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OSHA, BUILDERS REACH FALL-SAFETY COMPROMISE

by Ted Cushman



BILL DAVENPORT

Federal OSHA no longer requires a written plan justifying "alternative fall protection systems" like this controlled access zone (CAZ). State-run OSHA programs may or may not adopt the same policy.

Occupational Safety and Health Administration (OSHA) director Joseph Dear issued an OSHA-wide directive in December that will make it easier for builders to adapt to the agency's new fall protection regulations.

Acting to forestall a Congressional move to suspend enforcement of "29 C.F.R. Part 1926 Subpart M," the fall-safety rule that took effect in February, 1995, OSHA officials negotiated with representatives of the National Association of Home Builders (NAHB) and the National Roofing Contractors Association (NRCA) to produce a directive easing paperwork bur-

dens, expanding the scope of "alternative systems," modifying the requirements for residential roofing work, and promising to reopen the rule for further modifications starting early this year.

NAHB welcomed the new document, saying it would make the fall safety standard more workable without sacrificing worker safety. Contractors can get a copy of the directive and the fall-protection rule itself from OSHA by sending a written request along with a self-addressed label to Department of Labor, OSHA Publications, P.O. Box 37535, Washington, DC 20013, or by calling OSHA Publications at 202/219-4667.

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L-P Settles Siding Lawsuit

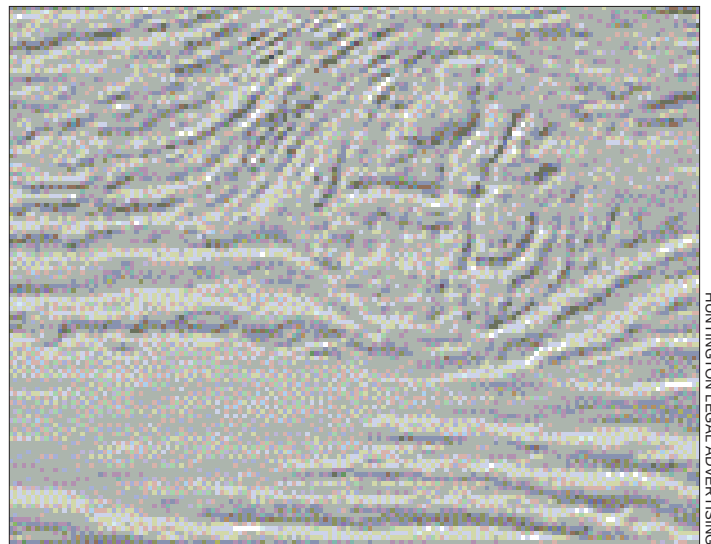
Lawyers for homeowners suing Louisiana-Pacific, manufacturer of the OSB-based siding product called Inner-Seal, have agreed to a settlement in the class action suit. New management at L-P moved quickly to accept the deal, which will pay out as much as \$375 million to homeowners whose siding has failed. "We don't see any sense in having our customers wait several years for a possible remedy that L-P is prepared to provide right now," said Stephen Grant, L-P's new Senior Vice-President for Compliance.

Terms of the deal. Under the agreement, L-P will pay

homeowners for material and labor costs of replacing any Inner-Seal siding that fails in service. An independent arbitrator will evaluate damage and set the amount of compensation for each customer on a case-by-case basis. Homeowners have until 2002 to file for compensation in the case.

Understanding the problem. The lawsuit stemmed from the Inner-Seal product's tendency to be attacked by moisture and rot. Inner-Seal consists of an oriented strand board core covered by wax-impregnated paper. In

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HUNTINGTON LEGAL ADVERTISING

Homeowners with deteriorated L-P Inner-Seal siding are entitled to cash payments under a class action settlement. This characteristic small knot pattern can be used to help identify the product.

STATE BY STATE

Missouri. A new law allows enforcement of mechanics liens even in cases where a subcontractor has signed a contract with a contingent payment clause. The law also allows courts to award interest and attorney fees to the prevailing party in a contract payment dispute.

Ohio. The state Supreme Court has ruled that impact fees on residential builders to fund parks and recreation facilities violate the state constitution. Ohio's constitution specifically requires such charges to be collected equally from all citizens, not just from certain groups.

New Jersey. A bill to require carbon monoxide detectors in all new homes and apartments is raising the eyebrows of the state Association of Home Builders, according to a report in the *Newark Star-Ledger*. An association spokesman reportedly expressed reservations about whether the devices work reliably, as well as concerns about requiring them through separate legislation rather than as part of the state building code.

