

'ABANDON SHIP' BELIEF CHALLENGED

A coroner has challenged the apparently common belief among ground fertiliser spreaders that should the truck get out of control the best course of action is to jump from it.

The Press reports coroner Brigitte Windley found that Chris Cornell, who died in 2015 when he jumped from his runaway fertiliser truck, would almost certainly have survived if he had remained on board – particularly if he had been wearing a seatbelt.

She found there was “folklore” among ground spreaders that urged them to “jump ship” should they lose control of their truck on a slope.

A serious crash analyst gave evidence that whether a truck was rolling backwards in a straight line – as in this case – or rolling, the safest course of action was to remain on board.

The coroner has asked the New Zealand Groundspread Fertilisers' Association to work with WorkSafe to ensure spreaders wear seatbelts and to understand best practice is to remain with the vehicle.

DATA ON REGULATOR'S ACTIVITY

WorkSafe New Zealand has created a new website page with detailed databases covering all of its assessment and enforcement activities, and all notifications, back to January 2008 (which includes the pre-WorkSafe era when the regulator was MBIE or the Department of Labour).

There are three databases for the HSE Act and another three for the new HSW Act since it came into effect on 4 April 2016. Each piece of data includes the month/year, the industry sector and subsector, and geographic region.

For the HSE Act:

- the notifications data includes notifications of harm, serious harm and potential for harm notifications;
- the enforcement data includes HSNO compliance orders, infringement notices, improvement notices, prohibition notices, negotiated agreements, and written warnings.

For the HSW Act:

- the notifications data includes notifications of death, of injury or illness, of incident, and of concern about unsafe conditions;
- the enforcement data includes HSNO compliance orders, improvement notices, and prohibition notices.

To find the data, visit worksafe.govt.nz and select “Data & Research”, then “Detailed WorkSafe Data”.

NIHL CHALLENGE – REGISTER TODAY

The National Foundation for the Deaf's annual online fundraising event – to be held on 4 August – is this year focusing on noise induced hearing loss in the workplace.

The Silent Leadership Challenge requires participants to undergo some challenging communication tasks in the workplace and at home, wearing bright yellow hearing protectors to simulate deafness. The challenge will include communicating and participating in one-to-one meetings, a team meeting in the workplace, and watching television while wearing the provided ear protectors.

Since The National Foundation for the Deaf opened registrations 118 New Zealand entities have registered online to take part in the fundraising campaign. Many of the registrations are made up of teams with hundreds of people participating.

“We've found that getting involved in the challenge can have a powerful effect on people in the workplace,” says campaign manager Lisa Talbot. “It really does create understanding to think twice about being exposed to noisy sounds over 85DB, and using protectors.”

Register right now at silentleadershipchallenge.com

NEWS WRAP

- A Whangarei commercial fisherman received severe lacerations when he was lanced by a stingray (*Northern Advocate*, 17 July).
- Meat processor Alliance Group is investing more than \$3 million in new bandsaws which use sensor technology to automatically stop within 15 milliseconds if a hand or glove is detected in too close proximity (*Timaru Herald*, 17 July).
- The proportion of respondents in the regular New Zealand Diversity Survey who identify bullying and harassment as a significant issue has risen from 26% to 36% over the nine months to May, according to Diversity Works NZ (*NZ Herald*, 20 July).
- A police officer in Rotorua was knocked unconscious while trying to make an arrest (*Stuff*, 21 July).
- A digger driver in Flat Bush, Auckland, suffered moderate injuries when he was trapped after his machine flipped over (*Stuff*, 24 July).
- The rate of infection with leptospirosis for the first six months of 2017 is three times the level for the same period last year. If the current rate continues the number of cases for 2017 will reach a level not seen since herd vaccination began in 1981 (*Radio NZ*, 25 July).
- Selena Armstrong has been appointed as the NZISM's first chief executive. Her previous role was as general manager of the University of Auckland's Goodfellow Unit. Before that she established the national project office for the Institute of Chartered Accountants in Australia. She starts with NZISM on 21 August (*NZISM*, 26 July).
- Three people intending to conduct a survey of a house in a rural area near Whangarei were shot, two fatally, when they approached the property (*NZ Herald*, 27 July).

