *passim*

Neil v. NWCC Investments, 155 Wn. App. 119, 229 P.3d 837 (Div. 1, 2010) — 12-13

Rogers v. Irving, 85 Wn. App. 455, 933 P.2d 1060 (Div. 1, 1997) — 13

Shannon v. Howard S. Wright Constr. Co., 181 Mont. 269, 593 P.2d 438 (1979) — 10

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

Weinert v. Bronco National Co., 58 Wn. App. 692, 795 P.2d 1167 (Div. 1, 1990) — 17-18

Statutes

RCW 4.22.070 — *passim*

RCW 49.17.010 — 11

RCW 51.24.030 — 13

Title 51 RCW — 2, 15

Washington Industrial Safety and Health Act, Chapter 49.17 RCW ("WISHA") — *passim*

WISHA Regulations

WAC 296-155-110 — 5, 5 n.5

WAC 296-155-682 (8)(b)(iii) — 6

WAC 296-155-682 (8)(b)(xv)(C) — 6

Court Rules

Civil Rule 30(b)(6) 5 n.3

Washington Rule of Appellate Procedure 2.3 19-20

Constitutional Provisions

Wa. Const. art. II, § 35 3 n.1

I. INTRODUCTION

General contractor Inland Washington LLC ("Inland") seeks to dismantle decades of Washington law by overturning Stute v. P.B.M.C. and Kelley v. Howard S. Wright Const. Co. This line of cases provide that general contractors have *per se* control over the work on their jobsites, that their innate supervisory authority puts them in the best position to ensure compliance with safety regulations, and that safe workplace duties are placed on general contractors as a matter of law. In short, under the Stute line of cases, **it is the general contractor's job** to keep their jobsites under control and ensure that workers are provided with a reasonably safe workplace and enforce WISHA regulations.

Inland seeks to avoid responsibility by destroying the distinction between general contractors and landowners. In cases involving landowners who are not general contractors, control needs to be proven in order to establish that the landowner has retained the sufficient right to control the work as to be comparable to that of general contractors. This Court recognized the critical difference in Kamla v. Space Needle Corp. It reasoned it is unrealistic to conclude all jobsite owners necessarily control work conditions or have the same degree of knowledge as general contractors to be charged with non-delegable safety duties. But

general contractors have *per se* control and non-delegable duties to enforce WISHA and keep the jobsite safe.

In addition to abolishing the general contractors' *per se* control, Inland seeks to impose restrictive standards for a showing of control that would be nearly impossible to meet in any case. Inland seeks to impose a new "common work area" requirement such that no duties would be owed unless employees of more than one trade are working in exactly the same place at exactly the same time. This is not supported in either fact or law.

Inland submits this Court's July 2018 decision in Afoa v. Port of Seattle (II) overturned Stute. This is not so, since Afoa involved ground service equipment at an airport, not general contractors on construction sites. The Afoa II majority did not even cite Stute. In Afoa II, this Court held liability for breaches of non-delegable safe workplace duties was subject to apportionment under RCW 4.22.070 between the Port and non-party airlines who were found to have "concurrent non-delegable duties." The Port was still found to owe the duties, and under RCW 4.22.070, no liability can be apportioned to Title 51 immune employers. In this case, all potentially liable parties are named defendants, so apportionment to non-parties is not an issue.

Inland's case rests on dangerous dicta in Afoa II that indicates that control must be shown for general contractors as well

as landowners, and that control must be shown under agency principles for vicarious liability to apply. This proposition directly contravenes the *per se* control of general contractors under Stute and would necessitate abandoning at least 30 years of Washington workplace safety law governing construction sites. It also has constitutional implications under the Washington Constitution, which requires legislation for worker protection.[1] The Vargas family submits this was not this Court's intent in Afoa II, and that Stute should be affirmed.

II. ISSUES PRESENTED FOR REVIEW

A. Whether this Court's decision in Afoa v. Port of Seattle (II) overruled longstanding Washington law regarding safe workplace and WISHA duties of general contractors including Stute v. P.B.M.C. and Millican v. N.A. Degerstrom, Inc.

B. Whether the dismissal of the Vargas family's claims against undisputed general contractor 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. and is vicariously liable for breaches of safe workplace duties.

C. Whether this Court's opinion in Afoa II rendered the Court of Appeals' prior acceptance of review in this matter to have been improvidently granted.

III. STATEMENT OF THE CASE

On May 23, 2013, Gildardo Crisostomo Vargas suffered a severe traumatic, permanent brain injury when he was whipped in

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[1] Wa. Const. art. II, § 35.

the head by the end of a pressurized concrete pump hose, which was caused by a combination of a clog or plug in the hose, air getting into the system, and high pressure being applied. It is admitted and undisputed that Inland was the general contractor on the jobsite. At the time of his injury, Mr. Vargas was working for Hilltop Concrete Construction, Inc. ("Hilltop"), his direct Title 51 RCW immune employer. Hilltop used Defendant Ralph's Concrete Pumping, Inc. ("Ralph's") to pump concrete into 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. 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 place concrete into the wooden wall forms. Ralph's operator worked the boom and pump by remote control.

Facts support the Vargas family's claims that Mr. Vargas was injured by a number of negligent safety practices and WISHA violations. Mr. Vargas and his co-workers were within the "danger

zone" when starting to pump,[2] as prohibited by pump manufacturer Putzmeister's manual and its representatives' testimony.[3] This hazard was not addressed in the safety plans of either Inland or Hilltop in any way prior to the incident. In response to a citation from the Department of Labor and Industries ("L&I"), Hilltop produced a plan that called for workers to "duck and cover" when they hear the pump about to blow.[4] Facts and expert opinion support a finding that this violated WISHA regulations including requirements under WAC 296-155-110 for accident prevention programs that are effective in practice and address the types of hazards involved.[5] Evidence that the pump truck was missing a vibrator, which helps keep air out, had a broken antenna, and that the remote failed, supports a finding that the injury was caused by

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[2] The Putzmeister manual 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 CP 1966.

[3] CP 1963-1972 (Putzmeister Manual); CP 2304-2327 (Deposition of Thomas Hurley, Putzmeister America's CR 30(b)(6) designee); *See also* Ralph's CP 4446-4522 (Deposition of Alan Woods, Putzmeister training manager).

[4] CP 1717 (Declaration of Matt Skoog); CP 2027-2028 (Deposition of Gordon Skoog, pages 76-77.); CP 1992 (Hilltop's addition to safety book).

