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## **Investigation Report**

**Confidential-Prepared at The Request of Counsel**

**May 20, 2020**

### **Introduction**

The case was assigned by the law firm of McNeil, Leddy and Sheahan, P.C., on behalf of the Chittenden Solid Waste District (CSWD) to investigate a report that on or about April 30, 2020 at the District's Essex Drop Off facility, a District employee and supervisor, Bob Magee, was performing work on a sign while standing in the elevated bucket of a bucket loader driven by another District employee, Shane Morris, while a third District employee, Ryan Cota, observed the incident. Further, Bob Magee knew or should have known that standing in bucket loader bucket to perform work while the bucket was elevated is a violation of safety procedures.

This investigator was provided with the following:

1. Two videos from the Chittenden Solid Waste District cameras, dated April 30, 2020.
2. Two photos of the bucket lift arms on the mini loader.
3. Chittenden Solid Waste District's Personnel Rules and Regulations dated June 2018.
4. Letters to Robert Magee, Ryan Cota and Shane Morris from Sarah Reeves, dated May 7, 2020.
5. Letter from Robert Magee to Sarah Reeves, dated, May 11, 2020.
6. PowerPoint presentation entitled Heavy Equipment Awareness presented by Josh Tyler, on 10/27 & 10/28/2015.
7. The attendance sheet for the PowerPoint presentation presented by Josh Tyler on 10/28/2015, confirming Robert Magee's attendance.
8. PowerPoint presentation entitled Heavy Equipment Awareness, Dated November 2016, presented by Robert Magee and Josh Tyler.
9. Chittenden Solid Waste District Safety and Health Program dated September 2014.
10. Email from Josh Tyler to Sarah Reeves, on 5/7/2020.

All information was carefully reviewed to assist in the formulation of appropriate, specific questions for the people interviewed.

Three employees were interviewed as part of this investigation. All of these interviews were recorded with the permission of the interviewee. All of the interviews were conducted by telephone, due to the restrictions posed by the COVID-19 [ongoing] pandemic.

## Summary

The video documentation [provided] and interview statements garnered from employees Cota, Morris and Magee [all] concur with what occurred on April 30, 2020.

Additionally, the interview statements of both Morris and Cota agree with what they told Josh Tyler on 5/7/2020, as outlined in Tyler's email dated 5/7/2020.

Magee, as the supervisor of the crew, directed Morris to operate the mini loader while he [Magee] got into the bucket of the mini loader and Morris raised him up in the bucket to remove a sign. Distance estimates vary among the three people concerning Magee's distance [above the ground] if he fell out of the bucket. Those distances range from 6 feet to 15 feet.

After removing the three pieces of the sign, which were approximately 2' x 4' each in size, Magee was then lowered back to the ground while still in the bucket.

No safety harness or any [other] safety devices were used to secure Magee to the bucket.

All three employees acknowledged attending specific front-end loader safety training prior to April 30, 2020. All three employees acknowledged that they knew it was a safety hazard to have an individual ride in or be lifted in the air with the bucket of a front-end loader.

Magee recalls that he was a presenter in a safety training presentation with Josh Tyler a few years ago regarding front-end loader safety. (The specific Power-Point presentation was: Heavy Equipment Awareness in November 2016). Magee went on to state that he does not remember any specific discussion related to not allowing a person to ride or stand in the bucket of a front-end loader. However, he said he is fully aware that using the bucket to lift a person is generally considered an unsafe act. He stated that he has been operating front-end loaders since he was in the military in 1974.

Two employees, Morris and Cota, stated that before they began work removing the sign on April 30, 2020, they advised Magee that it was not a good idea for him to get in the bucket to be lifted up to remove the sign. Magee acknowledged that he does recall Morris stating his concern relating to this action to him.

The act of lifting Magee in the bucket violates CSWD safety procedures. CSWD safety training has been provided to all employees involved as well as general safety guidelines specific to the proper use of front-end loaders.

## **Review of CSWD**

### **Personnel Rules and Regulations Safety and Health Plans Safety Training**

#### **Personnel Rules and Regulations**

A review of the Personnel Rules and Regulations policy found a general safety statement starting on page 21 and continuing on to page 22. The policy states that all employees should adhere to CSWD safety procedures and that managers shall assume full responsibility for the safety of the working area.

At the beginning of page 22 the rules and regulations state that each employee shall observe all safety rules operating procedures and safety practices.

The rules and regulations also state that employees, including managers who violate safety rules practices and policies may be subject to disciplinary action up to and including discharge where appropriate.

The policy also refers the reader to Appendix E for the full safety policy.

#### **Safety and Health Plan**

A review of the CSWD Safety Plan found that on page 4 in capital letters it states

“NO JOB OR OBJECTIVE IS SO IMPORTANT THAT WE WILL RISK OUR SAFETY OR HEALTH OR THAT OF OUR COWORKERS, OR KNOWINGLY CREATE ENVIRONMENTAL HAZARDS.”

