



National Grain and Feed Association

Government and Grain

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More Sweeping Changes to OSHA's Sweep Auger Enforcement

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[Editor's Note: As reported on page 1 of the accompanying NGFA Newsletter, this edition of Government and Grain describes the details of a recent settlement between an NGFA member company and a regional Occupational Safety and Health Administration (OSHA) office in Illinois regarding sweep auger citations. Through the settlement, OSHA withdrew the citations and incorporated a set of "Ten Sweep Auger Safety Principles," which, if satisfied, would allow an employee to work inside a grain bin with an energized sweep auger. The article was written by [Eric J. Conn](#) and [Amanda R. Strainis-Walker](#), of the OSHA Group at the law firm of [Epstein Becker & Green](#) in Washington, D.C.]

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The fast-changing landscape of Occupational Safety and Health Administration's (OSHA) enforcement policy in connection with work inside grain bins with energized sweep augers has taken another turn.

After decades of employees working inside grain bins with sweep augers, a recent string of Interpretation Letters issued by OSHA effectively banned the practice outright. Now, a groundbreaking settlement of an OSHA case against an Illinois grain company became a Final Order of the Occupational Safety and Health Review Commission in January, and that settlement renewed the right to work inside grain bins with energized sweep augers under certain, specified conditions.

Background

OSHA's grain handling standard does not specifically address the use of sweep augers or the conditions in which an employee may work inside a grain bin with an energized sweep auger. The rule does, however, include a general requirement about equipment inside grain bins at 1910.272(g)(1)(ii):

All mechanical, electrical, hydraulic, and pneumatic equipment which presents a danger to employees inside grain storage structures shall be deenergized and shall be disconnected, locked-out and tagged,

blocked-off, or otherwise prevented from operating by other equally effective means or methods.

This requirement was not enforced consistently by OSHA in connection with sweep augers until a series of Interpretation Letters beginning in 2008 changed the landscape. Specifically, between September 2008 and February 2012, OSHA issued a series of Interpretation Letters that essentially required employers to guard all sides of a sweep auger, including the flighting, which would defeat its functionality, or prohibit employees from working inside the bin with the auger.

Enforcement

The new policy staked out by the agency in those Interpretation Letters, in conjunction with the surge of grain elevator inspections under the Grain Handling Facilities Local and Regional Emphasis Programs across the country, raised the profile of this issue, and led to a spike of sweep auger citations.

Several of these sweep auger citations were challenged by employers, including one appeal of a federal OSHA citation, and another to a Maryland OSHA (a State Plan) citation. In both cases, the sweep auger citations were vacated by an administrative law judge because OSHA had not proven that any employees were in the "zone of danger" or that the

augers were not adequately guarded. Because the federal OSHA case was not taken before the OSH Review Commission and the other case was in a State Plan, neither decision became binding legal precedent for OSHA, nor did the cases shed light on what OSHA considers to be “equally effective means or methods” to protect employees inside grain bins from energized sweep augers.

Even though OSHA was losing the sweep auger cases in litigation, the agency continued to issue sweep auger citations, even when the evidence showed that employees stayed at least seven feet away from the moving parts of the sweep auger. Employers were faced with the option of:

- (a) accepting sweep auger citations and facing the risk of repeat citations with penalties up to \$70,000 per violation;
- (b) challenging the citations and incurring legal fees; or
- (c) not emptying bins in an economical manner.

A Groundbreaking Settlement

Attorneys in Epstein Becker & Green’s national OSHA Practice Group represented a major grain handler in Illinois that received one of these sweep auger citations, and we found ourselves dealing with an OSHA Area Director and Regional Administrator who were knowledgeable about sweep augers from personal experience in agriculture, and who were willing to work with our client to develop a set of safety principles that would satisfy the “equally effective means or methods” language of the grain handling standard.

Our client had a policy that allowed employees to work inside bins with energized sweep augers, but employed a combination of engineering and administrative controls to ensure no employee worked within a zone of danger. Accordingly, we contested the citation, and initiated a lengthy settlement discussion with the OSHA Area Director to address this specific citation and the overall landscape of sweep auger enforcement in the industry.

OSHA ultimately agreed to withdraw all of the citations issued to our client (and associated penalties) because OSHA could not prove employee exposure to a hazard, and because we were able to agree to settlement terms that would provide guidance to the entire industry about sweep auger operations. The end result was a settlement that incorporated a set of “*Ten Sweep Auger Safety Principles*,” which, if satisfied, OSHA would allow an employee to work inside a grain bin with an energized sweep auger.

Ten Sweep Auger Safety Principles

The “Ten Sweep Auger Safety Principles” were sent to OSHA’s National Office in Washington, D.C., where they

were reviewed and approved for purposes of at least our specific settlement, and according to the Area Director and Regional Administrator, could be publicized for the industry’s benefit.

