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Report of S.C. OSHA Findings in June 18, 2007 Charleston Sofa Super Store Fire

The South Carolina Department of Labor, Licensing and Regulation, Office of Occupational Safety and Health (S.C. OSHA), has completed its investigation into the June 18, 2007 fire that claimed the lives of nine City of Charleston Fire Department employees. The following is a summary of the agency's findings.

Accident investigation summary:

On June 18, 2007, the deceased (Bradford Baity, Mike Benke, Melvin Champaign, James Drayton, William Hutchinson, Mark Kelsey, Louis Mulkey, Brandon Thompson and Michael French), employees of the City of Charleston Fire Department, were engaged in interior structural firefighting in a furniture store (Sofa Super Store, 1807 Savannah Highway, Charleston, SC). The store had been converted from a 1960s era grocery store with a metal truss roof system. The fire and smoke spread rapidly, and they became lost and separated from their hoses. With air in air-packs running out, they could not find their way out. They died of smoke inhalation.

City of Charleston Fire Department

Alleged violations and penalties assessed:

Willful violation: Employer knew or should have known that the command system does not provide for the overall safety of emergency personnel and their activities.

Initial penalty: \$7,000

Adjustment: none

Assessed penalty: \$7,000

Serious violation 1: Standard operating procedures were not developed to cover the special hazards associated with fighting and attacking a fire involving a metal truss roof.

Initial penalty: \$1,000

Adjustment: regulatory history

Assessed penalty: \$900

Serious violation 2: Body protection was not required to be worn by nine firemen involved in interior structural firefighting at 1807 Savannah Highway on or about June 18, 2007.

Initial penalty: \$1,000

Adjustment: regulatory history

Assessed penalty: \$900

Serious violation 3: Self contained breathing apparatus was not required to be worn at all times by four firemen exposed to smoke and toxic substances while fighting fire at 1807 Savannah Highway, on or about June 18, 2007.

Initial penalty: \$1,000

Adjustment: regulatory history and good faith

Assessed penalty: \$525

City of North Charleston Fire Department

No violations

Charleston County – Awendaw Fire Department

No violations

Summerville Fire Department

No violations

St. Andrews Public Service District Fire Department

No violations

St. Paul Fire Department

No violations

Sofa Super Store

Alleged violations and proposed penalties:

Willful violation: On or about June 18, 2007, exit doors on the front and rear of the warehouse of the establishment were padlocked; two sets of double hung exit doors on the left side of the casual showroom were locked with sliding bolts on the top and bottom of the doors; and exit door on right side of decor showroom of the establishment was padlocked.

Initial penalty: \$49,000

Adjustment: size of employer

Assessed penalty: \$29,400

Serious violation 1: Three fire doors located on the wall between the main showroom and decor showroom were not in proper working order during the fire on or about June 18, 2007.

Initial Penalty: \$7,000

Adjustment: size of employer and regulatory history

Assessed penalty: \$2,500

Serious violation 2: Emergency action plan was not implemented for employees at the establishment.

Initial penalty: \$7,000

Adjustment: size of employer, regulatory history and good faith

Assessed penalty: \$875

What is OSHA?

- South Carolina is one of 26 states and territories that administers its own occupational safety and health program through an agreement with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).
- The South Carolina Occupational Safety and Health Act requires employers to provide their employees with a safe and healthy worksite that is free of recognized hazards that are causing or are likely to cause death or serious physical harm to employees.
- OSHA also requires employers to comply with a variety of specific safety and health standards.
- S.C. OSHA investigates all workplace accidents that result in the death of a worker or injury and hospitalization of three or more employees.
- S.C. OSHA's role, following an on-the-job accident, is to go in and identify hazards and violations present at the time of the accident, bring them to the attention of the employer and get them corrected. The agency's role is not to determine cause.

OSHA Standards

OSHA standards represent minimum measures for providing employees a safe and healthy workplace, and employers are encouraged to exceed the standards to maximize employee protection.

S.C. OSHA's General Duty Clause

SECTION 41-15-80. Employers shall furnish safe place; compliance of employers and employees to certain rules.

(1) Each employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and he shall comply with occupational safety and health rules and regulations promulgated under this chapter.