Maryland. Builders and farmers are opposing an attempt to rezone 12,000 acres of farmland in northern Baltimore County, according to a report in Dec. 3's *Baltimore Sun*. The proposed change would allow only one house for each 50 acres in the agricultural preservation area, the paper noted.

Wind Research Update: Hurricane Clip Advice

Hurricane clips that attach trusses to wall plates in high wind areas should go on the outside of the wall, not the inside, according to Project

Blue Sky researchers (see *Eight Penny News*, 10/95).

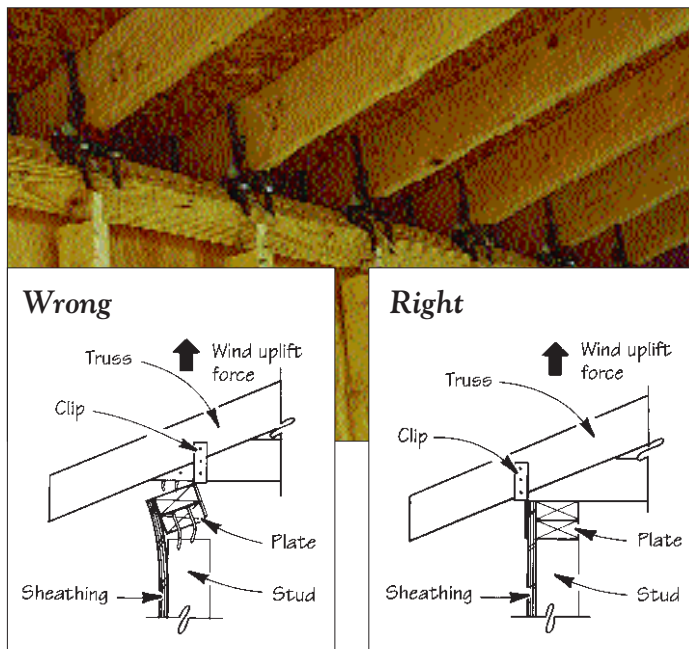
Scott Schiff, the civil engineering professor who is directing Clemson University's part

of the Blue Sky construction research effort, explains that when wind uplift forces are trying to pull a section of trusses off the wall plate, clips fastened on the inside are opposed by sheathing on the outside of the wall. In response to the competing forces, the top plate tends to rotate or twist along its long axis (see illustration, below left). The twisting can cause the whole joint to fail.

In contrast, when the clips are attached on the outside face of the wall, the forces act within the same plane and there is no twisting, thus less chance of failure.

Current building codes do not specify where hurricane clips must be placed. But recommendations coming out of the Blue Sky program will call for the clips to go on the outside, says Schiff.

For more information, write to Blue Sky, 6 Skyline Rd., Southern Shores, NC 27949. □



Clemson researchers attached hoists to the rafters of a test assembly with hurricane clips installed on the inside face (photo). Pulling up on the rafters caused the wall plate to twist loose. Conclusion: Hurricane clips should go on the outside wall face (drawing, right), not the inside (left).

TAX TALK: ABOUT AUDITS

by Martha Myron

The IRS has noted that construction firms and self-employed people often underpay their taxes. So if you're a self-employed building contractor, you're a more likely target for an audit than many other Americans.

Keeping a low profile. The IRS sees everybody's numbers, so when somebody's return strays too far from the average, they wonder why. To keep your Schedule C from standing out in the crowd, watch out for items that may trigger an audit.

One significant red flag is an abnormally low profit margin. This is an easy one for the IRS to check: Line 4 of

Schedule C shows costs of goods sold (labor, materials, and other hard costs of your projects), while Line 5 shows your gross profit. The IRS will calculate the ratio and compare your return with an average profit ratio for similar-size businesses in the industry. If your costs seem too high in relation to your revenues, they'll guess you might be charging work on your own property to customers' jobs. The IRS treats work your employees do on your property as your personal income, and they want you to pay taxes on it.

If there's a good explanation why your costs and revenues

are out of whack — for example, somebody didn't pay you and you took a loss — be ready to document it.

