COLDEN CORPORATION
Occupational Health, Safety & Environmental Consultants

SUMMARY FOR January 2009 – March 2009

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) REGULATORY UPDATES

FINAL STATUTES, RULEMAKINGS, AND GUIDANCE

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OSHA Letter of Interpretation Regarding Permissibility of Using Electronic Signature to Satisfy the Annual Summary Certification for OSHA Form 300-A Standard Number: 1904.32(a)(4) January 29, 2009	In January, OSHA answered the following question on the use of electronic signatures. **Question:** Prior to posting, is it permissible to use an electronic signature to certify the OSHA 300-A Annual Summary? **Answer:** The OSHA recordkeeping regulation does not prohibit the use of electronic signature to satisfy the Annual Summary certification requirement. The certification required by the regulation may be made by either signing and dating the certification section on the OSHA 300-A form, or by signing and dating a separate certification statement and appending it to the OSHA Form 300-A. The requirement in Section 1904.32(a)(4) to post the Annual Summary also means that the certification must be posted in the workplace. In other words, if an employer chooses to certify the Annual Summary for an establishment by electronic signature, such certification must be printed and posted in the workplace from February 1 through April 30 of the year following the year covered by the OSHA Form 300-A.
OSHA Letter of Interpretation on Whether a Manufacturer-Stipulated Minimum Anchor Point Elevation of 18½ Feet Precludes the use of a Shock Absorbing Lanyard in an Aerial Lift. Standard Number: 1926.453(a)(1)(v); 1926.453(b)(2)(v); 1926.500(a)(3)(i); 1926.500(b); 1926.502(d); 1926.502(d)(15); 1926.502(d)(16)(iii) January 14, 2009	In January, OSHA answered the following questions on the use of fall protection in an aerial lift. **Question (1):** Section 1926.453(b)(2)(v) requires employees to tie off to the boom or the basket when working from an aerial lift. In addition, §1926.502(d)(16)(iii) provides that a personal fall arrest system shall be rigged such that an employee can neither free fall more than six (6) feet, nor contact any lower level. The manufacturer of a particular shock absorbing lanyard sets a minimum anchor point elevation for the lanyard of 18½ feet to prevent contact with a lower level in the event of a fall. My concern centers around the fact that, when raising an employee from a work surface, or upon returning an employee to a work surface, the employee at times will be at elevations that are less than 18½ feet. Since at times the distance between a lift's work platform and a lower level will be less than 18½ feet, does the manufacturer's instruction regarding the minimum anchor point elevation preclude its use as part of a fall protection system in an aerial lift? **Answer (1):** Fall protection during construction work in aerial lifts is required by 29 CFR §1926.453(b)(2)(v), which is located in Subpart L of OSHA's construction standards; it provides: (v) A body belt [or body harness] shall be worn and a lanyard attached to the boom or basket when working from an aerial lift The other standard to which you refer, 29 CFR §1926.502(d), is in 1926 Subpart M; it provides: (16) Personal fall arrest systems, when stopping a fall, shall: (iii) be rigged such that an employee can neither free fall more than 6 feet (1.8 m), **nor contact any lower level**; ... [Emphasis added] Section 1926.502(d)(16)(iii) is made applicable to the use of personal fall arrest systems in

