



OCT 11 2018

RECEIVED OCT 15 2018

Stephen E. Yates, CHST  
President  
Optimum Safety Management  
1300 Iroquois Avenue  
Suite 260  
Naperville, Illinois 60563

Dear Mr. Yates:

This letter is in response to the two February 15, 2018 submissions by Optimum Safety Management, on behalf of the Tindall Corporation, for an Interim Order and Permanent Variance from the OSHA General Industry Standard for Fall Protection contained in 29 CFR 1910.28(b)(1). In particular, Tindall requests a Permanent Variance relating to work performed in precast yards atop precast materials flat stacked on rolling stock and motor vehicles while attaching and detaching rigging during product storage and unloading operations.

OSHA may only grant a permanent variance if the employer demonstrates that the “conditions, practices, means, methods, operations, or processes used by an employer will provide employment and places of employment . . . which are as safe and healthful as those which would prevail if [the employer] complied with the standard.” (29 U.S.C. 655(d); *see also* 29 CFR 1905.11(b)(4)).

In communications to discuss your application, OSHA requested supplemental information to demonstrate specifically how your alternative work practice would provide coverage equivalent to the applicable standard. The Agency has determined that the fall protection plan submitted with your application does not provide an alternative that is “as safe and healthful” as the applicable standards or follow the fall protection plan outline included in Subpart D of the Walking-Working Surfaces Standard. Further, your responses highlight the belief that adherence to the standard is infeasible for your industry. The Agency disagrees with your opinion and believes that the OSHA General Industry Standard for Fall Protection standard provides enhanced protection for workers due to its clarification of previous fall protection policy, as well as its enhanced requirements for training and inspection.

For the foregoing reasons, OSHA is denying the request for a permanent variance without prejudice. Tindall may apply for a permanent variance if they develop alternate means of compliance that they can demonstrate would provide their employees with protection that is “as safe and healthful as those which would prevail if [the employer] complied with the standard” (29 U.S.C. 655(d)).

For further clarification on OSHA standards involving fall protection requirements, including OSHA’s interpretations of those requirements, Optimum Safety Management and/or Tindall Corporation may wish to contact OSHA’s Directorate of Enforcement Programs at:

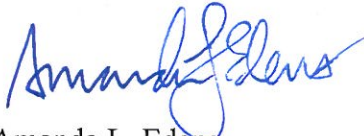
Occupational Safety and Health Administration  
Directorate of Enforcement Programs  
Office of General Industry and Agricultural Enforcement  
200 Constitution Avenue NW, Room N3119  
Washington, DC 20210  
202-693-2100

Additionally, Tindall Corporation must post a copy of this letter at the place(s) where they normally post notices to workers (see Variance Policy and Procedures, 2.1 STD 06-00-001 (October 30, 1978); available on OSHA's webpage at: [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=DIRECTIVES&p\\_id=1826](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=1826)).

If you have any questions regarding your application for a permanent variance, please contact Terrance Roach, Program Analyst, Office of Technical Programs and Coordination Activities, at 202-693-1872 or by e-mail at [roach.terrance@dol.gov](mailto:roach.terrance@dol.gov).

Thank you for your interest in worker safety and health.

Sincerely,



Amanda L. Edens  
Director  
Directorate of Technical Support and Emergency Management

Copy to:

Doug Kalinowski, Director, Directorate of Cooperative and State Programs  
Amanda L. Edens, Acting Director, Directorate of Enforcement Programs  
Kurt Petermeyer, Regional Administrator, Region IV – Atlanta, GA  
Kim Morton, Area Director, Columbia, South Carolina Area Office  
Rob Smith, General Manager, Tindall Corporation