[5] CP 2135-2146 (Deposition of Rick Gleason, Vol. 1); CP 2147-2165 (May 1, 2015 Report of Rick Gleason); *See also* Ralph's CP 4498 (Deposition of Alan Woods, 207:13-23). L&I cited Hilltop for violating WAC 296-155-110, but did not issue any corresponding citation to Inland. The facts that a citation was issued, but not to Inland, would likely be inadmissible under Hadley v. Maxwell, 144 Wn.2d 306, 314 n.3, 27 P.3d 600 (2001) *citing* Billington v. Schaal, 42 Wn.2d 878, 882, 259 P.2d 634 (1953). However, the underlying facts are admissible, and would support a jury's finding of a WISHA violation.

unsafe equipment in violation of WAC 296-155-682 (8)(b)(iii).[6] The jury could also find the injury was caused by attempting to pump 1.5 inch aggregate rock though a three inch hose, in violation of WAC 296-155-682 (8)(b)(xv)(C) ("Aggregate should not exceed 1/3 the diameter of the delivery system.")[7]

Although a general contractor's control is *per se* under Stute, and need not be proven, even if Stute is overturned there is evidence from which a jury can find that Inland retained the right to control the work. As discussed in the Vargas family's opening brief,[8] Inland superintendent Steve Miller testified that his job duties included "coordinating the job" and required him to "play babysitter when somebody cries, solve problems that arise."[9] Hilltop foreman Matt Skoog also testified that Steve Miller was involved in the decision as to where to park the pump truck:

> Q. Do you know who made that decision as to where to park the pump truck that morning?
> A. I believe we all did in order to find the best spot for the pump to sit to pour.
> Q. When you say "we all", who was involved in that?
> A. Steve Miller and I and possibly Don from Ralph's Concrete Pumping.

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[6] CP 2135-2146 (Deposition of Rick Gleason, Vol. 1); CP 2147-2165 (May 1, 2015 Report of Rick Gleason).
[7] Inland argues the word "should" makes compliance optional. However, a jury could find this violation to be evidence of negligence under RCW 5.40.050.
[8] Brief of Appellants Vargas, pages 17-18.
[9] CP 2057 (Deposition of Steve Miller, page 42:2-8).

CP 2180-2181 (Deposition of Matthew Skoog, Pages 59:22-60:3). A jury could find that the placement of the truck was unsafe and a proximate cause of the injury. Evidence shows the boom was too short, resulting in the need to stretch the hose flat across the wall as opposed to hanging straight down as intended.[10]

Mr. Vargas's co-worker and son, Oscar Flores, describes how Inland people were constantly on site and directing the work, including safety aspects.[11] Oscar Flores testifies that the Inland superintendent would often meet with the concrete pumper and the Hilltop foreman to decide how pumping operations should be conducted.[12] The Inland superintendent and other Inland people would be on site telling Hilltop workers what work to do and how to do it, and that Inland people would tell workers what to do on the job generally, and especially regarding safety.[13] Mr. Flores also reports Inland people saw workers too close to the end hose when pumping was started, yet did nothing to keep them away.[14]

Despite Inland's constant presence and Inland's awareness that Hilltop workers were in the danger zone holding the hose when pumping started, Inland did nothing to stop this practice, did

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[10] *See* CP 2354-2356 (Deposition of Rick Gleason, Vol. 1, Pages 127:16-129:3).
[11] Ralph's CP 4440-4443 (Declaration of Oscar Flores, ¶ 5).
[12] Ralph's CP 4440-4443 (Declaration of Oscar Flores, ¶ 6).
[13] *Id.*, ¶ 6-9.
[14] *Id.*

not address it in its Accident Prevention Program, and did nothing to ensure it was addressed in Hilltop's. Inland expressly retained the right to control Hilltop's safety program in its contract.[15]

IV. ARGUMENT

1. Undisputed general contractor Inland had *per se* control over the workplace under *Stute v. P.B.M.C.*

Under Stute, a "general contractor's supervisory authority is *per se* control over the workplace." Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 463-464, 788 P.2d 545 (1990). There is a bright line difference between landowner cases, where the right to retain control must be proven, and general contractor cases, where the general contractor's control is *per se* and the duties are placed upon it as a matter of law. Both Kelley and Stute were general contractor cases, not landowner cases. The Kelley court explained the policy behind making safety the general contractor's job:

> Placing ultimate responsibility on the general contractor for job safety in common work areas will,[16] from a practical, economic standpoint, render it more likely that the various

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[15] Paragraph 5 of Section "A. Obligations and Responsibilities" of Inland's Subcontract Agreement with Hilltop provides, in relevant part:

> Contractor has implemented a Safety Program (hereafter "Program") Which shall apply to the Project. Subcontractor agrees that it, its employees and it's lower tier subcontractors (which includes, but is not limited to, Sub-subcontractors, Vendors and Suppliers) and their employees shall be bound by the Program and any other program Implemented by Contractor to benefit the health, safety and welfare of persons or property, and shall comply with all provisions thereof. …

CP 40.

[16] As discussed below, it need not be found that the incident happened in a common work area. Even if required, it would be satisfied in this case.

> 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.
>
> We regard it to be part of **the business of a general contractor** to assure that reasonable steps within its supervisory and coordinating authority are taken to guard against readily observable, avoidable dangers in common work areas which create a high degree of risk to a significant number of workmen.

Kelley, 90 Wn.2d at 332 (emphasis added) *citing* Funk v. General Motors Corp., 392 Mich. 91, 220 N.W.2d 641 (1974). While the Kelley court did not use the words "*per se* control" it applied the concept that the general contractor's "general supervisory functions" were sufficient to establish control and that its inherent authority alone was sufficient to establish the duty:

> In this case Wright had general supervisory and coordinating authority under its contract with the owner, not only for the work itself, but also for compliance with safety standards. Respondent maintains, and we agree, that **Wright's general supervisory functions are sufficient to establish control over the work** conditions of Robertson's employee Kelley. Wright had the right to require use of safety precautions such as lines or nets, or to halt dangerous work in adverse weather conditions. **This authority alone was sufficient to establish appellant's duty** to see that proper safety precautions were taken.

Kelley, 90 Wn.2d at 331 (emphasis added).

This concept was refined in Stute, which applied the policy to make WISHA enforcement the general contractor's job. The Stute court followed the policy of Michigan, Montana, and California of charging general contractors with safe workplace

duties as a matter of law. The Stute Court reiterated the Kelley Court's approval of Michigan's reasoning in Funk:

> 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."