SAFEGUARD says

The ongoing saga of quarry managers failing to pass the Certificate of Competence and requiring multiple deadline extensions appears to indicate a significant portion of an industry sector has operated for years under the radar of regulatory oversight. It's not before time that this numerous group of mostly small operators is emerging, however blinking and bewildered, into the 21st century with the active assistance of WorkSafe. Because another extractives operation that ran for years with – as we discovered – inadequate regulatory oversight was the Pike River mine.

SAFEGUARD UPDATE

Issue 559 . 31 July 2017

safeguard.co.nz**CONTENTS**

RTW after bullying

Rocks and hard places

Extraction information

Are you above the line?

'Abandon ship' belief

Regulator activity data

NIHL sponsorship

News wrap

Safeguard says

Returning to work after bullying

That bullying is a significant work-related health risk has again been highlighted in the case of a kindergarten teacher found to have been unjustifiably dismissed. The case also offers lessons in how a return to work programme should commence only after the hazard which caused the injury has been properly managed.

The Employment Relations Authority issued its main determination on 28 February but a raft of other related arguments meant it did not see the light of day until recently. A key point is that the names of all participants, including the name and location of the kindergarten, are suppressed.

Mrs T began working as a teacher at the North Island kindergarten after more than 20 years as a primary school teacher. The kindergarten was one of several run by a company, K, owned by Mr B. The kindergarten's manager and head teacher, Ms X, reported to K's senior teacher, Ms A, who was located some distance away and visited only occasionally.

A previous teacher at the kindergarten had lodged a complaint of bullying by Ms X. The company upheld the complaint and transferred the teacher to another of its kindergartens. Ms X was subject to disciplinary action, including undergoing corrective training designed to ensure the bullying behaviour would not happen again. Mrs T was employed to fill the position vacated by the transferred teacher.

Mrs T found herself being bullied by Ms X and raised the matter with Mr B, who advised her to lodge a formal complaint. She did so in writing in March 2015 and was placed on paid special leave so her concerns could be investigated.

During the investigation Ms X denied bullying Mrs T and said she would not apologise to her. In June Mrs T's complaint was upheld and Ms X was again disciplined. Mr B said K's position was that it would continue to support Ms X in an effort to change her behaviour.

“Ms X does not appear to have ever expressed or demonstrated any insight or understanding

of her behaviour in terms of the adverse effects her bullying had on the two complainants,” the ERA noted.

In July Mrs T met Mr B and Ms A to discuss a plan for her return to work. The plan included giving Ms X further training about appropriate behaviour, reviewing the kindergarten's staff conduct philosophy, Ms A attending fortnightly staff meetings and a monthly meeting with Ms X, and all staff to attend a guided mediation to facilitate Mrs T's reintegration. The proposal was emailed to her the next day.

In consultation with a union representative Mrs T suggested some changes to the plan and emailed it back to B. However her changes were never acknowledged by B or company K, which regarded the initial version discussed at the meeting as the only version in play. The ERA later found that a ‘final’ version of the RTW plan was never provided to Mrs T.

Nevertheless, it was common ground that Mrs T wished to return to work and acknowledged that she would still be reporting to Ms X. In August K arranged for all staff, including Mrs T, to attend a guided mediation. It did not go well. Staff felt aggrieved and Mrs T was upset because she felt ganged up on. She felt K just wanted her to “get over it” and get back to work, that Ms X had not accepted responsibility nor apologised, and that K did not understand how unsafe she would feel in returning to work under the same person who was not regularly supervised.

Mrs T felt that given what had happened after Ms X's first disciplinary experience, the same was likely to occur after her second. In other words, nothing would change.

After the disastrous mediation K instructed Mrs T to remain away from work on paid special leave. A mediation in September between the parties conducted by a mediator from MBIE did not succeed.