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	aerial lifts by 29 CFR §1926.500(a)(3)(i). As noted above, section 1926.502(d)(16)(iii) requires a personal fall arrest system to prevent the employee from contacting a lower level. The lanyard you describe would not meet that criterion when the aerial lift's work platform is at heights less than 18½ feet. Even if the working level of the aerial lift will ultimately be higher than 18½ feet, §1926.453(b)(2)(v) requires fall protection for employees in aerial lifts at lesser heights as well. Since the fall protection system you describe would not meet the requirements of §1926.502(d)(16)(iii) under these conditions, it would be prohibited. **Question (2):** Would the use of a retractable lanyard as part of a personal fall arrest system provide adequate fall protection to an employee working in an aerial lift, under 29 CFR 1926 Subpart M? **Answer (2):** Section 1926.500(b) of Subpart M provides the following definition of a self-retracting lanyard: *Self-retracting lifeline/lanyard* means a deceleration device containing a drum-wound line which can be slowly extracted from, or retracted onto, the drum under slight tension during normal employee movement, and which after onset of a fall, automatically locks the drum and arrests the fall. There are a variety of self-retracting lanyards available for fall protection. Some provide an operating range of over 100 feet with a capability of limiting a free fall distance to less than 2 feet. Section 1926.502(d)(16)(iii) requires that a personal fall arrest system be rigged such that an individual can neither free fall more than 6 feet, nor contact any lower level in the even of a fall (see **Question (1)**). This requirement applies irrespective of the type of lanyard used (i.e., self-retracting or other type). Without more specific information, we can only address your question in general terms. So, for example, if the lanyard were rigged so that the free fall distance of the employee in the aerial lift was limited to 2 feet, the system would meet the requirements in §1926.502(d)(16)(iii). However, an additional factor must be considered – the vertical and lateral loads that may be placed on an aerial lift in the event of an arrested fall. Under §1926.453(b)(2)(v) (quoted above), personal fall arrest systems in aerial lifts must be anchored to the lift's boom or basket. Section 1926.502(d)(15) sets load requirements for anchorages in a fall arrest system: Anchorages used for attachment of personal fall arrest equipment shall be... capable of supporting at least 5,000 pounds (22.2 kN) per employee attached, or shall be designed, installed, and used as follows: (i) as part of a complete personal fall arrest system which maintains a safety factor of at least two; The length of the free fall permitted by a self-retracting lanyard may affect whether or not a personal fall arrest system complies with §1926.502(d)(15). The longer the fall, the greater the impact forces imparted to the system. Thus, the more free-fall allowed by the self-retracting lanyard, the greater the load imposed upon the aerial lift. Some aerial lifts may lack the capacity to withstand the vertical and lateral loads caused by an arrested fall. Therefore, the length of free fall permitted by the self-retracting lanyard must be such that the aerial lift is capable of maintaining a safety factor of at least two when it arrests a fall. A restraint system may be used instead of a personal fall arrest system if a self-retracting

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	lanyard cannot be rigged to satisfy §1926.502(d)(15). A restraint system is a system that prevents an employee from falling any distance from a work surface. The note to §1926.453(b)(2)(v) indicates a body belt or body harness may be used as part of a restraint system. However, the system must be rigged to prevent the employee from falling.
OSHA Letter of Interpretation on Whether Catch Platforms Must Comply with OSHA's Scaffold Standard, Subpart L. Standard Number: 1926.0450(b); 1926.0451(a)(1); 1926 Subpart L January 5, 2009	In January, OSHA answered the following question on whether catch platforms must comply with OSHA's scaffold standard, Subpart L. **Question:** Are temporary catch platforms – used to catch employees who might fall from a working surface above, or falling objects – subject to the requirements of the construction scaffold standard, 29 CFR 1926 Subpart L? **Answer:** Yes. The temporary catch platforms you describe are covered by 1926 CFR Subpart L. Section 1926.450(b) defines a scaffold as: Any temporary elevated platform (supported or suspended) and it's supporting structure (including points of anchorage), used for supporting employees or materials or both. In this instance, if an employee or material were to fall onto the temporary catch platform, it would at that point support "employees or materials or both." Consequently, it meets the definition of a scaffold. Therefore, the catch platforms must comply with the applicable 1926 Subpart L requirements. These include, among others, the 4:1 strength requirements in 1926.451(a)(1).
OSHA Letter of Interpretation on Determining Recordkeeping for Work-Relatedness of Accidents Occurring During Off-Site Events Standard Number: 1904; 1904.5(b)(1) March 10, 2009	In March, OSHA answered the following question regarding the work-relatedness of accidents during off-site events. **Questions:** Is an injury incurred during the go-cart racing considered to be work-related? Is the answer any different if an employee elects to stay for the go-cart racing but is not required to participate and is injured while watching the racing? **Response:** Under Section 1904.5(b)(1), OSHA defines the work environment as "the establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work." In the scenario presented, the employee is at the go-cart facility as a condition of employment. Therefore, he or she is in the work environment and any injury or illness that arises is presumed to be work-related and must then be evaluated for its recordability under the general recording criteria. This holds true for both participating in and observing the races.
OSHA Letter of Interpretation on Determining Work-Relatedness for Recordkeeping of Injury Resulting from Horseplay Standard Number: 1940.4(a) ; 1904.5(a); 1904.5(b)(1); 1904.5(b)(2); 1904.5(b)(2)(v) February 9, 2009	In February, OSHA answered a letter from an employer relating to injury reporting requirements from situations involving horseplay or violence. **Scenario:** In your letter, you describe an instance where two of your supervisors had completed their work for the day and had entered the change trailer to change clothes and proceed home. There was some bantering back and forth concerning how to beat the traffic at shift's end. The discussion escalated into a physical confrontation where one supervisor allegedly pulled a knife and struck the other in the right bicep, causing a laceration that required sutures to close. **Issue:** You have asked OSHA to endorse your contention that, because the work environment did not contribute to the "horseplay gone badly," as you described the situation, the injury was not work-related and thus was non-recordable under OSHA regulations. **Response:** Under 29 CFR Subpart C, "Recordkeeping Forms and Recording Criteria," an injury must be recorded if it is work-related, is a new case, and meets one or more of the general