Stute v. P.B.M.C. Inc., 114 Wn.2d at 461 *quoting* Kelley, 90 Wn.2d at 331. The Stute Court followed Montana's reasoning that "[s]ince as a practical matter, the general contractor must have control over the property and working conditions, the general contractor will have the duty to provide for safety." Stute at 462 *quoting* Shannon v. Howard S. Wright Constr. Co., 181 Mont. 269, 593 P.2d 438 (1979). The Stute Court recognized California's finding that "as a practical matter, the general contractor is in the best position to coordinate work or provide expensive safety features to protect employees of subcontractors." Stute at 462 *citing* Alber v. Owens, 66 Cal.2d 790, 59 Cal.Rptr. 117, 427 P.2d 781 (1967). Adopting this reasoning, the Stute Court explained:

> the primary employer, the general contractor, has, as a matter of policy, the duty to comply with or ensure compliance with WISHA and its regulations. **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 at 463 (emphasis added.) It concluded:

> Thus, to further the purposes of WISHA to assure safe and healthful working conditions for every person working in Washington, RCW 49.17.010, we hold the general contractor should bear the **primary responsibility** for compliance with safety regulations **because the general contractor's innate supervisory authority constitutes sufficient control over the workplace**.

Stute at 464. (emphasis added). In short, Inland owes these duties because it is the general contractor and safety is part of the general contractor's job. It cannot absolve itself of these duties by abdicating control. General contractors cannot shirk their duties, they must fulfill them. To hold otherwise would encourage general contractors to avoid controlling anything – especially anything to do with safety – in the hopes that avoiding control would avoid liability. This is precisely the opposite of the policies behind Kelley and Stute, and abandoning these time-tested policies would make Washington jobsites more dangerous, resulting in more injuries and death.

2. Inland's reliance on landowner cases is misplaced; the right to retain control must be proven for landowners, but not for general contractors whose control is *per se* under *Stute.*

Inland ignores the bright line rule of Stute and Kelly that general contractors' control is *per se* and safe workplace duties are placed on them as a matter of law. General contractors cannot compare themselves with landowners. In Kamla, the Space Needle owner hired the plaintiff's employer, Pyro, to set up fireworks on

the building. Kamla v. Space Needle Corp.,147 Wn. 2d 114, 52 P.3d 472 (2002). In Afoa, the defendant Port of Seattle was found to retain control over the work of a ground service operator on the Sea-Tac airport tarmac. Afoa v. Port of Seattle (II), 191 Wn.2d 110, 421 P.3d 903 (2018). Hennig was also a landowner case against the Port of Seattle, pertaining to construction on the sea port. Hennig v. Crosby Grp., Inc., 116 Wn. 2d 131, 802 P.2d 790 (1991). Epperly was a landowner case against the City of Seattle decided in 1965, long before Kelly, Stute and before the enactment of both OSHA and WISHA.[17] Epperly v. Seattle, 65 Wn.2d 777, 399 P.2d 591 (1965).

In Cano-Garcia the plaintiff was a direct employee of the general contractor who unsuccessfully attempted to prove that landowner King County retained control. Cano-Garcia v. King Cty., 168 Wn. App. 223, 277 P.3d 34 (Div. 2, 2012). In Neil v. NWCC Investments, the court recognized the distinction between landowners and general contractors:

> In Washington, general contractors have a nondelegable specific duty that extends to all employees on the jobsite to ensure compliance with regulations promulgated under the Washington Industrial Safety and Health Act (WISHA). **Jobsite owners owe this same duty when they retain the**

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[17] Bozung v. Condominium Builders, 42 Wn. App. 442, 711 P.2d 1090 (Div. 2, 1985) involved a general contractor, but was decided before this Court's Stute decision. Thus the *per se* control of general contractors applied in Stute overrules contrary control requirements in Bozung.

> **right to control** the manner in which the independent contractor and its employees perform their work.

Neil v. NWCC Investments, 155 Wn. App. 119, 121-122, 229 P.3d 837 (Div. 1, 2010) (emphasis added).

In carefully circumscribing safe workplace duties with the control element in landowner cases, Washington Courts have demonstrated that safe workplace jurisprudence under Stute does not open the floodgates of litigation and unlimited liability. For example, it has been found that homeowners do not owe Stute duties when building personal residences. Rogers v. Irving, 85 Wn. App. 455, 463, 933 P.2d 1060 (Div. 1, 1997). Arguments that affirming Stute would impose strict liability on general contractors are also misplaced. As explained by Division I in the context of non-delegable duties of a common carrier escalator owner:

> Contrary to the argument of respondents, vicarious liability for the negligence of a contractor is not strict liability. A plaintiff who brings a negligence claim for injury on an escalator must make a prima facie showing of negligence.

Knutson v. Macy's W. Stores, Inc., 1 Wn. App. 2d. 543, 547, 406 P.3d 683, 685 (Div. 1, 2017). Abolishing worker protections under Stute would subsidize the private insurance industry at taxpayers' expense, contrary to Washington policy favoring L&I's ability to recover in third party actions. "*See* Entila v. Cook, 187 Wn.2d 480, 485, 386 P.3d 1099 (2017). ("RCW 51.24.030 favors third party actions")

3. **Under Washington law including *Afoa II* and *Millican*, general contractors are vicariously liable for breaches of safe workplace duties.**

> In Afoa II, Division I found vicarious liability applies:
>
> 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) *reversed on other grounds*, Afoa v. Port of Seattle (II), 191 Wn.2d 110, 421 P.3d 903 (2018) *quoting* Millican v. N.A. Degerstrom, Inc., 177 Wn. App. 881, 896, 313 P.3d 1215 (Div. 3, 2013) *review denied,* 179 Wn.2d 1026, 320 P.3d 718 (2014). (emphasis added). This Court's Afoa II majority explicitly upheld vicarious liability, but ruled liability was subject to apportionment under RCW 4.22.070 to non-immune non-party entities that were found to have "concurrent non-delegable duties."

> The primary question for review is whether the jury's verdict warrants finding the Port is vicariously liable for the airlines' negligence, justifying the imposition of joint and several liability on the Port. **We hold that RCW 4.22.070(1)(a) does preserve joint and several liability when a defendant is vicariously liable for another's fault.** Whether vicarious liability exists, however, is a

> factual question. Here, the jury's findings do not support the conclusion that the Port is vicariously liable for the airlines' fault.

