

**RHODE ISLAND DEPARTMENT OF LABOR & TRAINING  
DIVISION OF PROFESSIONAL REGULATION  
HOISTING ENGINEERS EXAMINING BOARD  
TUESDAY, JULY 11, 2006  
10:00 A.M.**

**In attendance: David Rodrigues**

**Benjamin Anthony**

**John Shaw**

**Ellery Wood**

**David Burnham**

**David Rodrigues, Chairperson, called the meeting to order at 10:00 a.m.**

**The above members were present for today's meeting. Members absent for today's meeting were Kathy Serrecchia and the vacant board member. There was a quorum.**

**The first order of business is acceptance of the minutes of the Board of Examiners of Hoisting Engineers meeting held on Tuesday, June 13, 2006. Everyone had an opportunity to review the minutes. Mr. Ellery Wood made a motion to approve the minutes as submitted. Mr. Benjamin Anthony seconded the motion. All members voted in favor.**

The next order of business is hearings. There are four (4) appeal hearings scheduled for today for which there is a court reporter. Boezi Construction was scheduled for today, however, due to an unforeseen commitment, Mr. Boezi could not be present today and requested his appeal and the appeal of his employee, Mr. Oscar Zapien be postponed until the August meeting of the Board. Mr. Edward Burnam of E.W. Burnam was in attendance for today's hearings. Voting on his appeal was tabled at the June 13, 2006 meeting until the Board had an opportunity to hear testimony from Greenwich Northeast, Inc. Mr. Rodrigues recused himself from voting on today's appeals since he was the investigator of these alleged violations. Mr. Rodrigues turned the Chair of the meeting over to Mr. David Burnham. Mr. Burnham explained the procedure the Board follows relating to the conduct of appeal hearings. All individuals present for today's hearing including Mr. Rodrigues were sworn in by the court reporter.

The first appeal hearing on the agenda pertains to Greenwich Northeast, Inc. Mr. John Abatecola of Greenwich Northeast, Inc. was sworn in as well as Mr. Edward Burman of E.W. Burman and Mr. Joseph Silva, Jr. Mr. Rodrigues read the violation. On Thursday, April 27, 2006, Mr. David Rodrigues upon on-site investigation of the Swan Point Cemetery (new chapel), 585 Blackstone Boulevard, Providence, RI, witnessed Mr. Joseph Silva, Jr., an employee of Greenwich Northeast, Inc. operating a construction forklift without a valid RI hoisting engineer's license.

**Mr. Abatecola stated that he had been operating the equipment most of the day. He left the job site for a little while, and Mr. Silva was servicing the machine. Mr. Silva is a mechanic. He does not work for Greenwich Northeast, Inc. He is the mechanic for an auto service that they hire to work on their equipment. Mr. Rodrigues stated that he witnessed Mr. Silva driving the forklift from the building, and Mr. Silva stated that he was moving a mortar bucket. Mr. Rodrigues stated that he considers that to be operating the machine.**

**Mr. Silva explained to the Board that he was servicing the equipment. There was a problem with the hydraulics, and he was just moving the machine to listen to it. He then went on to list all of the work he did on the forklift.**

**With regards to the violation against Mr. Silva, Mr. Anthony made a motion that based on the testimony provided a finding of fact has been made that Mr. Silva was driving a construction forklift at the construction site of a new chapel at the Swan Point Cemetery for the purpose of servicing it, however, a violation does exist because Mr. Silva is not properly licensed to drive the forklift. For these reasons, Mr. Anthony is recommending to the Director that the fine issued to Mr. Silva in the amount of \$300 be suspended for a 12-month period pending any further violations. The motion was seconded by Mr. Wood. All members voted in favor.**

**With regards to the violation against Greenwich Northeast, Inc., Mr. Anthony made a motion that based on the testimony provided a finding of fact has been made that Greenwich Northeast, Inc. did allow Mr. Silva to drive a construction forklift at the construction site of a new chapel at the Swan Point Cemetery for the purpose of servicing it, however, a violation does exist because Mr. Silva is not properly licensed to drive the forklift. For these reasons, Mr. Anthony is recommending to the Director that the fine issued to Greenwich Northeast, Inc. in the amount of \$600 be suspended for a 12-month period pending any further violations. The motion was seconded by Mr. Wood. All members voted in favor.**

**With regards to the violation against E.W. Burman, Mr. Wood made a motion that based on the testimony provided, a finding of fact was made that a violation did occur, however, for the reasons noted above, a recommendation be made to the Director that the fine issued to E.W. Burman in the amount of \$600 be suspended for a 12-month period pending any further violation. The motion was seconded by Mr. John Shaw. All members voted in favor.**

**The second appeal hearing on the agenda pertains to New England Construction. Mr. David Grundy of New England Construction was sworn in by court reporter, as well as Mr. Eugene Bucci and Mr. Anthony Guccione. Mr. Rodrigues read the violation. On Thursday, May 26, 2006, Mr. Rodrigues received a telephone complaint, and**

upon on-site investigation witnessed Mr. Oscar R. Zapien, an employee of Boezi Corporation operating a construction forklift without a valid RI hoisting engineer's license at a new car dealership located on 1515 Bald Hill Road, Warwick, RI. New England Construction sub-contracted with Boezi Corporation to perform said work. Mr. Zapien had taken the test the week before this violation occurred. The results of the examination had not yet been mailed out, and therefore, Mr. Zapien did not know if he had passed or failed the examination, and as such was not in possession of a valid RI hoisting engineer's license. Due to the violation against him, the results of Mr. Zapien's examination were held up pending the outcome of this matter. Mr. Rodrigues also stated that it should be noted, Mr. Zapien upon being interviewed, refused to present his license to Mr. Rodrigues. However, Mr. Rodrigues informed him that he knew who he was because he had recently taken the hoisting engineer's examination.