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	recording criteria (such as requiring medical treatment beyond first aid). See 29 CFR §1904.4(a). An injury is presumed to be work-related if it results from an event occurring in the work environment, unless an enumerated exception to this geographic presumption applies. See 29 CFR §1904.5(a). The work environment includes any location where one or more employees are working or are present as a condition of their employment. See 29 CFR §1904.5(b)(1). We assume that the supervisors were in the change trailer as a part of their work or as a condition of their employment. If our assumption is correct, the injury resulted from an event (the altercation between the two supervisors) occurring in the work environment and was thus work-related. When a work-related injury requires treatment beyond first aid, it is recordable unless it falls within one of the §1904.5(b)(2) exceptions to the geographic presumption. Violence in the workplace does not generally qualify as an exception. OSHA's Frequently Asked Question 5-2 provides guidance on this issue. Applying these principles to your situation, it is OSHA's position that the injury was work-related and required medical treatment beyond first aid. This is so whether the incident leading to the injury is characterized as horseplay or as workplace violence, neither of which is covered by any exception to the geographic presumption. Therefore, the injury is recordable.
National News Release: 09-227-NAT Occupational Exposure to Food Flavorings Containing Diacetyl March 16, 2009	The Secretary of Labor announced the withdrawal of an Advance Notice of Proposed Rulemaking (ANPRM) for occupational exposure to food flavorings containing diacetyl. The withdrawal will facilitate the Labor Department's Occupational Safety and Health Administration's (OSHA) timely development of a standard to protect workers from bronchiolitis obliterans, a serious and potentially fatal lung disease associated with such an exposure. Withdrawing the ANPRM facilitates the convening of a small business advocacy review panel to determine the impact a proposed rule might have on small businesses and how those impacts can be reduced, consistent with the agency's statutory requirements. This panel process is required under the Small Business Regulatory Enforcement Fairness Act.

Note: Complete copies of Letters of Interpretation are available on the OSHA Website

Other Recent Developments:

OSHA Issues New Guidance Document on Mandatory Respirator Selection Provisions Added to Existing Respiratory Protection Standard

Assigned Protection Factors (APF), a new guidance document published by OSHA, provides employers with vital information for selecting respirators for employees exposed to contaminants in the air. The document is available at: http://www.osha.gov/Publications/3352-APF-respirators.pdf

OSHA revised its existing Respiratory Protection standard in 2006 to add APFs and Maximum Use Concentration (MUC) provisions. APF means the workplace level of respiratory protection that a respirator or class of respirators is able to provide to workers. The higher the APF number (5 to 10,000), the greater the level of protection provided to the user. APFs are used to select the appropriate class of respirators that will provide the necessary level of protection against airborne contaminants. Such exposures can come from particles or a gas or vapor. MUC represents the limit at which the class of respirator is expected to provide protection. Whenever a hazard's exposure level exceeds MUC, employers should select a respirator with a higher APF. MUC means the maximum atmospheric concentration of a hazardous substance for which a worker can be expected to be protected when

wearing a respirator.

"Proper respirator selection prevents exposure to hazardous contaminants and is an important component of an effective respiratory protection program," said Deputy Assistant Secretary of Labor for OSHA Donald G. Shalhoub. "This guidance document serves as another useful resource for protecting the health and safety of workers at risk for respiratory illnesses."

APF and MUC are mandatory respirator selection requirements that can only be used after respirators are properly selected and are used in compliance with the entire standard. The Respiratory Protection standard requires fit testing, medical evaluations, specific training and proper respirator use. The standard applies to general industry, construction, longshoring, shipyard and marine terminal workplaces.