Also, watch out for other potential audit triggers:

- Unreported income. Subs should declare any payments they receive, even if they don't get a Form 1099. The general contractor will expense it on his return, and it'll be noticed.
- Questionable expenses on Schedule C that are really personal, such as claiming your rec room as a home office. □

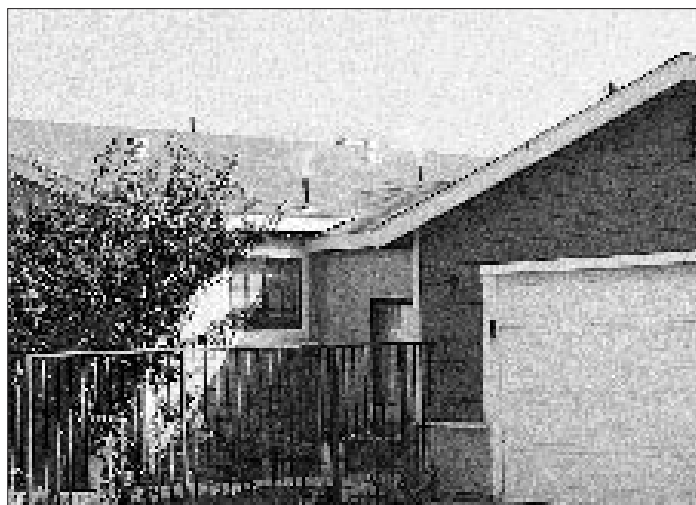
Martha Myron is a certified public accountant practicing in Concord, N.H.

Sewer Department Smokes Out Bad Plumbing

The town of Carpinteria, Calif., has found a way to locate sewer problems that is as exciting as it is effective. Sewer department employees cordon off a street, set a fan and smoke bomb over an open manhole, and watch closely as the fun begins.

gal bath unit somewhere, the telltale smoke lets the sewer department know. If a toilet or sink trap is empty (dried out from lack of use, for instance), the smoke pours into the house and lets the owner know — in a hurry.

Residents are warned a few



To locate potentially hazardous plumbing and vent defects, town employees in Carpinteria, Calif., blow smoke into sewer manholes (top). A few moments later, smoke emerges from rooftop vents (above).

Smoke is forced into the major sewer lines, then into the individual sewer hookups for each house. If everything is okay, the smoke finds its way out each home's plumbing vents.

But if sewer lines are leaking, there is an open cleanout, or there is an ille-

gal bath unit somewhere, the telltale smoke lets the sewer department know. If a toilet or sink trap is empty (dried out from lack of use, for instance), the smoke pours into the house and lets the owner know — in a hurry. Residents are warned a few days in advance with notices on their door handles, but it's still exciting to see the whole block wreathed in the smoke that pours out of rooftop vent stacks. According to one resident, the people who didn't get the advance notice are usually the first ones out of their houses. □

FROM WHAT WE GATHER

Changed your antifreeze recently? Relax — maybe you don't have to, says a report in November's *Construction Equipment* magazine. The city of Maryville, Tenn., hasn't flushed a radiator in its 230 fleet vehicles in four years. Instead, they treat the fluid with RadiAgent, an additive manufactured by KCS Laboratories in Knoxville, Tenn. Corrosion inhibitors and oxide/scale dispersants keep the antifreeze running clear, says the distributor.

For some jobs, you just have to call on a specialist.

That's what emergency room doctors discovered when a young girl was brought in with her tongue stuck in a soft drink bottle. At their wits' end, reports November's *Glass* magazine, the doctors called David Johnson, owner of Interstate Glass in Smithfield, N.C. Armed with a can of C. R. Laurence "Freeze It" and a Fletcher glass cutter, Johnston scrubbed up, put on a gown and gloves, and went to work. It was touch and go for a while, but at last the girl was freed. Now that's what you call emergency service.

You can burn out small engines early if you don't keep the foam air filters saturated with oil, warns Partner Industrial Products (708/773-2801), manufacturer of gas-powered cutoff saws. Pores in the foam filters are much bigger than the dust particles they're supposed to catch, says a company technical manager. Sticky oil on the foam snares dust by the "flypaper principle," but a dry filter won't do the job. The rule applies to any small engine with a foam filter, not just Partner products, says the company.

Advise your customers to call their homeowners insurance provider if you reduce the risk of property damage with work like a significant wiring or plumbing upgrade, says a report in December 15th's *PHC Plumbing Report*. Many insurance companies will give policyholders a premium break for improving a home's safety — but only if they ask for it.

Restoration buffs, take note: There's still time to sign up for Restoration 96, the Association for Preservation Technology International's conference on building restoration (March 17-19, Baltimore Convention Center). If you miss this one, you can still catch Restoration/Chicago (October 16-20), co-sponsored by the National Trust for Historic Preservation. For information, contact RAI/EGI Exhibitions, Inc., 129 Park St., North Reading, MA 01864; 508/664-6455.

Building with indoor air quality in mind? A computerized database on diskette lists more than 500 manufacturers and organizations, featuring thousands of products ranging from paints, flooring, and insulation to heat recovery ventilators and air filters. *The E-House Indoor Air Quality Product Guide* is available direct from E-House Environmental Building Consultants, 312 A Jefferson Ave., Cheltenham, PA 19012; 215/663-1611.