Afoa (II), 191 Wn.2d at 115. The majority further explains:

> **An entity that delegates its nondelegable duty will be vicariously liable for the negligence of the entity subject to its delegation**, but an entity's nondelegable duty cannot substitute for a factual determination of vicarious liability when RCW 4.22.070(1) clearly requires apportionment to "every entity which caused the claimant's damages."

Id. at 124 (emphasis added). This is not an issue here, as there are no empty chairs, and RCW 4.22.070(1) explicitly prohibits apportionment of fault to Title 51 immune entities. Although the Afoa II majority alternatively found the Port could have been vicariously liable for the airlines' fault if a finding of agency were made, such a showing is not needed for a general contractor to be liable for the breach of a non-delegable duty from a Title 51 immune employer to whom no fault can be apportioned.

4. This Court's *Afoa II* ruling or dicta did not overrule *Stute.*

Inland may argue that two lines of dicta abolished the *per se* control in Stute. These lines read:

> If the general contractor - or by extension, jobsite owner - has the right to exercise control, it also has a duty within the scope of that control, to provide a safe place of work.
> [and]
> A jobsite owner or general contractor will have this duty only if it maintains a sufficient degree of control over the work.

Afoa II, 191 Wn.2d at 121. Afoa was a landowner case that did not involve a general contractor on a construction site. The Afoa II five-to-four majority did not even cite Stute, much less discuss it. The majority certainly did not examine the policies for placing *per se* control on general contractors and placing the duties with them as a matter of law. The Afoa II dissent did cite and discuss Stute:

> Though subcontractors and others at the work site retain concurrent responsibility to meet workplace safety standards, "the primary employer, **the general contractor, has, as a matter of policy, the duty to comply with or ensure compliance with WISHA and its regulations**" because the general contractor's supervisory authority places it in the best position to ensure WISHA compliance for the safety of all workers.

Afoa II, 191 Wn.2d at 141 (Stephens, J. dissenting) *quoting* Stute, 114 Wn .2d at 464 (emphasis added). Moreover, the Afoa II dissent, citing the Afoa I majority, recognized the distinction between the *per se* control of general contractors and the required showing of control for landowners:

> The *Afoa I* decision confirmed that a jobsite owner, such as the Port, is not *per se* liable for all WISHA violations at the work site. **Whereas general contractors always have a duty to comply with WISHA regulations**, "jobsite owners have a duty to comply with WISHA only if they retain control over the manner in which contractors complete their work."

Id. (Stephens, J. dissenting) *quoting* Afoa I, 176 Wn.2d 460, 472, 296 P.3d 800 (2013)

5. Inland's argument for a new "common work area" element fails in both law and fact.

Inland argues safe workplace duties only apply in a "common work area," which it defines as only occurring where there are workers of more than one subcontractor at the same place at the same time. This argument fails both in law and in fact. First, there is no legal requirement that the incident occur in a common work area for the duties to attach, at least not under Inland's definition. Although the language in Funk, Stute and Kelley speaks of safe workplace duties in common work areas, the facts in those cases would not have satisfied Inland's new element. In Funk, no other company's employees were in the area of the plaintiff's fall at the time. The plaintiff, a plumber, had left the common work area of the steel beams and went up to the roof, from which he fell. The Funk court rejected the defendant's distinction. Funk, 392 Mich. at 115. Andre Stute fell from a roof while installing gutters for his direct employer; duties were found with no mention of any other trades or workers on site at the time. Stute, at 456. Edward Kelly fell from a temporary platform while doing metal decking work on the defendant's jobsite; duties were found with no mention of any other subcontractors' workers in the area. Kelley, 90 Wn.2d at 326. In Weinert, Division I reversed the trial court's summary judgment dismissal of the landowner and the general contractor, despite explicitly finding:

> 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 National Co., 58 Wn. App. 692, 795 P.2d 1167 (Div. 1, 1990). Thus under Weinert, a finding of a "common work area" is not an element necessary for safe workplace duties to be owed. Alternatively, if there were such an element, it would be axiomatically satisfied by the fact that the work area is common to the direct employer and to the general contractor. Factually, Inland's argument fails as well, since in addition to Inland, employees from three separate companies: Hilltop, Ralph's, and Miles, were performing the concrete pouring work at the time.

6. If control need be shown, evidence supports a finding that Inland controlled the work.

Evidence supports a finding that Inland retained the right to control Hilltop's work. "The test of control is not the actual interference with the work of the subcontractor, but the right to exercise such control." Kelley, 90 Wn.2d at 330-31. This Court in Kamla rejected the requirement of a showing of actual control:

> When we distill the principles evident in our case law, the proper inquiry becomes whether there is a retention of the right to direct the manner in which the work is performed, not simply whether there is an actual exercise of control over the manner in which the work is performed.

Kamla, 147 Wn.2d at 121. This Court's Afoa II opinion is also instructive in this regard. The Port's affirmative defense of airline liability was based on the airlines' vicarious liability for EAGLE's negligence. Mr. Afoa was between the gates of Hawaiian and China airlines when his pushback failed, and he was nowhere near any operations of British and EVA, yet all four airlines were found at fault for Mr. Afoa's injuries from "the airlines' failure to ensure a safe workplace." Afoa II, 191 Wn.2d at 121. Inland's activities, especially if shown in a light most favorable to the non-moving party, certainly show a level of control that far exceeded that of British and Eva in Afoa II.

7. The Court of Appeals' abrupt reversal and finding that review had been improvidently granted in light of this Court's *Afoa II* decision should be reversed.

Acceptance of appellate review was proper under RAP 2.3 which provides for discretionary review for "obvious error" under RAP 2.3(1); "probable error" substantially altering the status quo under RAP 2.3(2); a departure from "the accepted and usual course of judicial proceedings" under RAP 2.3(3); or where certified by the superior court under RAP 2.3(4). The Vargas family argued that review was warranted because dismissal of the general contractor from a Stute case was obvious error, or at least probable

error. The trial court had certified the question under RAP 2.3(4), upon which the Court of Appeals politely accepted review.[18]

As discussed above, this Court's Afoa II decision did not overrule Stute. It is still obvious or at least probable error to dismiss the general contractor from a Stute case. Any questions raised by this Court's Afoa II opinion make answering these questions all the more imperative, not less.

Further, Judge Ramsdell's granting summary judgment dismissal after Judge Schapira denied it warrants review under RAP 2.3(3). Defendants should not get a new bite at the apple for dismissal whenever a new judge is assigned. In King County it is common for a single case to be reassigned to a different judge two to three times or more. Encouraging defendants to repeatedly refile motions would systematically prejudice plaintiffs, implicate constitutional due process concerns, waste judicial resources, and contribute to the ever-escalating costs of civil litigation.