Mr. Grundy from New England Construction stated that when he found out Boezi Corporation did not have a licensed operator working on the job site, they were told to cease and desist work. They sent a letter to Boezi Corporation by certified mail, and are requesting some type of leniency. They do not feel they should be fined for a willful violation regarding this matter. The machines were behind a wall. It was the Friday before Memorial Day. The Masons were not working, and there were only supposed to be a couple of people there to clean up. Mr. Grundy

**provided the Board with a copy of the certified letters that were sent to Boezi Corporation, as well as a picture of the job site on the day of the violation.**

**Mr. Rodrigues did inform the Board that subsequent to this violation, he did visit the Progressive Insurance job site that New England Construction was working on. The masons were working, and they were all licensed.**

**Mr. Wood made a motion that based on the testimony provided a finding of fact was made that**

**Mr. Oscar Zapien, an employee of Boezi Corporation was operating a construction forklift at the construction of a new car dealership on 1515 Bald Hill Road, Warwick, RI. New England Construction sub-contracted with Boezi Corporation to perform said work, however, New England Construction did practice due diligence and stopped the work immediately. For these reasons, Mr. Wood is recommending to the Director that the fine issued to New England Construction in the amount of \$1,150 be suspended for a 12-month period pending any further violations. The motion was seconded by Mr. Shaw. All members voted in favor.**

**The third and fourth appeal hearings on the agenda pertain to Crystal Construction Corporation and Mr. Geoffrey D. Scott. Mr. Joseph**

**Casna of Crystal Construction Corporation and Mr. Geoffrey D. Scott were sworn in.**

**Mr. Rodrigues read the violations. On Tuesday, April 18, 2006, Mr. Charles DeMelo from Federal OSHA called David Rodrigues to inform him that he witnessed Mr. Geoffrey D. Scott, an employee of Crystal Construction Corporation operating a hydraulic excavator without a valid RI Hoisting Engineer's License at the installation of a pool located on 7 Anthony Drive, Warwick, RI. Mr. DeMelo was called to the job site because the excavation of the pool had caved in on an employee (Mr. Jonathan Monahan, III) who was working there pinning him in. At that time Mr. Rodrigues visited the site, no one was there, and the hole was fixed sufficiently so that it was not a hazard.**

**After speaking to Mr. Casna, Mr. Rodrigues was assured that a licensed operator would be finishing the job. However, Mr. Rodrigues visited the site several times and never saw anyone working there. The last time he went, though, the pool was finished. Mr. Rodrigues has a report from Federal OSHA which he read to the Board, and which was entered as evidence into the record. This was deemed to be a serious violation by Federal OSHA, and Crystal Construction Corporation was fined \$1,500 by Federal OSHA.**

**Upon questioning by the Board, Mr. Scott stated that the situation was all blown out of proportion by Mr. Monahan, who has a personal issue with him, and saw an opportunity to cause problems for him.**

**Mr. Scott is not licensed in Rhode Island as a hoisting engineer, and he would not have been operating the equipment, but Mr. Casna was not there. Mr. Casna is also not licensed in Rhode Island as a hoisting engineer, and stated that he was not aware of Rhode Island's licensing requirements for this equipment. They are a backyard contractor that installs pools.**

**Mr. Casna is asked the Board for some consideration based on the fact that they did not think they were doing anything wrong. He is asking for a conclusion to this matter, and that the fines be made more affordable. They seem to him to be too high considering this is a first violation. This company has competent person training in Massachusetts through OSHA, and are licensed in Massachusetts. Mr. Casna did submit an application to take the Rhode Island hoisting**

**examination, but he has not yet been approved because he has not yet submitted documentation of his experience on company letterhead.**

**Mr. Shaw made a motion that based on the testimony provided, a finding of fact was made that Mr. Scott was operating the hydraulic excavator in violation of RI general laws. However, since it is not Mr. Scott's job to operate this equipment, and it was a one-time occurrence, Mr. Shaw is recommending to the Director that the fine**

**issued to Mr. Scott in the amount of \$600 be suspended for a 12-month period pending any further violations. Mr. Wood seconded this motion. All members voted in favor.**

**With regard to Crystal Construction Corporation, Mr. Anthony made a motion that based on the testimony provided, a finding of fact was made that Mr. Scott was operating the hydraulic excavator in violation of RI general laws. This company is aware of the licensing requirements by OSHA and in Massachusetts, and if they are doing business in Rhode Island, they should be aware of the licensing requirements. For these reasons, Mr. Anthony is recommending that the fine issued to Crystal Construction Corporation in the amount of \$1,150 be upheld. This motion was seconded by Mr. Wood. All members voted in favor.**

**This concluded today's hearings.**

**Mr. Rodrigues informed the Board that legislation pertaining to the organization of the Board of Examiners of Hoisting Engineers passed the General Assembly and became effective without the Governor's signature on July 7, 2006. It is not public laws Chapter 504. This legislation will remove Mr. Rodrigues as the Chairperson of the Board and will provide for election of officers. Election of officers will take place at the August meeting of the Board for interim officers until the election in February, 2007.**

**There was no further business before the Board. A motion to adjourn was made by Mr. Wood at 11:30 a.m. and seconded by Mr. Anthony. All members voted in favor.**

**The next meeting of the Board of Examiners of Hoisting Engineers is scheduled for Tuesday, August 8, 2006 at 10:00 a.m. in Building #70 of the Department of Labor & Training, second floor conference room, 1511 Pontiac Avenue, Cranston, RI 02920.**