K wrote to Mrs T advising that if she intended to return to work then she must accept the terms

of the work plan discussed in July. Her proposed amendments were not mentioned. On 18 September K wrote to Mrs T that if she returned to work she would have to commit to the RTW plan and her agreement would be recorded as a full and final settlement of all issues arising out of her complaint. If she did not commit to the plan by an October deadline she would be regarded as having resigned.

"K effectively said to Mrs T that if you want to return to work you must compromise all potential legal claims against us and you must accept our work plan, without providing a copy of what she was required to agree to," the ERA noted.

On the deadline Mr B wrote to Mrs T saying her lack of response in agreeing to the plan amounted to her resignation.

The ERA found Mrs T was unjustifiably dismissed. "Unsuccessful mediation did not entitle K to abdicate its legal responsibilities to Mrs T by failing to facilitate her return to work in a fair and reasonable manner which involved addressing her specific safety concerns."

The ERA also found K should have taken constructive action to repair the staff problems which had arisen in the August mediation meeting so that Mrs T would not have to return to a hostile environment with unresolved issues.

(ERA, Auckland, 28 February 2017 and other determinations up to 18 May 2017)

ROCKS AND HARD PLACES

Some small quarry operators lack even basic knowledge of health and safety, according to the new CEO of the mining and quarry industry national health and safety council, Minex.

Wayne Scott told Safeguard there is a multitude of reasons for the persistently high failure rate of small quarry operators in the industry's Certificate of Competence process, but there is "a group out there who don't know what they don't know."

Under the law anyone with responsibility for a quarry site must hold a current CoC, but since the accreditation process was reviewed in 2014 a large number of those seeking B grade certification (for quarries with no more than four workers and where explosives are not used) have failed the final oral examination.

At the beginning of this year it was estimated that that some 60% of eligible operators in this grade had not yet completed their CoC.

In response, Scott is developing guidance material on the topics covered in the exam, and recruiting a nationwide team of mentors – experienced operators who have volunteered to assist – to support those having difficulties with the process. However he says some operators would need much more help than this if they are to successfully complete their CoCs.

"At the moment everyone [applying for a CoC] is being thrown in the same group, but I think we need to separate things out, and I'm hoping the mentoring process will identify where the gaps are.

"There will clearly be people who should not go for their oral [without more training] – often those in remote parts of the country who don't belong to any [industry] association and are doing what they've done for 40 years, oblivious of the new laws."

He says the mentoring programme is not intended to deal with needs at this level, and he will be advising mentors that such candidates should be encouraged to pull out of the certification process in the short term, and referred to a consultant, a local quarry manager, or to his own office for help.

For others, he believes the mentoring scheme will give them the confidence and understanding they need to pass the exam.

"They may know their stuff but they just can't articulate it, or perhaps they get daunted by the process. And of course the [HSW] Act is hard to read, so they may not really understand it – but these are all areas that mentoring can address and hopefully that will increase the pass rate."

In his view neither the nature of the questions asked, nor the oral format of the exam, are to blame for the high failure rate.

"I just think we've let the quarry guys down a bit in terms of preparation. Some of the larger organisations are doing a bit in that space, but for the small guys in the remote parts of the country it's very hard."

WorkSafe's chief inspector extractives, Mark Pizey, told Safeguard he is "disappointed" that the quarrying industry has not been able to complete the CoC process in a more timely fashion, but is encouraged that the managers of the 1000-odd mining, quarrying and tunnelling operations identified to date are working towards CoC accreditation or have already achieved it.

This, he says, represents a big change for a sector that has previously struggled to engage with the certification process. The industry has twice missed a deadline for accreditation to be completed, first in December 2015 and then December 2016.

Since the 2016 deadline passed, Pizey says WorkSafe has issued "lots" of improvement notices to non-compliant quarries, and one was served with a prohibition notice that would have shut down the site, had a new manager with the necessary CoC not been immediately appointed.

"I'm sure there will be instances where we have to take further enforcement action to ensure compliance, but in the majority of cases people are actively involved in achieving accreditation, in which case WorkSafe will work with them to ensure a mutually satisfactory result."

To date he says 19% of the 115 CoC applicants who failed the oral exam have re-sat, and 73% of these have passed. B grade quarries are by far the largest type of operation in the extractives sector.