V. CONCLUSION

For the aforesaid reasons, the Vargas family respectfully requests this Court affirm Stute and reverse the dismissal of its claims against the general contractor in this action.

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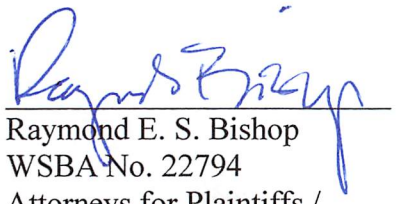
[18] Division I Order Granting Discretionary Review, pages 8-10.

Respectfully submitted this 26th day of April, 2019.



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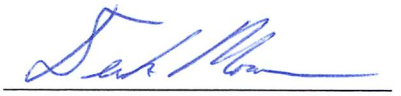

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VI. APPENDIX

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
LANDAVAZO
United

STOP! DO NOT GO BEYOND THIS POINT

12

APPENDIX B

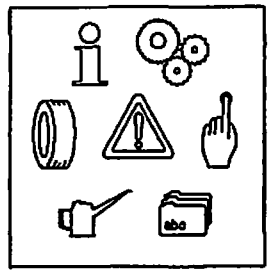
Operating Instructions

for machine operator and maintenance staff

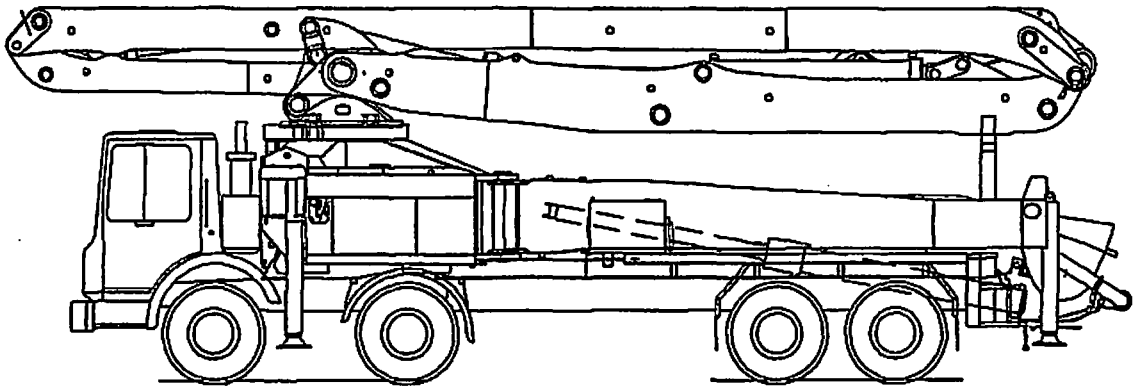
always keep by the machine

Truck-mounted
concrete pump

BSF46



Machine no.
Boom no.



P/N A820085
Rev. B
September 2002

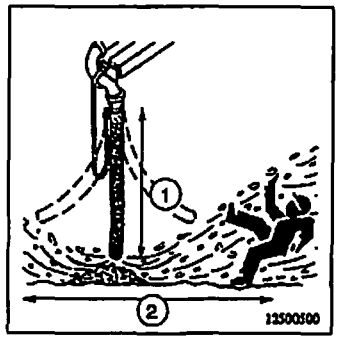
EXHIBIT 6
WIT: Harrell
DATE: 2-10-15
ELAINE RIPPEN, CCR

EXHIBIT 11
WIT: Hanson
DATE: 1-20-15
ELAINE RIPPEN, CCR

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.

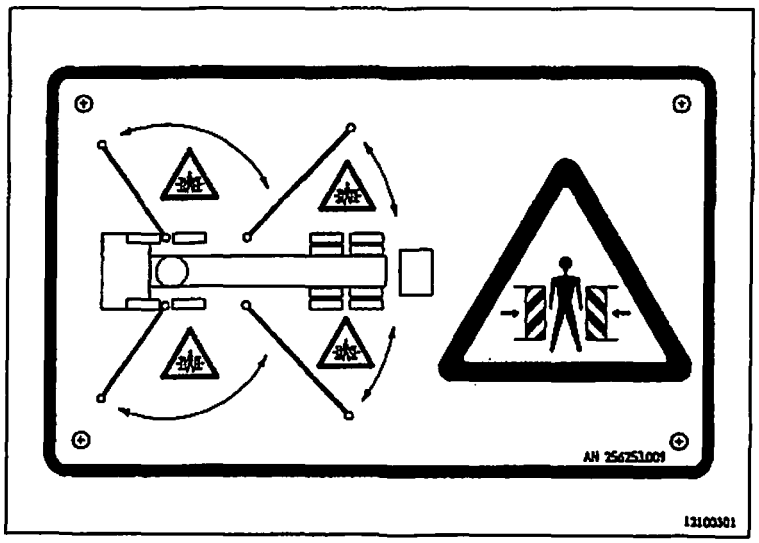
2.8 Danger zones

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

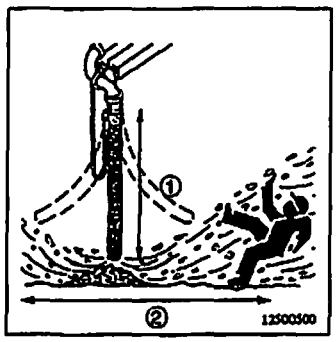


The danger zone when setting out the machine supports is the zone in which the supports are swung out or extended.

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.

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 × 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.

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.

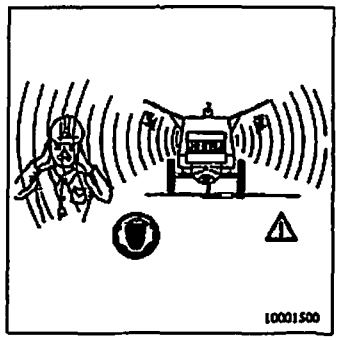
Avoid any method of operation that might be prejudicial to safety.

Secure yourself agains 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

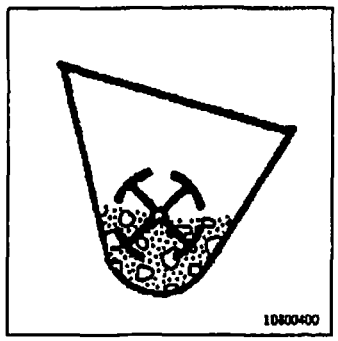
2.14.13 Truck mixer drivers

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).

