

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

[Docket No. OSHA-V05-2-2006-0785]

**AmerenUE; American Airlines, Inc.; CBS Outdoor, Inc.; Dixie Divers, Inc.; Graver Tank and Mfg. Co.; Hamon Custodis, Inc.; International Paper Co.; Metalplate Galvanizing, Inc.; Fisher Mills, Inc.; Pullman Power, LLC; U.S. Ecology Idaho, Inc.; West Pharmaceutical Services, Inc.; Zurn Industries, Inc.; and 3M Co: Technical Amendments to, and Revocation of, Permanent Variances**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Notice of technical amendments to, and revocation of, permanent variances.

**SUMMARY:** With this notice, the Occupational Safety and Health Administration (“OSHA” or “the Agency”) is making technical amendments to existing permanent variances, and revoking several others. The technical amendments involve renaming the employers identified on eight of the variances, and also revising the worksites covered by one of these variances. In addition, the Agency is revoking six variances based on evidence that the employers no longer need the variances.

**DATES:** The effective date of the permanent variance is December 9, 2009.

**FOR FURTHER INFORMATION:** Contact Ms. MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N-3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2110; fax (202) 693-1644. Access electronic copies of this notice at OSHA’s Web site, <http://www.osha.gov>, by selecting **Federal Register**, “Date of Publication,” and then “2008.”

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Agency has 23 permanent variances currently in effect. After reviewing these variances, OSHA found that employers identified in eight of these variances had new names (two resulting from the sale of company assets), and one of these employers relocated several worksites specified in the variance. The review also found that six of the employers do not need variances because: The conditions requiring the variance no longer exist; a new standard replaced the standard from which the employer received the variance; or the employer is no longer in business. With this notice, the Agency is correcting these problems. OSHA believes this notice will: Enable the Agency to accurately and expeditiously determine the employers covered by a variance, thereby enhancing enforcement of the variance;

ensure that a variance identifies and covers the appropriate worksites; and, for revoked variances, notify employees that the employer is no longer covered by the variance and must comply with the appropriate OSHA standard.

The technical amendments implemented by this notice do not alter the substantive requirements of the variances that remain in effect. For variances revised by this notice, these amendments maintain the regulatory obligations specified in the variances granted to the employers, thereby continuing to ensure the safety and health protection afforded to employees by the variances. For variances revoked by this notice, existing OSHA standards will provide employees with the necessary protection. A list of variances that remain in effect by this notice is available on OSHA’s Web site at <http://www.osha.gov/dts/otpc/variances/variances.html>.

With this notice, the Agency is making only technical corrections to existing variances, or revoking variances no longer needed by employers for employee protection. Accordingly, this notice will not have a substantive effect on employers or employees, and OSHA therefore finds that public notice-and-comment procedures specified under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and by 29 CFR 1905.11 or 1905.13, are unnecessary.

The following table provides details about the variances affected by this notice:

Name of employer (company) *	Variance No.	Date granted	Federal Register cite	OSHA standards affected
American Airlines, Inc	V-73-3	06/27/1973	38 FR 16944	1910.107(g)(7) and 1910.108(f)(4).
Custodis Construction Co., Inc. (now Hamon Custodis, Inc.)	V-73-13	04/03/1973	38 FR 8545	1926.552(c), 1926.451(1), 1926.451(4), and 1926.451(5).
Dixie Divers, Inc.	V-97-1	12/20/1999	64 FR 71242	1910.423(b)(2), 1910.423(c)(3)(iii), and 1910.426(b)(1).
Hammermill Papers Group (now International Paper Co.)	V-83-1	09/07/1983	48 FR 40463	1910.261(c)(9)(i).
Envirosafe Services of Idaho, Inc. (now US Ecology Idaho, Inc.)	V-93-1	06/07/1994	59 FR 29440	1910.106(b)(2)(viii)(F).
Fisher Mills, Inc.	V-74-2	01/11/1974	39 FR 1677-1678	1910.176(f).
Gannett Outdoor Companies (now CBS Outdoor, Inc.)	V-90-1	03/01/1991	56 FR 8801	1910.27(d)(1)(ii), 1910.27(d)(2), and 1910.27(d)(5).
Graver Tank & Mfg. Co., Inc	V-85-6	04/03/1973	39 FR 8545-8548	1926.552(c).
Metalplate and Coatings, Inc. (now Metalplate Galvanizing, Inc.)	V-74-49	12/28/1976	41 FR 56110	1910.22(c) and 1910.23(c)(3).
Minnesota Mining and Manufacturing Co. (now the 3M Co.)	V-77-4	03/10/1978	43 FR 9887	1910.106(d)(5)(vi)(B).
M. W. Kellogg Co. (now Pullman Power, LLC)	V-77-14			
	V-73-13	04/03/1973	38 FR 8545	1926.552(c).
Union Electric Co. (now AmerenUE)	V-74-5	10/18/1974	39 FR 37278	1910(28)(g)(1).
West Co., Inc. (now West Pharmaceutical Services, Inc.)	V-77-9	01/20/1978	43 FR 2945	1910.217(c)(3)(iii)(E).
Zurn Industries, Inc	V-82-7	05/14/1985	50 FR 2145-2149	1926.552(c)(1), 1926.552(c)(2), 1926.552(c)(3), and 1926.552(c)(14)(i).

