2024 VT 42

No. 23-AP-348

Kingsbury Companies, LLC	Supreme Court
v.	On Appeal from Superior Court, Washington Unit, Civil Division
Commissioner of Labor	May Term, 2024

Timothy B. Tomasi, J.

Pietro J. Lynn and Sean M. Toohey of Lynn, Lynn, Blackman & Manitsky, P.C., Burlington, for Plaintiff-Appellant.

Robert L. Depper III and Jared Adler, Special Assistant Attorneys General, Montpelier, for Defendant-Appellee.

PRESENT: Reiber, C.J., Eaton, Carroll, Cohen and Waples, JJ.

¶ 1. **CARROLL, J.** Kingsbury Companies, LLC, appeals from a trial court order that upheld various violations of the Vermont Occupational Safety and Health Act, 21 V.S.A. §§ 221-232. Kingsbury raises numerous arguments. We affirm.

I. Procedural History

¶ 2. The project at issue involved the construction of a manure digesting facility to supply power to Middlebury College. Following a complaint and worksite inspection, a Vermont Occupational Safety and Health Administration (VOSHA) Safety Compliance Officer issued Kingsbury a seven-item citation for violating the Vermont Occupational Safety and Health Act

(Act), 21 V.S.A. §§ 221-232. Kingsbury contested the citation before the VOSHA Review Board. The Board made numerous findings in a written decision. It rejected Kingsbury's arguments that the violations should be dismissed. On the merits, it vacated one violation and affirmed the remaining violations.

¶ 3. Kingsbury then appealed to the trial court. The trial court conducted an on-the-record review and considered if the Board's findings were "supported by substantial evidence." Id. § 227(a)(5) (stating that Board's findings "with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive"); see also Green Mountain Power Corp. v. Comm'r of Lab. & Indus., 136 Vt. 15, 21, 383 A.2d 1046, 1050 (1978) (recognizing that this standard "differs little, if at all, from the 'clearly erroneous' test of [Vermont Rule of Civil Procedure] 52(a)"). The court vacated an additional violation and upheld the remaining five violations.

¶ 4. The record indicates the following.[1] This case arose from a complaint filed with the Vermont Department of Labor by a person who identified himself as a Kingsbury job-site employee. The individual complained about unsafe conditions related to a crane, ladders, stairs, and confined spaces. In response to the complaint, a safety officer went to the site for an inspection. The inspector met with the Kingsbury employee in charge and described the issues in the complaint. The employee assented to the inspection and accompanied the inspector during his inspection. The inspector identified various violations.

¶ 5. As it did before the Board, Kingsbury sought dismissal of the violations in the trial court. It argued that: VOSHA should not have treated the complaint as "formal" and warranting

[1] On appeal, we apply the same standard of review as the trial court. Comm'r of Labor v. Eustis Cable Enters., LTD, 2019 VT 2, ¶ 8, 209 Vt. 400, 206 A.3d 1260. The Board's findings will stand "if supported by substantial evidence." Id. To the extent that there is any divergence between the Board's findings and the trial court's summary of those findings, the Board's findings control.

an inspection under the Occupational Safety and Health Act Field Operations Manual or 21 V.S.A. § 206(f); the safety officer did not provide a physical copy of the complaint at the time of the inspection as required by § 206(f); Kingsbury did not consent to the warrantless inspection; and the decision to inspect was arbitrary and invalid.

¶ 6. The court rejected these arguments. It found that Kingsbury improperly cited the Field Operations Manual as a source of enforceable rights given the manual's disclaimer that its contents were not enforceable. The court explained that the manual provided guidance materials for employees, not enforceable administrative rules. The court concluded Kingsbury's reliance on § 206(f) equally misplaced as that statute did not distinguish between "formal" and "informal" employee complaints.

¶ 7. The court emphasized the Commissioner of Labor's broad authority to conduct workplace inspections under § 206(a). Section 206(a) empowers "[t]he Commissioner or the Director, or their agents" to "enter upon a premises, upon presenting appropriate credentials to the occupant, at reasonable times, for the purpose of inspecting the premises within reasonable limits and in a reasonable manner, to determine" compliance with "the provisions of the VOSHA Code and this chapter and the rules adopted" thereunder. Id. "If entry is refused, the Commissioner or the Director may apply to a Superior judge for an order to enforce the rights given to the Commissioner and the Director and their agents under this section." Id.

