

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**TEXO ABC/AGC, INC., ASSOCIATED
BUILDERS AND CONTRACTORS, INC.,
NATIONAL ASSOCIATION OF
MANUFACTURERS, AMERICAN FUEL
& PETROCHEMICAL
MANUFACTURERS,
GREAT AMERICAN INSURANCE
COMPANY, ATLANTIC PRECAST
CONCRETE, INC., OWEN STEEL
COMPANY, and OXFORD PROPERTY
MANAGEMENT LLC,**

PLAINTIFFS,

v.

**THOMAS E. PEREZ, SECRETARY OF
LABOR, UNITED STATES
DEPARTMENT OF LABOR, et al.,**

DEFENDANTS.

CIVIL ACTION NO. 3:16-cv-1998

**EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR
EXPEDITED BRIEFING SCHEDULE AND HEARING**

Plaintiffs through counsel hereby move on an emergency basis pursuant to Federal Rule Civil Procedure 65 for a preliminary injunction against Defendants preventing them from implementing or enforcing Subparagraphs 1904.35(b)(1)(i), (iii), and (iv) of OSHA's New Rule entitled "Improve Tracking of Workplace Injuries and Illnesses," 81 Fed. Reg. 29,624 (May 12, 2016). Absent injunctive relief, effective August 10, 2016, the challenged provisions of the New Rule will for the first time in the history of the OSH Act prohibit incident-based employer safety incentive programs and routine mandatory post-incident drug testing programs, notwithstanding substantial evidence in the administrative record that these programs are needed to make

workplaces safer. The New Rule is contrary to and exceeds OSHA's statutory authority and is otherwise arbitrary, capricious and not in accordance with applicable law.

The standards for preliminary injunction are met in that Plaintiffs are likely to succeed on the merits; Plaintiffs will suffer irreparable harm in the absence of an injunction preserving the status quo; the balance of harms favors the Plaintiffs; and an injunction that preserves the status quo of the past 45 years is in the public interest.

Reference is made to the Memorandum in support of this motion. An expedited briefing schedule and hearing are requested. A proposed order is also attached.

Dated: July 12, 2016

Respectfully submitted,

/s/ Steven R. McCown

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ATTORNEYS FOR PLAINTIFFS

* *pro hac vice* motion pending

CERTIFICATE OF CONFERENCE

Counsel for Plaintiffs conferred with counsel for Defendants with regard to this Emergency Motion for Preliminary Injunction and Request for Expedited Briefing Schedule and Hearing on Tuesday July 12, 2016. An agreement could not be reached because Defendants' counsel stated that it was opposed to this emergency motion.

/s/ Steven R. McCown

Steven R. McCown

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2016, I electronically transmitted the attached document to the Clerk of Court using the ECF system for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF Registrants:

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/s/ Steven R. McCown

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CIVIL ACTION NO. 3:16-cv-1998

**ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION
FOR PRELIMINARY INJUNCTION AND REQUEST FOR EXPEDITED BRIEFING
SCHEDULE AND HEARING**

Having considered Plaintiffs' Emergency Motion for Preliminary Injunction and Request for Expedited Briefing Schedule and Hearing and the opposition thereto, Plaintiffs' Motion is hereby GRANTED.

Defendants are hereby enjoined from implementing or enforcing those provisions of Defendant OSHA's New Rule that would otherwise prohibit incident-based employer safety incentive programs and/or routine, mandatory, post-accident drug testing programs after August 10, 2016, pending a decision on the merits of Plaintiffs' claims.

SIGNED on this _____ day of _____, 2016.

UNITED STATES DISTRICT JUDGE