\* As listed on the original variance.

## II. Technical Amendments to Permanent Variances

### A. Renaming Companies

1. AmerenUE; CBS Outdoor, Inc.; Metalplate Galvanizing, Inc.; U.S. Ecology Idaho, Inc.; Viacom Outdoor, Inc.; West Pharmaceutical Services, Inc.; and the 3M Co. In the original variances, the names of these companies were, respectively, Union Electric Co.; Gannett Outdoor Services; Metalplate and Coatings, Inc.; EnviroSAFE Services of Idaho, Inc.; West Co., Inc.; and Minnesota Mining and Manufacturing Co. Recently, officers of these companies sent letters to OSHA stating that these names were no longer valid, and requesting the Agency to correct the variances using the new names (Exs. OSHA-V05-2-2006-0785-0002-004).

2. Hamon Custodis, Inc. By letter dated June 20, 1989, Charles Williams, Director of Marketing and Construction for Custodis Cottrell, Inc., notified the Agency that the company changed its name from Custodis Construction Co., Inc., the name under which OSHA granted the original variance (Ex. OSHA-V05-2-2006-0785-0005). In a letter dated April 27, 2005, Thomas Pratt, Director of Health, Safety, and Quality at Hamon Custodis, informed OSHA that "Hamon Custodis" was now the corporate name for Custodis Cottrell, Inc. (Ex. OSHA-V05-2-2006-0785-0006). A subsequent letter dated August 10, 2005, provided documentation showing that Hamon Custodis acquired the business assets, including the chimney-construction assets, of Custodis Cottrell, Inc. on July 23, 1998 (Ex. OSHA-V05-2-2006-0785-0007). This documentation also included certification from the Director of Construction for Hamon Custodis, John Huchko, attesting that Hamon Custodis continues to perform chimney-construction work under the conditions specified by the variance order (Ex. OSHA-V05-2-2006-0785-0008).

3. Pullman Power, LLC. A letter from Pullman Power, LLC ("Pullman Power") dated July 7, 2005, provided OSHA with a copy of an Asset Purchase Agreement showing that Pullman Power acquired the business assets of Pullman Power Products Corp., including equipment and property, on October 4, 2000 (Ex. OSHA-V05-2-2006-0785-0009). In this letter, Mr. Dan Fangio, president of Pullman Power, stated that the company continues to perform chimney-construction work as described in the variance, and complies with the conditions specified in the variance order when doing so. In a subsequent letter from Pullman Power, Mr. Fangio verified that Pullman Power was a

successor to the M. W. Kellogg Co., the employer identified in the original variance (Ex. OSHA-V05-2-2006-0785-0010). In this letter, Mr. Fangio also certified the following merger-and-acquisition history of Pullman Power:

(a) 1980—M. W. Kellogg Co. acquired by Wheelabrator-Frye, Inc.

(b) 1983—Wheelabrator-Frye, Inc. merged with the Signal Companies.

(c) 1985—the Signal Companies merged with Allied Corp. to form Allied-Signal, Inc.

(d) 1986—Allied-Signal, Inc. formed a holding corporation, the Henley Group, Inc., that included Wheelabrator Technologies, Inc. as a wholly owned subsidiary.

(e) 1990—Waste Management, Inc. assumed control of Wheelabrator Technologies, Inc., forming Pullman Power Products Corp. as a subsidiary corporation.

