

STATE OF NEW YORK DEPARTMENT OF LABOR

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In the Matter of the Suspension, Revocation, Refusal to Renew or
the Denial of an Application for a Crane Operator's Certificate of
Competence or its Continuance Relative to:

DETERMINATION
&
ORDER

RICHARD EVANS
CRANE CERTIFICATE NO 99-0104

File # LIC-16-0002

Pursuant to Subpart 61-1.5(f) of Title 12 of the Official
Compilation of Codes, Rules and Regulations of the State of
New York.

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Pursuant to 12 NYCRR 61-1.5.f, the Crane Operator Examining Board conducted a
hearing on January 12, 2017 to determine whether the Certificate of Competence issued to
Richard Evans (Respondent) should be suspended or revoked by the Division of Safety and
Health of the New York State Department of Labor.

The testimony and other evidence presented at the hearing establish, in relevant part, that:

1. Respondent's Certificate of Competence No. 99-0104 expires November 2017;
2. Respondent operated a MANITEX Boom Truck Crane, Model #2892S on May 25, 2016 at 3170 Erie Boulevard, Dewitt, New York;
3. Respondent, while operating such crane, was involved in an accident wherein the crane contacted a high voltage power line;
4. The accident did occur as a result of Respondent's negligence; and
5. That Respondent is not "a person of proper competence, judgment or ability" in relation to the operation of cranes (12 NYCRR 61-3.1, incorporating 12NYCRR 23-8.5 [n] [1]).

The Crane Operator Examining Board, based on the evidence presented at the hearing, made the following Recommendations on the record, as reflected on the attached transcript page(s):

1. That the accident did occur as a result of the Respondent's negligence;

2. That Respondent is not “a person of proper competence, judgment or ability” in relation to the operation of cranes (12 NYCRR 61-3.1, incorporating 12NYCRR 23-8.5 [n] [1]);
3. That the Respondent’s current Certificate of Competence is to be immediately revoked.

NOW, upon review of the entire record made by the Crane Operator Examining Board; and upon due deliberation had thereon, it is:

ORDERED that the Findings of Fact, the Conclusions and the Recommendations by the Crane Operator Examining Board be, and hereby are, ADOPTED by the Commissioner of Labor, and they shall constitute the final **Determination & Order** of the Commissioner.

Dated: February ¹⁴, 2017
Albany, New York



Roberta Reardon
Commissioner of Labor
State of New York

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2 (Off the record)

3 THE HEARING OFFICER: Okay. We're
4 back on the record.

5 Have the members of the Crane Board
6 had an opportunity to consider and review the documentary
7 evidence and the testimony offered in this proceeding?

8 MR. DILLON: Yes.

9 THE HEARING OFFICER: Have you --?

10 MR. LOUGHLIN: Yes, sir.

11 THE HEARING OFFICER: Are you prepared
12 to render a --

13 MR. HOGLE: Yes, sir.

14 THE HEARING OFFICER: -- report and
15 recommendation to the commissioner of labor?

16 MR. DILLON: Yes, we are.

17 MR. LOUGHLIN: Yes.

18 THE HEARING OFFICER: Okay. Who is
19 going to make the presentation on behalf of the Board?

20 MR. HOGLE: I can.

21 We would recommend revoking the crane
22 license due to the serious nature and safety of this
23 issue.

24 THE HEARING OFFICER: Okay. That's
25 Syracuse, so that's Mr. Hogle. Correct?

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2 MR. HOGLE: That's correct.

3 THE HEARING OFFICER: All right.

4 Going through the particulars of the notice of hearing, is
5 -- does the crane -- members of the Crane Board find that
6 the incident occurred as a result of the operator's
7 negligence?

8 MR. HOGLE: Yes.

9 MR. LOUGHLIN: Yes.

10 MR. DILLON: Yes.

11 THE HEARING OFFICER: Okay. Would you
12 like to make a brief statement in support of that finding?

13 MR. HOGLE: Yes, we can. Looking at
14 the -- the site where the crane was placed, the fact that
15 there was a forklift on-site, we felt that the crane was
16 placed in a poor position and certainly putting the
17 workers and itself at risk on-site.

18 THE HEARING OFFICER: All right.

19 Anything further in support of your finding of operator
20 negligence?

21 MR. DILLON: Well, the -- the operator
22 operated the crane within the proximity of the high
23 voltage, which is definitely not allowed.

24 THE HEARING OFFICER: Okay. Does the
25 -- do the members of the Board make any finding with

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2 respect to whether Mr. Richard Evans is a person who is
3 not of proper competence, judgement, and ability in
4 relation to operation of cranes? Do you make that
5 finding?

6 MR. LOUGHLIN: Yes.

7 THE HEARING OFFICER: Okay. And
8 again, may I -- may I just have a brief statement of facts
9 in support of that?

10 MR. LOUGHLIN: Well, I -- I think the
11 decision is unanimous between the three of us.
12 Unfortunately, the other Crane Board members aren't
13 available, but we discussed it and we seem to think that
14 they would be in agreement because of the egregiousness of
15 this act.

16 And I know accidents happen, and thank
17 God there was nobody killed in a situation like this, but
18 I could say you got lucky and I mean that and I'm not
19 being facetious. But thank God you did get lucky because
20 you could have been killed and whoever else was around
21 that crane could have been killed.

22 MR. EVANS: I agree one hundred
23 percent.

24 MR. LOUGHLIN: I know accidents
25 happen, but --.

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2 THE HEARING OFFICER: Okay. And it's
3 your recommendation that Mr. Evan's certificate of
4 competence be revoked. Is that correct?

5 MR. LOUGHLIN: Yes.

6 MR. HOGLE: Yes.

7 MR. DILLON: Correct.

8 THE HEARING OFFICER: Okay.

9 Immediately for a specific period of time?

10 MR. LOUGHLIN: Immediately.

11 MR. DILLON: Immediately, yes.

12 THE HEARING OFFICER: All right. Is
13 there a specific period of time for the revocation?

14 MR. LOUGHLIN: Well, when it's
15 revoked, it's revoked.

16 THE HEARING OFFICER: Okay.

17 MR. LOUGHLIN: You can't -- you can't
18 reapply.

19 THE HEARING OFFICER: All right.

20 Anything further?

21 MR. ZABLOW: No.

22 MR. EVANS: No.

23 THE HEARING OFFICER: All right. Mr.
24 Zablow, anything you'd like to add?

25 MR. ZABLOW: No, your Honor.

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2 THE HEARING OFFICER: Mr. Evans?

3 MR. ZABLOW: No.

4 THE HEARING OFFICER: All right. That
5 concludes this proceeding. The record is closed.

6 When the transcript is received, I
7 will prepare a decision and order, attaching to that the
8 relevant portion of the transcript to where the crane
9 operator -- the Crane Board examiners set forth their
10 findings of fact and recommendations for the commissioner.

11 When the commissioner reviews that, if
12 she signs it and accepts it, it will be served upon all
13 parties.

14 Mr. Evans, when you receive it, speak
15 with your attorney and determine whether or not you want
16 to appeal.

17 MR. EVANS: Okay. Very good.

18 THE HEARING OFFICER: All right.

19 Thank you. I appreciate everyone's participation. I wish
20 everyone a good day.

21 (The hearing concluded at 10:52 a.m.)

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