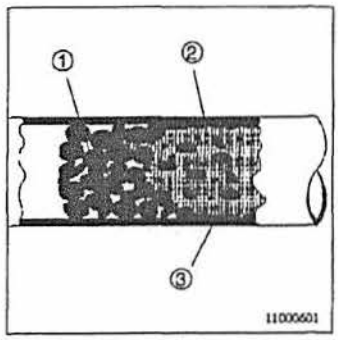
The agitator hopper must always be filled with concrete up to the mixer shaft to prevent concrete being sprayed because air has been sucked in.



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.

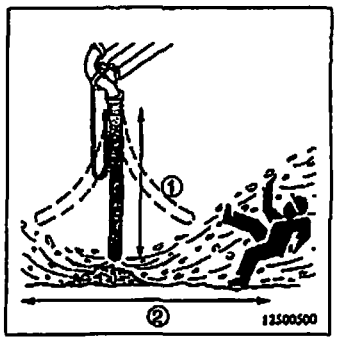
Always try to remove the blockage by reverse pumping and then re-starting forward pumping.

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

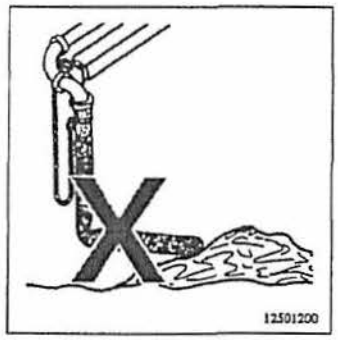
There is a risk of injury in the area around the end hose if the end hose strikes out when starting to pump, after a blockage has been freed or during washing out. This zone is twice the end hose length in diameter.
The end hose must be allowed to hang freely.
Ensure that no-one is standing in the danger 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.

2.14.19 Bending

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



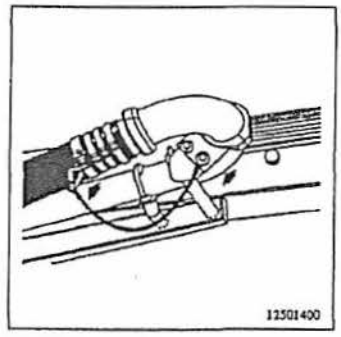
Do not bend the end hose

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 ingression 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.**

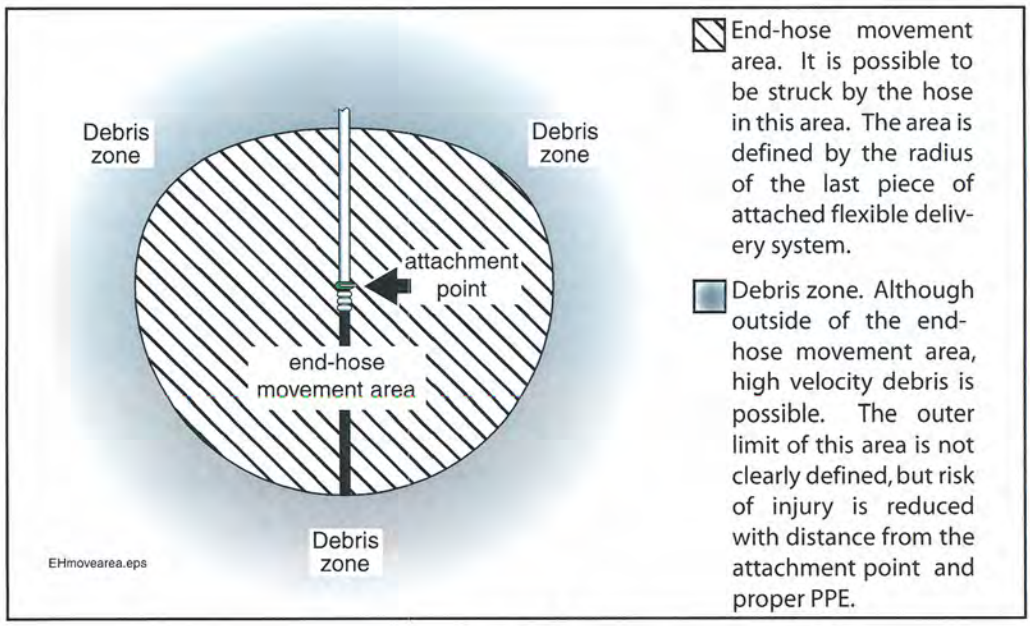


Figure 1
End-hose movement area

2. **The pump sucks air into the material cylinders through the hopper.** Air ingression 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 ingression 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

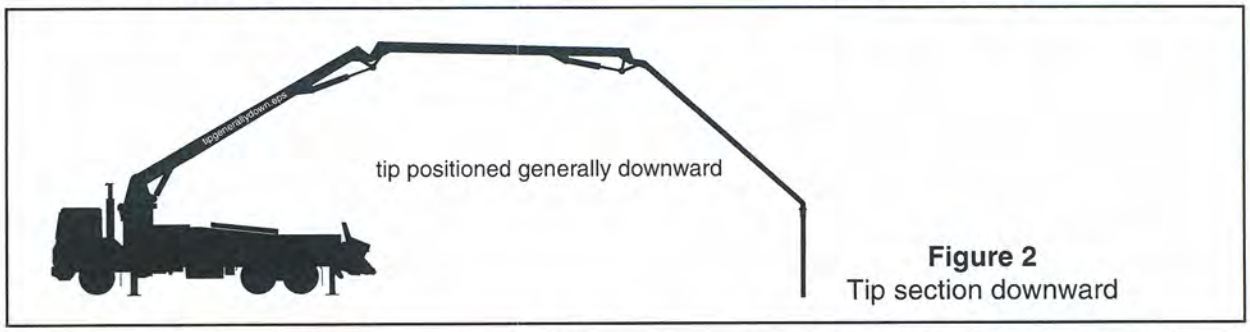


Figure 2
Tip section downward

   - 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.