(f) 2000—Resco Holdings, Inc., a subsidiary of Waste Management, Inc., sold Pullman Power Products Corp. to Pullman Power and Structural Technologies, LLC (the parent company of Pullman Power).

### B. Revising Covered Worksites

West Pharmaceutical Services, Inc. By facsimile letter dated May 19, 2004, (Ex. OSHA-V05-2-2006-0785-0011), West Pharmaceutical Services, Inc., asked OSHA to revise the worksites covered by the variance. This letter also noted that several of the original facilities, in Phoenixville, PA, Millville, NJ, and Kinston, NC, either did not require coverage by the variance or were no longer in operation. The employer is retaining coverage for the worksites at Kearny, NE, and St. Petersburg, FL, and is requesting to add coverage to the following worksites:

West Pharmaceutical Services, Inc.,  
347 Oliver Street, Jersey Shore, PA  
17740.

West Pharmaceutical Services, Inc.,  
101 Gordon Drive, Lionville, PA 19341.

West Pharmaceutical Services, Inc.,  
179 West Airport Road, Lititz, PA  
17543.

West Pharmaceutical Services, Inc.,  
Route 70, Kinston, NC 28501.

### C. Revoking Permanent Variances

1. American Airlines, Inc. The Agency granted American Airlines, Inc. a variance permitting it to use painted lines instead of "no smoking" signs to identify smoking areas at its Maintenance and Engineering Center in Tulsa, OK. The employer subsequently prohibited smoking at this facility, and, in an e-mail to OSHA, stated that it no longer needed the variance (Ex. OSHA-V05-2-2006-0785-0012).

2. Dixie Divers, Inc. On February 17, 2004, OSHA published a final rule that added Appendix C to its Commercial Diving Operations ("CDO") Standard at 29 CFR 1910, subpart T (69 FR 7351). The appendix permits employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression-chamber requirements specified in the CDO Standard. This set of requirements duplicates the conditions of the variance granted to Dixie Divers, Inc. Therefore, these requirements provide the employer with the same relief, and employees with the same protection, afforded to them by the variance. Accordingly, the variance is redundant and unnecessary.

3. Graver Tank & Mfg. Co. On March 28, 1996, Graver Tank was acquired by Astrotech International Corporation. Effective October 28, 1997, Astrotech merged with ITEQ Storage Systems Inc., as noted in a 1998 10-K filing with the Securities and Exchange Commission (SEC) (Ex. OSHA-V05-2-2006-0785-0013). In February 2000, ITEQ sold Graver Tank's assets to a private entity. The company was liquidated soon thereafter, obviating the need for a variance, as documented by SEC Proxy Statement Form DEF 14A, dated May 1, 2000 (Ex. OSHA-V05-2-2006-0785-0014).

4. Fisher Mills, Inc. On March 20, 2001, Fisher Communications Inc. sold the assets of Fisher Mills to Pendleton Flour Mills, Inc. Pendleton subsequently closed the mill's operations, obviating the need for a variance. This sale is documented in Fisher Communication's 8-K form filed with the SEC on March 16, 2001 (Ex. OSHA-V05-2-2006-0785-0015). The mill site, which is no longer in operation, was purchased by King County, WA, on July 28, 2003 (Ex. OSHA-V05-2-2006-0785-0016).

5. International Paper Co. International Paper Co. submitted a letter to OSHA dated August 11, 2005, stating that it was the successor to Hammermill Papers Group (Ex. OSHA-V05-2-2006-0785-0017). In this letter, International Paper Co. noted that its Erie, PA, mill, the only mill covered by the variance granted to Hammermill, is no longer in operation, thereby obviating the need for the variance.

6. Zurn Industries. Zurn Industries submitted a letter to OSHA dated April 16, 2004, stating that it sold its chimney- and tower-erection businesses (Ex. OSHA-V05-2-2006-0785-0018), thereby making the variance unnecessary.

### III. Decision

Based on the information described herein, including the finding that this notice will not alter the substantive requirements of the variances and will maintain the protection afforded to employees by the variances, the Agency is taking the following actions:

A. Revising the names of employers as shown in the following table:

Name in original variance	Revised name
Metalplate and Coatings, Inc., West Co. ....	Metalplate Galvanizing, Inc. West Pharmaceutical Services, Inc. 3M Co.
Minnesota Mining and Manufacturing Co., Custodis Construction Co., Inc.	Hamon Custodis, Inc.
M. W. Kellogg Co. ....	Pullman Power, LLC
Envirosafe Services of Idaho, Inc.	US Ecology Idaho, Inc.
Union Electric Co. ....	AmerenUE
Gannett Outdoor Services.	CBS Outdoor, Inc.

