

**CAUSE NO: 12-10A**  
**NAME: ZELLER ELEVATOR**  
**ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS**  
**DATE: JULY 13, 2011**  
**COMMISSION ACTION: OBJECTIONS FILED**

**FINDINGS OF FACT**

1. The elevator with State Elevator Number 42182 is a hydraulically actuated elevator located at 1111 South Green River Road in Evansville, Indiana.
2. Prior to April 27, 2012 that elevator's hydraulic system began leaking hydraulic fluid.
3. By April 27, 2012 Zeller was retained to diagnose the cause of the leak in the subject elevator and also to correct the problem.
4. Zeller did not apply for an alteration permit from the Division of Elevators of the Indiana Department of Homeland Security prior to beginning the corrective work.
5. Zeller did not obtain any of the specifications, plans or drawings for the subject elevator and its installation from the elevator manufacturer, the elevator installer, the elevator owner, or the Agency prior to beginning the work.
6. There was no evidence that Zeller made any measurements of the subject elevator equipment or performed any tests on the subject elevator equipment or checked any references to confirm his opinions about the design specifications of the subject elevator equipment.
7. Prior to the elevator being taken out of service by the Agency, Zeller had begun working on the elevator to remove the defective bulkhead and cylinder pipe beneath the level of the packing head and replacement of a hydraulic cylinder pipe, complete with emergency bulkhead.

8. The subject elevator's hydraulic cylinder did not have any cylinder protection system protecting it from galvanic or electrolytic action, salt water, or other underground conditions prior to Zeller commencing work.

9. Zeller was going to add a cylinder protection system whose purpose would be to protect the hydraulic cylinder from galvanic or electrolytic action, salt water or other underground conditions.

10. Zeller had performed, and would perform, welding on the subject hydraulic system in order to complete the job.

11. The only evidence concerning Zeller's welding skills and abilities was that Mr. Zeller had done welding for many years. There was no evidence of any sort of performance testing of Zeller's welding capabilities or evidence of certifications for welding which Zeller held.

12. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

### **CONCLUSIONS OF LAW**

1. The Department of Homeland Security is an agency within the meaning of I.C. 4-21.5.

2. The Agency is the state entity charged with building safety within the State of Indiana.

3. I.C. 4-21.5, I.C. 22-12 and 675 IAC apply to this proceeding. Specifically 675 IAC 21-3-1 adopts ANSI/ASME A17.1, 2007, Safety Code for Elevators and Escalators, published by the American Society of Mechanical Engineers, by reference as the Indiana

Elevator Safety Code.

4. The Fire Prevention and Building Safety Commission is the ultimate authority within the meaning of IC 4-21.5 with respect to Agency actions taken, violations, or alleged violations of the Indiana Building Code.

5. Pursuant to 675 IAC 21-1-1 an alteration permit is required if an elevator is altered.

6. The Elevator Safety Code definition of, “alteration” is, “any change to equipment including its parts, components, and/or subsystems, other than maintenance, repair or replacement.”

7. The Elevator Safety Code definition of, “maintenance” is, “ a process of routine examination, lubrication, cleaning, and adjustment of parts, components and/or subsystems for the purpose of ensuring performance in accordance with the applicable Code requirements.”

8. The Elevator Safety Code definition of, “repair” is, “reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with applicable Code requirements.”

9. The Elevator Safety Code definition of, “replacement” is, “the substitution of a device or component and/or subsystems, in its entirety, with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with the applicable Code requirements.”

10. The addition of a cylinder protection system for a hydraulic cylinder which did not previously have a cylinder protection system is “not maintenance, repair or replacement” as those terms are defined in the Elevator Safety Code. Rather, the addition of a cylinder protection system for a hydraulic cylinder which did not previously have one is “alteration” as that term is

defined in the elevator safety code.

11. Section 8.6.12.4.1 of the Elevator Safety Code provides:

Unless otherwise required in 8.6.12.5, any repair of damaged or worn parts or components shall be with parts of material and strength equivalent to or better than the original manufacturer's design. Any changes in the design of components other than those specified in 8.6.12.5 or 8.7 that might affect the safe operation of the equipment shall be certified for use by a professional engineer. A copy of the certification shall be retained by the contractor and recorded in the log book.

12. Without objective confirmation of the design specifications of the subject elevator equipment as it existed prior to Zeller beginning its problem diagnosis and corrective work it is impossible to know whether any items repaired or replaced on the subject elevator equipment are of ,” material and strength equivalent to or better than the original manufacturer's design.”

13. Section 8.8.1 of the Elevator Safety Code, “Qualification of Welders,” provides:

Where required elsewhere in this Code, welding of parts, except for tack welds later incorporated into finished welds, shall be undertaken

(a) by welders qualified in accordance with the requirements of Section 5 of ANSI/AWSD1.1, whereby the welders shall be qualified by the manufacturer or contractor; a professional consulting engineer; or a recognized testing laboratory; or

(b) by a fabricator qualified to the requirements of CSA W47.1, whichever is applicable (see Part 9).

14. The clear intent of this section is to have a knowledgeable person, other than the welder, vouch for the quality of the welder's welding skills, not just for liability purposes but also for basic safety purposes. Accordingly, Mr. Zeller approving, as the elevator contractor, of his welding does not comply with this section of the Elevator Safety Code.

15. Any item which is denominated a Conclusion of Law which should be considered a Finding of Fact is hereby incorporated by reference into the Findings of Fact.

## **DECISION AND ORDER**

The decision of the Administrative Law Judge in this matter is that each of the subject Report of Inspection and Emergency Order taking the subject elevator out of service issued by the Division of Elevator Safety is **AFFIRMED**.

The Fire Prevention and Building Safety Commission is the final authority in this matter and that Commission will consider this nonfinal decision at 9:00 AM on August 7, 2012 in Conference Room B of the Indiana Government Center South, 302 West Washington Street, Indianapolis, IN 46204.