OSHA Compromise, *continued*

Key Provisions

Here's a rundown of the important elements of the new OSHA fall-safety directive:

- **Reopening the rule.**

OSHA promises to move quickly toward "further rule-making," a process that will involve more gathering of information, as well as a chance for construction workers and employers to argue their cases. The process may begin as soon as this month and could go on for months or even years.

- **Defining "residential."**

Subpart M as written contains special provisions for residential construction but no definition for the term. The December directive explains that any construction methods that are typical of single-family or townhouse home construction are covered by the residential portions of the rule, regardless of whether the building will be used as a residence.

- **Paperwork reduction.**

The rule as previously enforced required builders to create detailed written fall-safety plans any time they wanted

to use "alternative fall protection systems" where scaffolds, guardrails, and tie-offs were not appropriate. While the rule is being reconsidered, the interim directive from OSHA headquarters says builders can use alternative systems during framing and sheathing of floors, walls, and roofs of residential structures *without producing a written plan*, as long as their practices conform with the sample plan language contained in Appendix E of Subpart M. (For a description of alternative systems, see "Fall Protection: Complying with OSHA's New Rule," 1/96.)

- **Broader application.**

NAHB argued that additional situations not specifically covered in Appendix E are also best handled by the alternative training and job-control techniques. So OSHA has agreed to specific precautions to be taken instead of using physical fall protection in two other cases: Workers installing mechanical systems on roofs or in attics, as well as employees working on block or concrete foundation walls or on top of concrete formwork, can be protected by alternative measures outlined in the directive.

- **Roof work.** Subpart M has been interpreted as requiring anyone shingling a fully framed and sheathed roof to harness up and tie off to an OSHA-compliant attach point. The interim directive modifies this requirement as follows: On roofs with pitches below 4 in 12, workers can use a safety monitoring system. For roofs steeper than 4 in 12, but shallower than 8 in 12, workers must install "slide guards" consisting of roof jacks or an equivalent supporting structure, with planks of 2x6 or wider lumber, along the entire roof eaves (this bottom set of planks must be placed at right angles to the roof). Where the pitch exceeds 6 in 12, jack-supported planks must also be installed at 8-foot or shorter intervals up the roof as needed (the planks of this upper staging may be set level if preferred). Harnesses, scaffolds, or nets are required only for roofs steeper than 8 in 12, or where the distance to the ground from the eaves is more than 25 feet. This portion of the directive is complicated and detailed and contains the

kind of specifics that often trip up contractors during OSHA site inspections, so if your employees are roofing houses, read the directive closely. You may need to consult OSHA for guidance.

Will States Follow Suit?

Dear's directive applies to all federal OSHA officials. The directive "strongly encourages" the 25 state OSHA offices to adopt the same guidelines, and gives state plans 30 days to notify federal officials whether they intend to do so. States who wish to adopt some other standard must explain their policy in writing to federal officials by the 30-day deadline.

However, the act establishing federal OSHA and authorizing the creation of state OSHA plans allows states to establish rules that are stricter than federal OSHA's. In this case, OSHA officials say, state plans are allowed to ignore the federal directive if their own standards are stricter — states can even refuse to consider alternative safety plans at all. □

L-P Settles, *continued*

damp environments, the material soaks up water and supports the growth of fungus, sometimes even sprouting mushrooms.

Problems may be prevented with correct finishing and maintenance, according to Louisiana-Pacific. Information on maintaining the siding is available from L-P at 800/648-6893. However, the settlement stipulates that homeowners whose siding fails will be compensated regardless of how the product is installed or finished.

- **Where to get information.**

The court has appointed the law firm of Poorman Douglas

in Portland, Ore., to handle administration of siding claims. For information, write to L-P Siding Litigation, Poorman Douglas, P.O. Box 80100, Portland, OR 97280, or call 800/245-2722.

If you're Internet-savvy, Huntington Legal Advertising of Portland has created a World Wide Web site to inform consumers about the settlement. The site can be accessed at www.hunt.com/lpsiding.htm. You can also e-mail Huntington's Jeanne Finegan (jeanne@hunt.com) and receive regular e-mail updates on the case.

The Huntington web site has copies of the settlement



An image from Huntington Legal Advertising's World Wide Web page shows fungus growing from the underside of L-P Inner-Seal siding.

and a short form with a tear-off coupon for people who wish to file. It also contains information about how to identify L-P Inner-Seal siding and how to

determine if the product is failing. A key identifying element is a characteristic small knot pattern that appears on many of the boards (see photo). □