¶ 8. The court found nothing in § 206(f) that limited VOSHA's broad discretion to inspect under § 206(a). Section 206(f) allows employees to request an inspection if they "believe[] that a violation of a safety or health standard exists that threatens physical harm." Id. The employee must provide written "notice to the Commissioner or Secretary or the Commissioner or Secretary's authorized agent of the violation or danger" and identify "with reasonable particularity the grounds for the notice." Id. "If upon receipt of the notification the Commissioner or Secretary

determines there are reasonable grounds to believe that a violation or danger exists," they must "make a special inspection . . . as soon as practicable to determine if a violation or danger exists." Id. The court explained that while § 206(f) required an inspection under certain circumstances, it did not bar or limit inspections, as Kingsbury suggested. The court also rejected Kingsbury's related assertion that the complaint was too vague to warrant an inspection under § 206(f).[2]

¶ 9. Kingsbury further complained that the inspector failed to produce a physical copy of the complaint at the time of the inspection. Section 206(f) states that, where a special inspection is conducted pursuant to a complaint, "[a] copy of the [employee's complaint] shall be provided [to] the employer or the employer's agent not later than at the time of inspection."

¶ 10. In this case, the inspector met with Kingsbury's superintendent upon his arrival at the job site. He provided the superintendent with his credentials and told him he was there to investigate items identified by a complaint. The superintendent called Kingsbury's Safety and Risk Manager to let him know that the safety officer was on site. The inspector did not provide a physical copy of the complaint due to COVID-19 protocols and concerns. He did, however, tell the superintendent about the items in the complaint and asked the superintendent if he had any questions about the complaint. The superintendent did not object to investigating the items in the complaint and he accompanied the inspector during the inspection. The Board found that the inspector conducted a warrantless inspection with Kingsbury's consent and that Kingsbury was aware of the scope of the inspection prior to its commencement.

[2] The Federal Act contemplates "programmed" and "unprogrammed" inspections. "Unprogrammed inspections result from complaints, referrals, fatalities, catastrophes, follow-ups and monitoring," and their scope "should be limited to the reason for the inspection." Occupational Safety and Health Law: Compliance and Practice § 5:14 (2023). "Programmed inspections are those anticipated or scheduled in administrative plans," and, "[a]s a general rule, . . . [they] are comprehensive inspections, often called 'wall-to-wall inspections.' " Id.

¶ 11. The trial court reached the same conclusion. It explained that it was not seriously disputed that Kingsbury received a full description of the complaint's contents prior to the inspection, which served the principal purpose of the statute. Kingsbury identified no palpable claim of prejudice from having received oral versus written notice and it provided no authority to support its position that the absence of a written copy of the complaint vitiated its consent to the inspection or warranted dismissal of the violations. As the Board found, it would be absurd under these circumstances to invalidate the inspection and the resulting citations for such a de minimis deviation from the statute.

¶ 12. The court also agreed with the Board that Kingsbury consented to the inspection and thereby waived its challenges to any alleged deficiencies in the preinspection process. The court found the record clear that the inspector arrived to inspect, provided notice of the contents of the precipitating complaint, the employee in charge allowed the inspection and accompanied the inspector during the inspection, and consent was never withdrawn. The court found no indication that the consent somehow was obtained by unfair means, such as trickery or overbearing conduct. It explained that Kingsbury could have refused or limited its consent and obligated VOSHA to seek a warrant, which would have shifted the determination of the propriety and scope of any inspection to a court. Having failed to do so, however, Kingsbury could not now convert its own failure to refuse consent at the time of inspection into a basis for dismissal after the fact.

¶ 13. Finally, the court rejected Kingsbury's argument that the decision to inspect was arbitrary under the Vermont Administrative Procedure Act and therefore void. The court reiterated that if Kingsbury thought the inspection was unwarranted because it was arbitrary or for any other reason, it could have declined consent and allowed the inspection's reasonableness to be tested in court. Instead, Kingsbury consented.

¶ 14. The court then considered Kingsbury's challenges to the merits of the violations and upheld all violations except one. We discuss the pertinent violations below in connection with Kingsbury's arguments on appeal.

II. Arguments on Appeal

A. Preliminary Questions

¶ 15. On appeal, Kingsbury largely reiterates the arguments it presented below. We begin with its arguments in support of dismissal of the violations. According to Kingsbury, VOSHA failed to follow the preinspection procedures laid out in the Field Operations Manual and required by the Act. More specifically, Kingsbury contends that the report was made by a former employee and for this and other reasons, it should not have been treated as a "formal complaint" as defined in the manual, and no inspection was warranted under § 206(f). Kingsbury also asserts that the complaint was too vague to constitute a formal complaint. Kingsbury further argues that it had a statutory right to a hard copy of the complaint at the outset of the inspection and, because it did not receive one, the investigation and resulting citations should have been invalidated and any evidence obtained during the inspection excluded. Finally, Kingsbury argues that VOSHA's actions precluded it from providing valid consent to the inspection. As support, it again cites the absence of a hard copy of the complaint and argues that the scope of the inspection was broader than the allegations in the complaint.