In section 2.2, on page 8, the safety plan reiterates that each supervisor shall assume full responsibility for safe working area for his/her employees.

In section 2.3, also on page 8, the plan states that employees are required to develop and exercise safe work habits to prevent injuries to themselves, fellow workers and the public.

#### **Safety Training**

The PowerPoint presentation entitled Heavy Equipment Awareness was presented by Josh Tyler, on 10/27 & again on 10/28/2015. The fourth slide of the presentation entitled “Tips for Equipment Operators” lists several tips. Two of the tips are:

“Never use the bucket as a portable work platform”

“Never allow anyone to ride on the machine with you”

(See addendum # 7)

Both Cota and Magee attended this training on 10/28/2015. (See addendum # 8)

## **Details of Investigation**

### **Interview with Ryan Cota**

On May 12, 2020, I interviewed Mr. Cota by telephone. He agreed to a recorded interview.

Mr. Cota has been employed with the district for approximately 16 1/2 years. He is the roll-off coordinator and also a driver.

His direct supervisor is Robert Magee.

He stated that over the years he has attended numerous classes on operational safety of front-end loaders. He recalled that several years ago, possibly in 2012, he attended formal front-end loader training at the district. He said since that time, front-end loader training has been part of the annual safety training. He commented that it is common knowledge that you do not allow anyone to ride in the bucket of a front-end loader or to allow the loader /bucket to be used as a man-lift.

On April 30, 2020, he was a member of the crew that removed the old sign over the compactor. He said prior to performing the job he was part of the discussion with Morris and Magee. He said they discussed a few ideas on how to safely remove the sign. Magee instructed Morris to operate the loader and informed that he [Magee] was going to get inside the bucket and be lifted up, in the bucket, to remove the sign. Cota said he recalls saying to Magee that this procedure was “not a good idea” as it was a safety violation. Additionally, he pointed out to Magee that the district's cameras were pointed right at their work area and somebody might review the video and observe the inappropriate, unsafe action.

He stated that despite his objections, Magee got into the bucket and directed Morris to operate the loader. He followed the instruction and raised Magee, in the bucket, to remove the sign. Cota was not able to provide an estimated distance of how far Magee could have fallen, if he fell out of the bucket. He said Magee would have landed on the compactor [if he had fallen].

He stated that his role on the project was to take the signs from Magee, once Magee had detached them from the building.

He said no modifications were made to the bucket of the front-end loader prior to Magee getting inside. He stated that no safety harness or fall protection, of any type, was used by Magee.

He stated it is not common practice for them to use the front-end loader as a man-lift. He could not recall any other time when it was used for this purpose.

Since Magee was placed on leave, Magee has not contacted him regarding the incident or this investigation.

His interview was consistent with the information he provided to Josh Tyler on 5/7/2020, as outlined in Tyler's email of 5/7/2020.

### **Interview with Shane Morris**

On May 12, 2020 I interviewed Mr. Morris by telephone. He agreed to a recorded interview.

He stated he had worked for the district for approximately four years. His current position is a maintenance/roll-off director. His immediate supervisor is Robert Magee.

He stated he had been trained as an operator of a front-end loader. Overall, he has about 15 to 20 years of experience with the front-end loader. He said he received additional on-the-job training from Magee and fellow employee, Ryan Cota, when he started work at the district. He also recalls attending the district safety training as a part of his employment. He is aware of the yellow warning decals, affixed to the lift arm of the mini loader, indicating no one should get inside the bucket.

On April 30, 2020 Morris was involved in the removal of the sign over the compactor. He said prior to beginning the job, a discussion occurred between Magee, Cota and himself. He first tried to reach the sign with a long pipe; he discovered that was not going to work. He also said they discussed using a ladder but realized that would not work either. At that time, Magee informed that they were going to use the mini loader to lift Magee up to the sign. He recalls both himself and Cota telling Magee that it was not safe for anyone to get in the bucket and be lifted up to the sign. In addition, he told them that the district's cameras were pointed right at the area where they would be working, and someone might see what they were doing on the video.

He said despite his own and Cota's objections, Magee directed him to run the loader while Magee, got into the bucket to be lifted up to remove the sign.

He stated that he did not feel that he could refuse to do as he was told because Magee was his supervisor. He was concerned that Magee would take it out on him if he refused to follow orders. Thus, he stated that he operated the bucket, as he was directed by Magee, and Magee got into the bucket. Magee directed him to move forward and then lift him up so that he could reach the sign. He estimated that if Magee had fallen out of the bucket, he would have fallen approximately 15 feet before he struck the compactor below.

Morris said no modifications had been made to the bucket, nor was there was any fall protection utilized to keep Magee from falling out of the bucket.