(2) Each employee shall comply with occupational safety and health rules, regulations and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

The General Duty Clause requires each employer to furnish his/her employees a place of employment free from hazards that are likely to cause death or serious injury. OSHA has adopted hundreds of safety and health standards or rules. Still, OSHA rules do not address every potential hazard in the workplace. The General Duty Clause covers all hazardous conditions that may be present in the workplace. When there is a serious hazard present in the work place and OSHA has no standard addressing it, court precedent has shown that OSHA can hold employers to compliance with a nationally recognized consensus standard (such as a standard adopted by the National Fire Protection Association or by the American National Standards Institute). OSHA and

“state plan” states have for years issued citations to employers for failure to comply with nationally recognized safety standards.

These conditions must be present for OSHA to cite the General Duty Clause:

- there must be a hazard
- the hazard must be recognized (If the hazard or the danger is one that is recognized or generally known in the employer's industry, this satisfies the criterion that it is a “recognized hazard”. Any evidence that there have been fact sheets written about it, that it is contrary to accepted industry practice or standards, that it is contrary to suppliers' standards for use, or that safety experts in the industry acknowledge the hazard, would mean that the employer should have known about the hazards.)
- the hazard causes or is likely to cause serious harm or death
- the hazard must be correctable

Violations Defined

- A **willful violation** is one committed with conscious or voluntary disregard of the requirements of the South Carolina Occupational Safety and Health Act or plain indifference to employee safety or health. The maximum penalty for a willful violation for a private sector employer is \$70,000; for a public sector employer, the maximum is \$7,000.
- A **serious violation** is one that could cause death or serious physical harm to employees, and the employer knew or should have known of the hazard. The maximum penalty for a serious violation for a private sector employer is \$7,000; for a public sector employer, the maximum is \$1,000.

How penalties are computed

- Penalties are computed after consideration of the following factors: probability and severity of an injury that could occur (number of employees exposed, frequency and duration of exposure, proximity of employees to hazard and partial efforts to protect against the hazard), employer's size, regulatory history and good faith. These factors are the same whether OSHA identifies the violation during a general schedule, complaint or accident/fatality inspection.
- There is a difference in the penalty charts for public and private sector employers. The state recognizes that all public sector penalties are ultimately paid by the taxpayer. We have worked to make them large enough that they catch the attention of local officials and media but not so large that they interfere with the more important use of the limited public funds which is to provide safe working conditions for employees.
- The penalty structure, first established in the Occupational Safety and Health Act of 1970, was not designed by the U.S. Congress as a punishment for violations. No fine can compensate for the loss of a life. Instead, penalties are designed to serve as an incentive for employers to correct violations voluntarily.
- Compensation for a worker death does not fall under OSHA's authority. Compensation comes through a wrongful death action, workers' compensation or other avenues.

Informal Conference

Upon receipt of citations alleging safety violations and assessing monetary penalties, an employer may within 20 calendar days request an informal conference with state OSHA representatives. This is the employer's opportunity to ask questions, seek clarification regarding the agency's findings, present evidence not made available to the investigator at the time of the inspection, or negotiate a settlement of the case. The vast majority of cases are resolved at the informal conference.

Appeals

All employers have 20 working days from receipt of citations to contest the citations and the proposed penalties before the independent South Carolina Occupational Health and Safety Review Board. One member is assigned to hear the case. S.C. OSHA presents its evidence at the hearing to support citations and penalties, and the employer has the opportunity to present its defense. Either party may appeal the final decision of the hearing officer to the remaining board members who sit as a body. A decision by the board may be appealed on up to the State Supreme Court.

What's Next

Enforcement is only one part of the state OSHA program. Two other key elements are safety and health education and consultation. S.C. OSHA's education staff is currently planning additional training for fire chiefs, supervisors and firefighters to review OSHA rules covering safety and health for fire department personnel. S.C. OSHA and the South Carolina State Fire Academy have provided such training in the past. S.C. OSHA's consultation office is available to provide technical assistance to employers in complying with the state OSHA standards. Fire departments have used consultation in the past and are encouraged to take advantage of this free service.