EXTRACTING INFORMATION

The extractives industry has been asked for feedback on proposed changes to the Certificate of Competency process – although at an industry conference in Auckland Mark Pizey warned that it would not include changes to the oral exam.

Speaking at QuarryNZ, the annual conference for the Aggregate and Quarry Association and the Institute of Quarrying, he said the review is being carried out mainly because the CoC programme and its schedule of associated unit standards was established in 2014, before the HSW Act became law.

"We want to know whether the unit standards we're using are still relevant," he told the conference.

Chief among the proposed changes is the introduction of a site-specific CoC for small operations that do not use crushing or explosives, involve no more than four people, and operate over limited hours, on sites with no special hazards, and with relatively low rates of production.

"This is an opportunity for smaller operations that don't change a lot, where the risk may be manageable by somebody who has a slightly lower qualification," Pizey said. "But there will still be an oral examination."

He suggested that the alluvial gold mining sector might find the proposal appealing.

Other recommended changes include specifying that the required first aid certificate should be from a basic two-day course, and that the operational experience that all CoC holders must have should be obtained "in the workings" of the mine, quarry or tunnel for which they are seeking certification.

"There is a very extensive list of what would constitute operational experience in the review proposal," Pizey said. "We want feedback as to whether that list is appropriate, or whether there are things we've missed out."

It is hoped to gazette the CoC changes in January next year, for them to come into force at the beginning of 2019. Pizey said that during the transitional period people would be able to do their CoCs under either programme, but those renewing current CoCs would need to complete the required first aid course.

WorkSafe's Mining Board of Examiners currently oversees 17 CoC programmes, covering different roles and work situations within the extractives industry. The review is being carried out by the Board with the extractives industry's training body, MITO.

ARE YOU ABOVE THE LINE?

When you mention health and safety to people in your organisation, how do they react – do they go 'above the line' or 'below the line'?

According to Gilbert Enoke, All Blacks manager and mental skills coach, sometimes just the dreaded phrase 'health and safety' is enough to drive people below the line: defensive, closed-minded, and committed to being right.

Speaking at the Safeguard conference, he said the alternative – above the line thinking – is much to be desired, being characterised as open, curious, and committed to learning. "The brain can't tell the difference between a threat to your ego and a threat to your safety, so we are hard-wired to go below the line."

He invited delegates to reflect on their role in their organisation and to come up with one word or phrase to sum up where the business stands at the moment – and then to consider what the next level of performance would look like.

"Set the challenge high. Something that drives, excites and energises you. You must have a gap. If you want to create something great you've got to have a gap which makes you uncomfortable."

He cautioned it isn't about the power of positive thinking. Nor negative thinking, for that matter. It's about clear thinking, and to support that a structure is required, so that at times of high anxiety people can stay in the moment and rely on their underlying structures.

Enoke said most businesses spend most of their time fashioning a vision and a set of values, and these are important; but within the All Blacks they had worked out that the first thing to establish, and to spend the most time on, is the sense of belonging. Next comes the environment in which people operate. Get those two sorted first, he said, and then you'll have a basis for talking about values and a vision.

His final message? That fear is OK.

"It's not a weakness. We've learned to embrace it. Just don't get stuck on it."



Safeguard Climate Survey

Engage . Understand . Improve

"The insights revealed were extremely valuable for developing meaningful responses to some hidden workplace physical, mental, and social H&S issues."
Dave Williams, QHSE Manager, GEA Process Engineering

Contact Peter 09 361 8926
peter.bateman@thomsonreuters.com



DON'T BE CAUGHT OUT, ENSURE YOU HAVE COMPETENT STAFF



edenfx HSE recruitment

edenfx HSE is NZ Leading Recruitment Specialist for Health, Safety and Environmental Professionals.

For a confidential discussion and advice on ensuring you have the right risk management professionals please call us today.

Alison Gill CMIOSH, MInstD, Cert NZISM, Managing Director on 09 424 8367 or email info@edenfx.co.nz

www.edenfx.co.nz