

Boring & Tunneling Co. of America, Inc.

Docket S030
Ex. 69-2

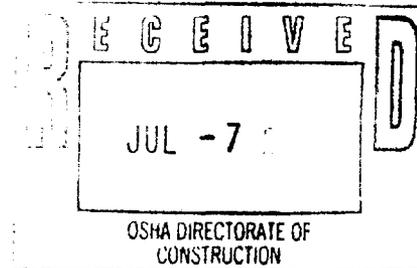
TELEPHONE (713) 799-1200
FAX (713) 799-1394



515 SOUTH LOOP WEST
HOUSTON, TEXAS 77054

July 4, 2004

Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Conference Room N-3437 A, B, C



RE: Crane and Derrick Negotiated Rulemaking Advisory Committee (C-DAC)
Docket No. S-030

Dear Sirs:

I am addressing you on the referenced subject as President of Boring & Tunneling Company of America (BorTunCo). For over fifty years, BorTunCo has led the trenchless construction industry. BorTunCo is engaged in general and sub-contracting in the construction of water, wastewater, storm water, and other utility installations. BorTunCo has performed construction work in forty-eight states, various United States territories, and foreign countries. Municipal and private water suppliers, departments of transportation, federal agencies, private corporations, and various other agencies have contracted BorTunCo for the installation of trenchless facilities from two inch diameter to thirty-two feet in diameter.

Our workforce is seventy (70) to seventy-five (75) percent Hispanic. We operate, on average, four (4) cranes and employ nine (9) to ten (10) crane operators. As with every aspect of our operation, we are always working to improve the quality and competence of our employees through training and the addition of knowledgeable employees.

BorTunCo has a history of supporting and implementing safety training and training of equipment operators, including crane operators. Including a safety program, outlining, explaining, and testing on current OSHA standards applicable to our employees.

BorTunCo has reviewed the current working drafts and offer the following concerns:

1. **1400 (c) (8) Exclusions** – The current draft contains an exclusion for industrial lift trucks, however it does not extend this exclusion to wheel or track loaders that may be equipped with forks. When equipped with forks, this type of equipment is used in the same way as an industrial lift truck, and therefore should receive the same exclusion.
2. **1422 (a) Physical examination, Drug Testing** – We believe that mandatory drug testing should be required on a pre-hire, post accident, near miss, and random basis.

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3. **1422 (b) Operator Certification** – As previously mention, BorTunCo is a proponent of training its employees. However, we are strongly opposed to a mandatory certification by a third party as suggested in the “Full Working Draft”. We believe OSHA should enforce ANSI B30.5 (2000). This standard requires a skills examination of crane operators, but leaves the employer an option of using a third party to administer the testing or overseeing the testing in-house.
4. **1422 (c) (1) Written Examination** – In addition to B30.5, we would suggest that employers should be extended the option of administering this test as a written or oral examination. English is not the first language for many in our work force, a fact recognized by recent efforts by OSHA to encourage bi-lingual training. The probability of ESL employees satisfying the requirements of a written examination in English is very small. Further, the workforce in our industry is replete with individuals who cannot pass a written test due to socio-economic issues. It is common for workers in our industry to be able to read and comprehend printed information, yet still have difficulties in expressing that understanding in writing. The intelligence of our employees is more accurately measured in the application of their knowledge or an oral assessment rather than demonstrated in a written examination.

Thank you for the opportunity to express our concerns to you.

Sincerely,



Dale Kornegay
President