¶ 16. On review, we apply the same standard as the trial court and "[w]e will affirm the board's findings if supported by substantial evidence." Eustis Cable Enters., LTD, 2019 VT 2, ¶ 8; accord Green Mountain Power Corp., 136 Vt. at 21, 383 A.2d at 1049. "Our role is not to reweigh the evidence, and we will defer to the finder of fact when there is conflicting evidence in the record." In re Ferrera & Fenn Gravel Pit, 2013 VT 97, ¶ 6, 195 Vt. 138, 87 A.3d 483 (quotation omitted). We agree with the Board and the trial court that Kingsbury consented to the warrantless

inspection here. Its consent obviates Kingsbury's complaints about the preinspection process, and we do not address these arguments.

¶ 17. Workplace inspections, like that at issue here, are searches under the Fourth Amendment to the U.S. Constitution and require a warrant absent an exception, such as consent. Marshall v. Barlow's, Inc., 436 U.S. 307, 313 (1978); see also Occupational Safety and Health Law: Compliance and Practice § 5:2 (2023) (explaining that under Marshall, "OSHA may enter a worksite with either consent of the appropriate person or with a warrant"); Green Mountain Power Corp., 136 Vt. at 24, 383 A.2d at 1051 (recognizing that Vermont's Act "is patterned after the federal act").

¶ 18. "A person's valid consent to a search makes the search reasonable (and lawful) under the Fourth Amendment." Peacock Timber Co. v. U.S. Dep't of Lab., 649 F. App'x 887, 888 (11th Cir. 2016) (mem.); see also Sec'y of Lab. v. Cody-Zeigler, Inc., 2001 CCH OSHD ¶ 32,352, 2001 WL 34127723, at *2 (Nos. 99-0912, 99-0913, 99-0914; 00-0040, 00-0222, 2001), ("[D]ecisions are uniform" that "[i]f an employer consents to an OSHA inspection, . . . the employer may not later challenge the inspection on Fourth [A]mendment grounds, if it is within the scope of that consent.") (citing cases). This includes a challenge to the basis on which the employer was selected for an inspection. See Cody-Zeigler v. Sec'y of Lab., 2002 CCH OSHD ¶ 32,559, 2002 WL 595167, at *1 (No. 01-1236) (D.C. Cir.) (holding that "consent precluded [the employer] from challenging . . . the manner in which it was selected for inspections"). As that court explained, "even if [the relevant statute] constrain[ed] the manner in which the OSHA selects a site for inspection, an employer forfeits a . . . defense if it consents to the inspection." Id. at *2 (citing Florida v. Jimeno, 500 U.S. 248, 250-51 (1991) (stating that "we have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so").

¶ 19. Consent to a search also includes the ability to discover violations in plain view. See, e.g., Peacock Timber Co., 649 F. App'x at 888; Occupational Safety and Health Law: Compliance and Practice, § 5:3 (2023) (explaining that if employer "consent[s] to the search on the complaint, OSHA can cite the employer for anything it finds," including violations in plain view). In Peacock Timber Co., the court rejected the argument that "OSHA inspectors violated the Fourth Amendment because they were never authorized to search the facility for violations other than those alleged in the former employee's complaint." 649 F. App'x at 888. The court held that the employer's "executives consented to the inspectors' [workplace] searches, recognizing the possibility that the inspectors might observe violations beyond those alleged in the complaint." Id. "Having consented to the searches that took place," the court concluded, the employer "cannot now complain about what those searches turned up." Id.

¶ 20. In a similar vein, the record here supports the Board's determination that Kingsbury consented to the warrantless search, which included any plain-view violations observed by the inspector. As found by the Board, the inspector met with the Kingsbury superintendent at the job site and read him the complaint information, including that there were "[s]afety hazards recognized throughout the job site," "[c]oncerns over crane not being up to code, concerns over stairs, ladders," and "[c]oncerns regarding entering confined spaces." This is consistent with the complaint that VOSHA received, which alleged that "[t]he crane that is on site is not up to code the job itself is dangerous between ladders stairs getting into confined spaces" and identified the hazard location as "[t]he entire job site." The Board credited the inspector's testimony that the information in the complaint was transmitted to respondent's on-site representative and that respondent was aware of the inspection's scope prior to its commencement. We defer to the Board's credibility assessments.

¶ 21. The superintendent did not object to the inspection or seek to limit its scope. The superintendent accompanied the investigator during his inspection and the Board found that while the inspector was focused on the items in the complaint he also observed additional violations in plain sight. The superintendent did not revoke or limit his consent to the inspection.