OSHA and American Biological Safety Association Alliance Addresses Biological Safety Hazards

Four new fact sheets on biological safety issues, including "Select Agent Diseases" and "Zoonotic Diseases," were developed by the American Biological Safety Association (ABSA) through a recently renewed Alliance with the OSHA. The fact sheets are available at http://www.osha.gov/dcsp/alliances/absa/absa.html

The "Select Agent Diseases" fact sheet is a reference tool for laboratory employees that lists symptoms, transmission methods and treatments for common bacteria and viruses that have the potential to pose a major threat to public health and safety, such as anthrax and bubonic plague. Commonly encountered diseases found in animals but transmittable to humans are referenced in the "Zoonotic Diseases" fact sheet. It provides laboratory employees with symptoms, incubation periods and treatments for bacteria such as salmonella.

"We are pleased to continue our Alliance with ABSA as we develop relevant information for those working in the biological sciences field," said Deputy Assistant Secretary of Labor for OSHA Donald G. Shalhoub. "As these professionals research ways to treat and prevent common and uncommon diseases affecting the American public, our Alliance will work collaboratively to protect workers' safety and health while on the job."

To advance the goal of developing information on the recognition and prevention of biological safety hazards, ABSA members provide technical input for OSHA's Safety and Health Topics pages on issues such as Avian flu, mold and fungi, and smallpox. ABSA members assisted in updating OSHA's Hospital eTool and reviewed modules on bloodborne pathogens, laboratory and healthcare-wide hazards.

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2009 OSHA Outreach Training Program Guidelines – Changes Announced

Summary of major changes to the OSHA Outreach Training Program are noted below.

Topics

- Construction 10-hr, 4 hours mandatory (was 3 hrs)
  - included Electrical & Falls within new "Focus Four" category (2 hrs)
  - added ½ hr each for PPE and Health Hazards
- Construction 30-hr, 12 hours mandatory (was 6 hrs)
  - included Electrical & Falls within new "Focus Four" category (5 hrs)
  - added 2 hrs each for PPE and Health Hazards and 1 hr for Stairways & Ladders
- General Industry 10-hr, 6 hours mandatory (was 4 hrs)
  - added 1 hr each on PPE and Hazard Communication
- General Industry 30-hr, 11 hours mandatory (was 7 hrs)
  - added 1 hr each on PPE & Hazard Communication and 2 hrs on Materials Handling

Outreach Training Program Report

- Trainer must sign statement of certification to certify that the class was conducted in accordance with OSHA's guidelines attesting to the accuracy of the documentation submitted
- Requests additional course information: if conducted in another language, for youth, related to OSHA Alliance or Partnership, and where training took place
- Added 30-hour topic block and student list to the report
- Completing the report is all existing trainers (with ID numbers) need to do to request cards
- E-mail and fax requests for cards require topic list and signed statement of certification
- Eliminated short mail format

Records - trainers must maintain class files for 5 years which include:

- Student sign-in sheets for each class day
- Student addresses
- Copy of the documentation sent in to request cards
- Records which indicate the card number dispensed to each student

Trainers complete student cards

- By printing or typing their name
- May also sign card, but name must be printed or typed in.
- May not alter the cards or use white out on them

Holding a class of over 50 students

- must take attendance and obtain prior approval from OSHA Education Center

Video conferencing – must provide materials and obtain prior approval from OSHA Education Center

Outreach Training Tips, added

- importance of safety and health, that they add value
- ensure workers are trained in their language

OSHA Publishes Proposed Rule to Revise Procedures for Fit Testing Respirators

OSHA has proposed two revised fit test procedures under OSHA's Respiratory Protection Standard for determining the effectiveness of facemasks. The Notice of Proposed Rulemaking appears in the Jan. 21 Federal Register available at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=21394

New OSHA Safety and Health Information Bulletins Target Reducing Skid-Steer Loader and Cable Tray Hazards

OSHA published a Safety and Health Information Bulletin addressing concerns of safety features of a skid-steer loader being bypassed, defeated or improperly maintained resulting in serious injury or death to the operator and employees working on or around the equipment. The bulletin is available at: http://www.osha.gov/dts/shib/shib011209.html

The Safety and Health Information Bulletin, Safely Installing, Maintaining and Inspecting Cable Trays, describes the hazards of overloaded cable trays and identifies specific OSHA and National Electric Code requirements to help avoid those hazards. The document is available at: http://www.osha.gov/dts/shib/shib011609.html