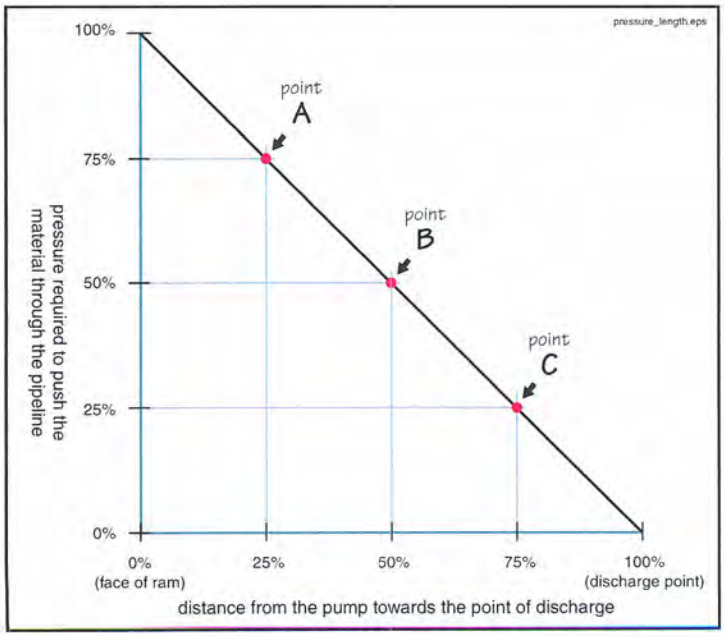


Figure 3
Pressure as a function of distance

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.

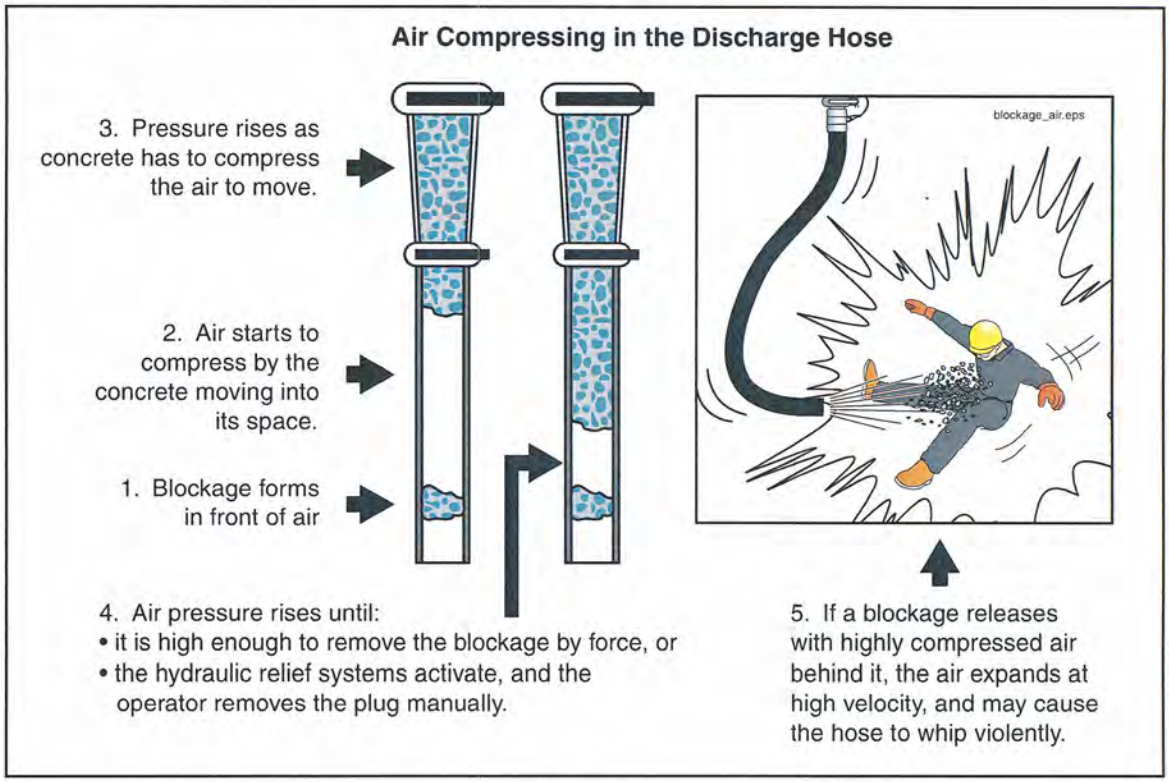


Figure 4
When air compresses in or near the tip hose

Boyle's Law

$$\frac{\text{Initial Pressure}}{\text{Final Pressure}} = \frac{\text{Final Volume}}{\text{Initial Volume}}$$

Example: A material cylinder 9 inches in diameter and 80 inches long takes in a half gulp of air. This results in 2535 cubic inches of air being forced into the delivery system pipeline. In our example, the concrete requires 800 PSI of pressure to push it through the entire length of pipeline. The air pocket compresses until it's at 800 PSI, too. At that pressure, the 2535 cubic inches of air has become only 2.5 inches long in a 125 mm pipe.

When the air has traveled 25% of the distance towards the end (point A in figure 3), the pressure has fallen 25%. Because of that, the air pocket increases in size. At 600 PSI it is about 3 1/4 inches long.

At halfway to the end, the pressure has fallen to half the original pressure, so it's now at 400 PSI (point B in figure 3). That allows the air to decompress more, and it is now almost 5 inches long.

When the air has made it 75% of the way to the end, air pressure will have fallen 75% from the original value (point C in figure 3). At 200 PSI, the air pocket is about 9 3/4 inches long.

Between the time the air pocket leaves point C, and when it arrives at the end of the delivery system, it will increase to it's original size of 133 1/4 inches (11 feet, 1 1/4 inches). Because it is getting larger, it must push the concrete in front of it faster to make room for itself. The concrete accelerates, (there's only atmospheric pressure in front of it) which can cause forceful ejection of the rocks and sand, followed immediately by the air pocket.

Concrete arriving after the air is unaffected by the air pocket it was pushing.