Morris stated that using the front-end loader as a man-lift is not a common practice. He does not recall ever using, or seeing the bucket used for this purpose at the district previously.

Since Magee was placed on leave, Magee has not contacted him regarding the incident or this investigation.

His interview was consistent with the information he provided to Josh Tyler on 5/7/2020, as outlined in Tyler's email of 5/7/2020.

### **Interview with Robert (Bob) Magee**

On May 13, 2020 I interviewed Mr. Magee by telephone. He agreed to a recorded interview.

He stated he has been employed by the District for approximately six years, as the supervisor of maintenance. He stated that his direct supervisor is Josh Tyler.

He informed that he started operating front-end loaders in the Army in 1974. Since then, he has attended many training sessions on the safe operation of front-end loaders. He stated that he operated front-end loaders in the Army and also as Road Commissioner for the town of Duxbury, Vermont for 22 years. He said he recalls attending a safety training, specific to front-end loader safety, provided by Josh Tyler, a few years ago. He said he was a participant in the presentation. He noted that although he does not recall any specific discussion about a person riding in or being lifted up by the bucket of the loader, he is aware that is generally considered an unsafe act.

He stated he does recall receiving a copy of the CSWD Safety and Health program. He stated that he is aware, in his role as a manager, that the company policy states that he assumes full responsibility for the safety of the work area.

He said on April 30, 2020 the job was to remove an old sign over the compactor at the Essex drop-off center. He said the sign consisted of three panels approximately 2' x 4' each. As he described in his letter to Sarah Reeves, he said the work crew discussed the project plan before starting. He said Morris suggested putting planks on top of the compactor which the crew felt was unsafe. He said Cota suggested getting on the roof and reaching down (over the top) which all agreed, was unsafe. He said they did discuss renting a man-lift, however considering the additional time it would take and the cost, he decided that was not a good option either. He said he finally made the decision that Morris was to operate the mini front-end loader and he was going to get into the bucket of the loader. Morris would then lift him up in the bucket, so he could detach the sign.

He recalls Morris saying he thought this was an unsafe idea. Morris also informed that the cameras were pointed towards the work area in their direction. Magee went on to say that proceeding forward with his plan, the front-end loader bucket would be resting on the top of the 42-inch-high rails when he was taking down the sign. He said he reviewed with Morris the hand signals he would use to direct him.

In his estimation [if he fell out of the bucket while taking down the sign] he would have fallen approximately 6 feet and landed in the compactor shoot. He said he had no fall protection and was not secured to the bucket in any way. He described his plan and noted that in order to perform the job, once he was lifted up in the bucket, he first stood and then had to kneel down to disassemble the signs.

He said the job was completed with Morris running the mini loader with him standing in the bucket and then, Morris raised the bucket up and positioned him to reach the sign.

He said he was aware of the safety risks of using the bucket to lift him.

He stated after he was placed on leave he contacted Richard Wobby, whom he called “the safety person” for Associated General Contractors of Vermont. He said he is familiar with Mr. Wobby from past safety programs.

He said he discussed the incident with Wobby and Wobby told him that what they did was wrong and unsafe. He said they should have either used a man-lift or had an appropriate attachment for the front-end loader to safely lift a person.

(A check of the website-[The Associated General Contractors of Vermont](#)-reveals Mr. Wobby is the Executive Vice President and Director of Safety Training and Member Services.)

A decision was made not to interview Mr. Wobby because, all information from the employee interviews, together with the two videos provided, corresponded and no further investigation was needed.

## **Addendum's**

1. Two videos from the Chittenden Solid Waste District cameras, dated April 30, 2020
2. Two photos of the bucket lift arms on the mini loader
3. Chittenden Solid Waste District's Personnel Rules and Regulations dated June 2018 (see Attachment D - Enclosure 1)
4. Letters to Robert Magee, Ryan Cota and Shane a Morris from Sarah Reeves, dated May 7, 2020 (see Attachment A)
5. Letter from Robert Magee to Sarah Reeves, dated, May 11, 2020 (See Attachment B)
6. PowerPoint presentation entitled Heavy Equipment Awareness presented by Josh Tyler, on 10/27 & 10/28/2015
7. Slide #4 from PowerPoint presentation entitled Heavy Equipment Awareness presented by Josh Tyler, on 10/27 & 10/28/2015 (See Attachment D- Enclosure 4)
8. The attendance sheet for the PowerPoint presentation presented by Josh Tyler, on 10/28/2015, confirming Robert Magee's and Ryan Cota's attendance (See Attachment D- Enclosure 3)
9. PowerPoint presentation entitled Heavy Equipment Awareness, Dated November 2016, presented by Robert Magee and Josh Tyler
10. Chittenden Solid Waste District Safety and Health Program dated September 2014 (See Attachment D - Enclosure 2)
11. Email from Josh Tyler to Sarah Reeves, on 5/7/2020
12. Three audio files -interviews of employees