

SUPREME COURT OF IOWA

Insituform Technologies, Inc. v. Employment Appeal Board

728 N.W.2d 781 (Iowa 2007) · No. No. 05-0740 · Decided February 16, 2007

SUMMARY

The Iowa Supreme Court reviewed occupational-safety citations and penalties imposed against Insituform Technologies following a sewer-relining accident that killed two people and seriously injured five others. The court upheld the application of general-industry permit-required confined-space standards to the sewer-relining work, rejected Insituform’s vagueness and fair-warning challenge, and examined whether substantial evidence supported the cited violations and their classification as serious violations.

CASE DETAILS

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| COURT                 | Supreme Court of Iowa                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Wiggins, Justice; Hecht, Justice; Appel, Justice                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| JURISDICTION          | Iowa                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | February 16, 2007                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| DOCKET                | No. 05-0740                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Further review of a court of appeals decision reversing the Employment Appeal Board's application of Iowa occupational safety and health standards and reducing the assessed civil penalties.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| STANDARD OF REVIEW    | The Supreme Court reviews the district court's judicial-review ruling by applying the Iowa Administrative Procedure Act and determining whether it would reach the same result as the district court. The agency's interpretation of standards within the labor commissioner's delegated authority is reversed only if irrational, illogical, or wholly unjustified. Agency factual findings are binding when supported by substantial evidence. Constitutional issues are reviewed de novo. Statutory interpretation concerning the meaning of a willful violation is reviewed for correction of errors at law. Penalty assessments are reviewed deferentially and will be reversed only if irrational, illogical, or wholly unjustified. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## PARTIES

Insituform Technologies, Inc. v. Employment Appeal Board, Labor Commissioner

## TOPICS

administrative law

judicial review of agency action

occupational safety and health

due process

appellate procedure

## PRACTICE AREAS

administrative law

occupational safety and health

constitutional law

appellate procedure

employment law

## QUESTIONS PRESENTED

1. Whether the Employment Appeal Board properly applied the general-industry permit-required confined-space standards rather than the construction standards to Insituform's sewer-relining work.
2. Whether application of the general-industry permit-required confined-space standards violated due process because Insituform allegedly lacked fair warning.
3. Whether substantial evidence supported the Board's findings that Insituform committed eight serious violations and ten willful violations.
4. Whether the district court improperly combined the civil penalties assessed for separate violations.

## HOLDINGS

1. The general-industry permit-required confined-space standards apply to Insituform's sewer-relining work because the Board properly treated the work as maintenance rather than repair, and substantial evidence supported that determination.
2. Application of the general-industry permit-required confined-space standards to Insituform's sewer-relining project was constitutional because Insituform had fair warning that those standards applied.
3. Substantial evidence supported the Board's findings that Insituform committed eight serious violations and ten willful violations of the IOSH standards.
4. The district court erred by combining the penalties for separate violations; the Board had broad discretion to assess a penalty for each distinct violation, even when a single abatement action might cure overlapping conditions.

## KEY QUOTATIONS

*"Our interpretation requires an intentional disregard or a plain indifference to the requirements of our IOSH standards. Under our interpretation, "a plain indifference" is an alternative to "intentional disregard." Furthermore, a plain indifference without direct evidence that the employer knew of each individual violation allows the finder of fact to infer willfulness from that evidence."* (800-801)

*"The Board has a right to assess a penalty for each violation to deter conduct, to protect the public from violations, and to punish the violator for its actions."* (802)

## FACTUAL BACKGROUND

Insituform performed a sewer-relining project in which two people died and five people were seriously injured. The IOSH bureau determined that Insituform violated numerous respiratory-protection and permit-required confined-space standards, including requirements concerning hazard identification, ventilation, air monitoring, permits, training, protective equipment, and rescue systems. Insituform had a safety manual addressing the general-industry confined-space standards, but the evidence showed that the company did not consistently implement those procedures at the worksite.

## PROCEDURAL HISTORY

The IOSH bureau cited Insituform for nine serious and eleven willful violations arising from a sewer-relining accident and proposed \$808,250 in penalties. An administrative law judge reduced the penalties to \$158,000; the Employment Appeal Board reinstated most violations and assessed \$733,750. The district court affirmed application of the general-industry confined-space standards but reinstated the ALJ's grouping and penalty assessment. The court of appeals held the general-industry standards inapplicable, dismissed most violations, and reduced the penalty to \$4,500. The Supreme Court of Iowa granted further review.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Vacate the court of appeals decision, reverse the district court judgment, and remand to the district court to enter an order affirming the Employment Appeal Board's decision.

## CASES CITED

- City of Des Moines v. Employment Appeal Board, 722 N.W.2d 183, 187-95 (Iowa 2006)
- IBP, Inc. v. Harpole, 621 N.W.2d 410, 414 (Iowa 2001)
- United Fire & Casualty Co. v. St. Paul Fire & Marine Insurance Co., 677 N.W.2d 755, 759 (Iowa 2004)
- ABC Disposal Sys., Inc. v. Department of Natural Resources, 681 N.W.2d 596, 605 (Iowa 2004)
- State v. Todd, 468 N.W.2d 462, 465 (Iowa 1991)
- Ohio Cast Products, Inc. v. Occupational Safety & Health Review Commission, 246 F.3d 791, 798-99 (6th Cir. 2001)
- State v. Holway, 644 N.W.2d 624, 629 (S.D. 2002)
- City of Marion v. Iowa Department of Revenue & Finance, 643 N.W.2d 205, 206 (Iowa 2002)
- IBP, Inc. v. Iowa Employment Appeal Board, 604 N.W.2d 307, 321 (Iowa 1999)
- Ensign-Bickford Co. v. Occupational Safety & Health Review Commission, 717 F.2d 1419, 1422 (D.C. Cir. 1983)
- A.E. Staley Manufacturing Co. v. Secretary of Labor, 295 F.3d 1341, 1350-51 (D.C. Cir. 2002)
- Secretary of Labor v. Stimson Contracting Co., 5 O.S.H. Cas. (BNA) 1176, 1178 (Mar. 28, 1977)

- Secretary of Labor v. H.H. Hall Construction Co., 10 O.S.H. Cas. (BNA) 1042, 1046 (Oct. 7, 1981)
- Dakota Underground, Inc. v. Secretary of Labor, 200 F.3d 564, 569 (8th Cir. 2000)

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