B. Adding worksites at Jersey Shore, Pa., Lionville, Pa., Lititz, Pa., and Kinston, N.C. to the variance granted to West Pharmaceutical Services, Inc. (formerly the West Co.).

C. Revoking the variances granted to American Airlines, Inc., Dixie Divers, Inc., Graver Tank and Mfg. Co., Fisher Mills Co., International Paper Co. (the successor employer to Hammermill Papers Group), and Zurn Industries.

### IV. Authority and Signature

Thomas M. Stohler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, directed the preparation of this notice. This notice is issued under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5-2007 (72 FR 31160), and 29 CFR part 1905.

Signed at Washington, DC, on November 18, 2008.

**Thomas M. Stohler,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8-29002 Filed 12-8-08; 8:45 am]

BILLING CODE 4510-26-P

**ACTION:** Notice; correction. The LSC grant award date is revised. See the revised grant award date under Summary.

**SUMMARY:** The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people. LSC hereby announces the availability of competitive grant funds for the provision of a full range of civil legal services to eligible clients in Wyoming. Grants will be awarded in or around July 2009. The estimated annualized grant amounts for service areas in Wyoming are: \$478,874 for the provision of civil legal services to the general low-income population throughout the state (i.e., service area WY-4); \$12,054 for the provision of civil legal services to the migrant farmworker population throughout the state (i.e., service area MWY); and \$167,794 for the provision of civil legal services to the Native American population throughout the state (i.e., service area NWY-1).

**DATES:** See SUPPLEMENTARY INFORMATION section for grants competition dates.

**ADDRESSES:** Legal Services Corporation—Competitive Grants, 3333 K Street, NW., Third Floor, Washington, DC 20007-3522.

**FOR FURTHER INFORMATION CONTACT:** Reginald Haley, Office of Program Performance, 202.295.1545.

**SUPPLEMENTARY INFORMATION:** The Request for Proposals (RFP) is available at <http://www.grants.lsc.gov>. Once at the Web site, click on *FY 2009 Request For Proposals Narrative Instruction* to access the RFP and other information pertaining to the LSC competitive grants process. Refer to the RFP for instructions on preparing the grant proposal; the regulations and guidelines governing LSC funding; the definition of a full range of legal services; and grant proposal submission requirements.

Applicants must file a NIC (RFP Form-H) to participate in the competitive grants process. The deadline for filing the NIC is March 2, 2009, 5 p.m. E.D.T. The deadline for filing grant proposals is April 13, 2009, 5 p.m. E.D.T. The dates shown in this notice for filing the NIC and the grant proposals supersede the dates in the RFP. All other instructions, regulations, guidelines, definitions, and grant proposal submission requirements remain in effect unless otherwise noted.

The following persons, groups, and entities are qualified applicants who may submit a Notice of Intent to Compete (NIC; RFP Form-H) and an

application to participate in the competitive grants process: (1) Current recipients of LSC grants; (2) non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (3) private attorneys, groups of attorneys or law firms; (5) state or local governments; and (6) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

LSC will not fax the RFP to interested parties. Interested parties are asked to visit <http://www.grants.lsc.gov> regularly for updates and correction notices pertaining to the LSC competitive grants process.

Dated: December 4, 2008.

**Janet LaBella,**

*Director, Office of Program Performance, Legal Services Corporation.*

[FR Doc. E8-29109 Filed 12-8-08; 8:45 am]

BILLING CODE 7050-01-P

### NATIONAL INDIAN GAMING COMMISSION

#### Fee Rate

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given, pursuant to 25 CFR 514.1(a) (3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.057% (.00057) for tier 2 for calendar year 2008. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2008 shall be one-half of the annual fee rate, which is 0.0285% (.000285).

**FOR FURTHER INFORMATION CONTACT:** Kwame Mambo, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632-7003; fax (202) 632-7066 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those

### LEGAL SERVICES CORPORATION

#### Notice of Availability of Calendar Year 2009 Competitive Grant Funds; Correction

**AGENCY:** Legal Services Corporation.