Below is the list of Sweep Auger Safety Principles that OSHA, at the National Office Level, has agreed to, and which should now serve as guidance to the industry for how to perform sweep auger operations in compliance with the Grain Standard:

1. In accordance with 29 CFR 1910.272, no employee shall enter a grain bin until after completion of a bin entry permit, which confirms there are no engulfment and/or atmospheric hazards present inside the storage bin, or unless the employer or the employer’s representative who would otherwise authorize the permit remains present during the entire entry. The grain bin hazard evaluation shall be completed by a qualified person.
2. Before entering the bin to set up or dig out the sweep auger, the subfloor auger and the grain entry points must be de-energized and locked out.
3. Before operating the sweep auger, the grate/guard on the sub-floor auger must be in place and secured.
4. Employees operating the sweep auger cannot walk on the grain, if the depth of the grain presents engulfment hazard.
5. It shall require that the sweep auger is provided with guards and covers per the manufacturers’ design, and the only unguarded portion of the sweep auger is the point of operation.
6. A rescue trained and equipped observer, in accordance with 1910.272(g), must always be positioned outside the storage bin monitoring the activities of all workers inside the bin.
7. If a worker is to enter the bin while the sweep auger is energized, the employer must utilize engineering controls within the grain bin to prevent workers from coming into contact with the energized sweep auger. The use of only administrative controls without the use of an engineering control is not a sufficient means of worker protection. Acceptable engineering controls may include:
 - a. Sweep auger equipped with an attached guard which prevents the workers contact with the unguarded portion of the auger in accordance with 1910 subpart O.
 - b. Sweep auger equipped with a control mechanism, such as a dead-man switch

or other similar device, which will allow for the sweep auger's operation only when the operator is in contact with device. If this method is utilized as a means of worker protection, the worker must be positioned at least seven feet from the auger at all times it is energized; moreover, if worker(s) in addition to the operator of the sweep auger are in the bin, additional engineering controls (such as those described in section 7 of this criteria) must be used to protect those worker(s).

- c. Portable guardrails are permissible, provided they are placed at least seven feet behind the sweep auger. Note: the use of a warning line, or other easily removable device, other than a portable guardrail, is not considered sufficient engineering controls.
8. The auger must be provided with a positive speed control mechanism or bin stop device that prevents the uncontrolled rotation of the sweep auger.
9. Workers are prohibited from using their hands, legs or other similar means to manipulate the sweep auger while it is operating.
10. If maintenance/adjustments are necessary to the sweep auger, the sweep must be unplugged, with the person making the adjustments maintaining the control of the plug, or locked-out in accordance with lock-out/tag-out procedures.

Practical Application of the Ten Sweep Auger Safety Principles

As part of the settlement negotiations that resulted in Ten Sweep Auger Safety Principles, the cited employer also developed and submitted for OSHA's review and approval a specific Sweep Auger Policy that included actual, practical engineering and administrative controls the employer intended to use at its facilities.

The following is a non-exhaustive list of the engineering and administrative controls that OSHA affirmatively approved as being consistent with the Ten Sweep Auger Safety Principles:

1. **Safety Handle:** A handle of at least seven feet in length attached to the back of the sweep auger that is equipped with a dead man switch or kill switch.
2. **Attached Standard Railing:** A standard railing mounted to the sweep auger with protective

covering (such as snow fence) attached across the back of the standard railing. The size of openings in the protective covering will conform to the allowable dimensions set forth in Table O in OSHA's machine guarding standard.

3. **Portable Standard Railing:** A portable, self-supported standard railing set in place behind the sweep auger, again with protective covering attached across the back of the standard railing.
4. **Operator Enclosure:** A portable enclosure made of standard railing inside of which the sweep auger operator can be stationed with a dead man switch or kill switch while the sweep auger is operating. Alternatively, other electrical controls may be used as long as they shut off the sweep auger when the employee steps outside the enclosure.
5. **Operator Stand:** A stand inside the grain bin mounted to the bin wall or elevated from the grain bin floor above the moving parts of the sweep auger, from where the sweep auger operator can operate and/or observe the sweep-cleaning operations. The sweep auger operator shall have access to a dead man switch or kill switch. Alternatively, other electrical controls may be used as long as they shut off the sweep auger when the employee dismounts the stand.
6. **Light Curtain:** When it is demonstrated to be a feasible option, a light curtain may be installed with a triggering distance of seven feet around the sweep auger, which would shut off the sweep auger whenever an employee moves within the triggering distance.

Future of Sweep Auger Enforcement

Although this settlement, the Ten Sweep Auger Safety Principles, and the engineering and administrative controls listed above were all approved at the highest levels within OSHA, the agency has not archived its conflicting sweep auger Interpretation Letters, nor have the Ten Sweep Auger Safety Principles been issued by OSHA as a new formal interpretation. Accordingly, it remains to be seen what the agency's enforcement philosophy will be, and whether there will be consistent application of these principles in all OSHA Regions.

Regardless, this settlement, the corresponding Ten Sweep Auger Safety Principles, and the approved engineering and administrative controls reflect a major step in the right direction in the partnership between the agriculture industry and OSHA.