Occupational Safety and Health Administration Scaffolding Regulation: U.S. District Court Addresses Challenge to Standard Interpretation Letter

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A United States District Court (N.D. California) ("Court") addressed in a February 3rd Order an issue arising out of the Occupational Safety and Health Administration ("OSHA") scaffolding regulations. *See Golden Gate Bridge, Highway and Transportation District v. United States Department of Labor, et. al.*, 2025 WL 371800.

The issue addressed was whether the Golden Gate Bridge, Highway and Transportation District ("District") had Article III standing to challenge to two Standard Interpretation Letters ("SIL") interpreting these regulations.

OSHA issued in 1996 scaffolding regulations following a formal notice–and-comment rulemaking process. The regulations require that:

…each scaffold and scaffold component shall be capable of supporting, without failure, its own weight and at least 4 times the maximum intended load applied or transmitted to it. See 29 C.F.R. § 1926.451(a)(1).

The regulations defined "maximum intended load" as:

…"the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time. See 29 C.F.R. § 1926.450(b).

An SIL was issued in 2013 in response to an engineer's public request for clarification about how the weight of a scaffold should be considered in determining whether the regulation's required 4-to-1 factor is satisfied.

OSHA describes its SILs as documents that explain requirements set by statute, standards, and regulations. This includes how they apply to particular circumstances. However, OSHA states that such SILs cannot create additional obligations.

In addressing the scaffolding regulations, the 2013 SIL stated that under Section 1926.451(a)(1), each component of a scaffold system must be able to support at least four times the maximum intended load on that component, in addition to the weight of the component. An example was also provided.

The 2013 SIL was further revised in a 2020 SIL. OSHA revised the earlier guidance and provided a new example. The District argued that the 2020 SIL resulted from an outreach campaign by one of its contractors. It stated that the contractor utilized the 2020 SIL to argue that a scaffolding system the

District had required the contractor to design was not actually mandated by the scaffolding regulations. This is stated to have forced the District to bear additional costs.

The District sought a declaratory judgment that OSHA violated the Administrative Procedures Act ("APA") when it issued the SIL. OSHA filed a Motion to Dismiss arguing that the District lacked Article III standing because the SIL was not a final agency action reviewable under the APA.

The Court granted the Motion to Dismiss.

OSHA argued that the District bore the burden of demonstrating the irreducible Constitutional minimum of having:

1. suffered an injury in fact,
2. that is fairly traceable to the challenged conduct of the defendant, and
3. that is likely to be redressed by a favorable judicial decision.

The Court concluded:

- 2020 SIL does not have the force of law.
- There was a failure to establish injury-in-fact (i.e., showing the challenged action's threat to concrete interest is reasonably probable).
- APA provides for judicial review of only those actions that are either made reviewable by statute or final agency action for which there is no other adequate remedy in a court or subject to judicial review.
- 2020 SIL is not a final agency action (i.e., purely informational in nature and could not have injured Plaintiff because it did not compel anyone to do anything).
- No indication that the 2020 SIL is the culmination of OSHA's decision-making process on scaffolding or that significant legal consequences will follow as a result.

A copy of the Order can be downloaded here.