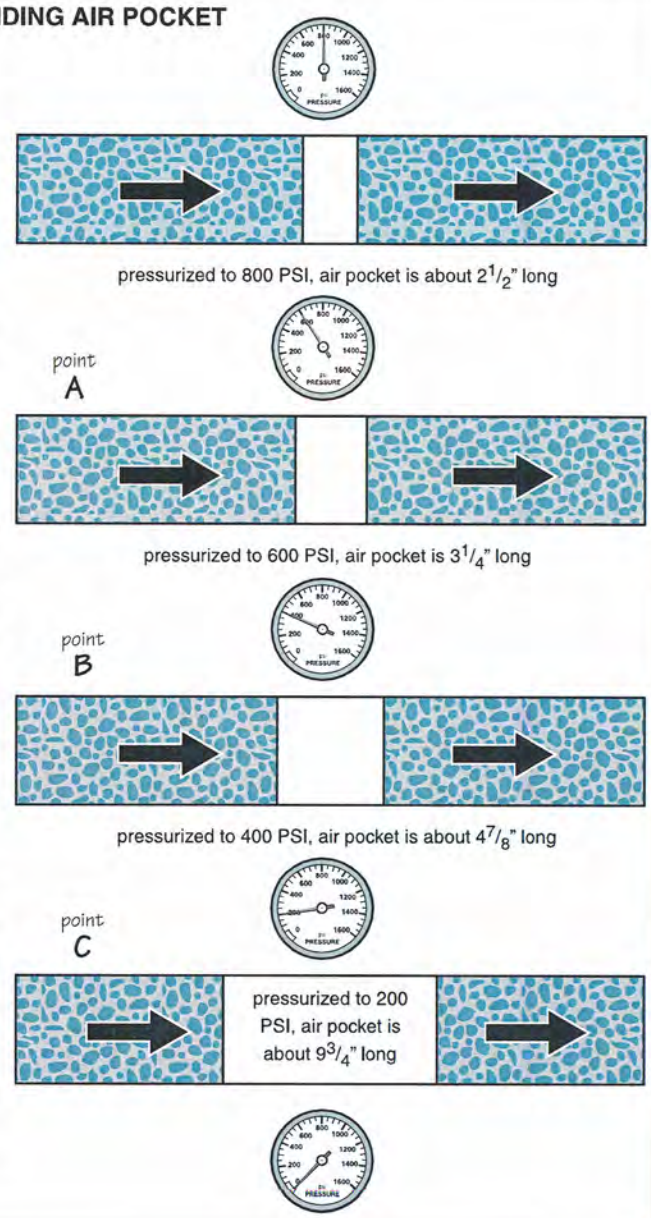


Figure 5
Air expands as pressure drops

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 ingression.

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 of hear a plug, yell clog and everybody immediately move away from the hose.

EXHIBIT 3
WIT: Henson
DATE: 1-20-15
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

WALL Pour full load @ topsoil

SLUMP 4 TICKET TOTAL

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.

SUBTOTAL	SALES TAX	AMOUNT

LEFT PLANT	ARRIVED JOB	LEAVE JOB	RETURN TO PLANT
7:03	8:10	8:55	10:15

GALLONS WATER ADDED	TRUCK NO.	LOAD NO.	TOTAL YARDS
	C140	1	10.5

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

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

Load Size	Mix Code	Returned	Qty	Mix Age	Seq.	Load ID
10.50 CY	0260A				W1	42128

Material	Description	Design Qty		Required		Batched		% Var	% Moisture	Actual	Wat
SAND CLS 2	SAND CLASS 2	1340	lb	14376	lb	14360	lb	-0.78%	6.05% A	108	gl
7/8 #67	7/8 #67	1850	lb	19523	lb	19560	lb	0.19%	0.50% M	12	gl
TYPE III	CEM	564	lb	5932	lb	5930	lb	0.14%			
WATER 1	WATER 1	30	gl		gl		gl				
MBAE90	MBAE90	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 4	WATER 4	100.0	% #	178.8	gl	179.5	gl	0.40%		179.5	gl

Actual													
		Num Batches:	1										
Load	41863 lb	Design W/C:	0.443	Water/Cement:	0.420	A	Design	315.0 gl		Actual	299.2 gl	To Add:	15.1 gl
Slump:	4.00 in	Trim Water:	-1.5 gl / CY										

EXHIBIT 15
WIT: Mansur
DATE: 09-29-16
Brandice L. Pivar, CCR

APPENDIX F

RALPH'S CONCRETE PUMPING — **Driver Equipment Report**

Date	Equipment No.	Odometer Reading	Pre-Trip	After-Trip
5-24-13	P# 208		OK ☑	☐
			Not OK ☐	☐

Drivers Signature: X [signature]

Pre-Trip Inspection - Check following items (X)

☑ General Condition & Equipment numbers	☑ Doors & Seals	☑ Emergency Equipment	☑ Tachometer
☑ Leaks - Oil, Coolant Fuel, Air	☑ Lights - Incl. Stop & Turn Signals	☑ Seat Belt	☑ Air Pressure
☑ Tires	☑ Fuel Quantity	☑ Oil Pressure	☑ Brake Action FM VSS 12 Braking
☑ Mirrors & Reflectors ☐	☑ Engine Oil Level ☐	☑ Windshield Wipers	☑ Windshield - Cleanliness & Condition
☑ Hydraulic Fluid	☑ Coolant Level ☐	☑ Horn	☑ Cab Heater
	☑ Speedometer	☑ Safety Straps	

After-Trip Check Items Needing Attention (X)

Engine	**Steering**	**Fuel System**	**Wheel Assemblies**
☐ Knocks	☐ Wanders	☐ Tanks	☐ Wheels
☐ No Power	☐ Shimmy	☐ Pump	☐ Hubs
☐ Overheats	☐ Tramps	☐ Lines	☐ Bearings
☐ Noisy	☐ Hard	☐ Leaks	☐ Tires
☑ Leaks Oil Small ☐	☐ Free Play	**Cooling System**	**Vehicle Structure**
☐ Oil Pressure	**Brakes**	☐ Leaks	☐ Axle and Spring Assys
Clutch	☐ Grab	☐ Plugged	☐ Cab Damage
☐ Slips	☐ Squeal	☐ Fan	**Exhaust System**
☐ Grabs	☐ Air Pressure	☐ Fan Belt	☐ Muffler
☐ Chatters	☐ Don't Release	**Emergency Equipment**	☐ Tailpipe
☐ Free Travel	☐ Pedal Travel	☐ Fuses	**Concrete Pump**
Transmission	**Electrical**	☐ Flag	☑ Hydraulic Leaks Small
☐ Noisy	☐ Lights	☐ Flares	☐ Pump Kit Greased
☐ Disengages	☐ Horns	☐ Fire Extinguisher	☐ Drain Water Box
☐ Leaks Fluid	☐ Battery	☐ Seat Belt	**Instruments**
☐ Shift Control	☐ Alternator	☐ Triangle	☐ Tachometer
	☐ Starter	☐ Cones	☐ Oil
	☐ Wiring		☐ Water
			☐ Air

Comments:
Needs New Windsheild wiper Blades
Needs a New R-Side Windsheild
Needs a New antena for the Radio Recever
Needs a New O-Ring from the transition Elbow to the 6x6 Elbow
Needs a Vibrator Installed for the Hopper

Date	Equipment No.	Odometer Reading
5-24-13	TK# 208	

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 • Work on different shifts with 10 or fewer employees on each shift **OR** • 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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