¶ 22. We reject Kingsbury's assertion that VOSHA "depriv[ed] Kingsbury of its ability to understand the complaint against it and to potentially consent to an inspection" or that the inspector exceeded the scope of Kingsbury's consent to search. Kingsbury was orally provided the information from the complaint, without objection, which satisfied the purpose of the statute. The Board's finding that the superintendent understood the scope of the inspection is supported by the evidence. Providing this information orally was not unreasonable at the outset of the COVID-19 pandemic. More significantly, Kingsbury identifies no specific harm or prejudice that befell it from having the information orally delivered. It identifies no harm that resulted from an inspection that referenced "ladders and stairs" as opposed to "ladders and stairs in relation to confined spaces". The complaint itself contained no punctuation between these items, and in any event, Kingsbury consented to the inspection as described to it by the inspector.

¶ 23. Kingsbury's argument that it was deprived of an opportunity to consent because of VOSHA's "lackluster" preinspection procedures and the inspector's failure to provide a physical copy of the complaint misses the larger point. Kingsbury was under no obligation to let VOSHA inspect the premises without a warrant and it could have narrowed or revoked consent at any time. It chose not to do so even though a representative accompanied the inspector throughout the inspection. The search was reasonable and there is no basis to dismiss the violations discovered during the inspection. Any alleged shortcomings in the preinspection process were obviated by Kingsbury's consent.

B. Violations and Penalties

¶ 24. We next consider Kingsbury's challenges to the merits of the violations. "To establish a violation, the Department of Labor must show that the employer had knowledge or constructive knowledge of the condition violating the law." Eustis Cable Enters., LTD, 2019 VT 2, ¶ 9 (quotation omitted). As set forth above, we apply the same standard as the trial court and "will affirm the board's findings if supported by substantial evidence." Id. ¶ 8. We agree with the trial court that the violations are supported by substantial evidence here. Kingsbury essentially wars with the way in which the Board weighed the evidence and we do not reweigh the evidence on appeal. Ferrera & Fenn Gravel Pit, 2013 VT 97, ¶ 6.

1. Violation 1

¶ 25. The first violation concerns Kingsbury's failure to comply with the electrical standard set forth at 29 C.F.R. § 1926.405(g)(2)(iv). The standard requires "[f]lexible cords . . . [to] be connected to devices and fittings so that strain relief is provided which will prevent pull from being directly transmitted to joints or terminal screws." Id.

¶ 26. The inspector identified two locations where this standard was violated. Kingsbury complained below that the violation was outside of the scope of the inspection authorized by the complaint. The Board found that, whatever the outer limit of an inspection in response to a complaint such as this one might be, it was well-established that an inspector could take note of, and issue citations for, violations in "plain view." Citing Donovan v. A.A. Beiro Constr. Co., 746 F.2d 894, 901-902, 903 (D.C. Cir. 1984); Noble Steel, Inc. v. Occupational Safety & Health Rev. Comm'n, 72 F.3d 138 (10th Cir. 1995).

¶ 27. The Board recounted the testimony of the inspector and Kingsbury's employee and found that the violations were in plain view. It explained that the officer was a trained and experienced safety inspector for whom such violations would appear obvious. It found that the

safety officer observed the violation as he walked directly past a generator that was sitting in front of the crane, which was identified in the complaint. While the Kingsbury employee who accompanied the inspector testified that he did not think it was possible for the inspector to have noticed this violation incidentally, the Board credited the inspector's testimony.

¶ 28. On appeal, Kingsbury cites to its employee's testimony and again argues that the violation was not in plain sight. It contends that the Board and trial court "ignored" its employee's testimony. This argument is without merit. The Board did not ignore this testimony. Instead, it credited the inspector's testimony on this point. We leave it to the factfinder to assess the credibility of witnesses and weigh the evidence and we do not reweigh the evidence on appeal. Ferrera & Fenn Gravel Pit, 2013 VT 97, ¶ 6. This violation is supported by the record.

2. Violation 2

¶ 29. The second violation concerns gaps in scaffold planks that violated the standard set forth in 29 C.F.R. § 1926.451(b)(1)(i). The Board found that the gaps far exceeded the permissible limits, and Kingsbury knew or should have known of this violation, as it was obvious. The Board further found that Kingsbury's employees were exposed to the hazard, as there was no dispute that the platform was accessible to employees and was used by employees. It rejected Kingsbury's argument that the violation should not be considered "serious" because the gaps were not large enough to allow an employee to fall through them. The Board explained that serious violations existed where "there is a substantial probability that death or serious physical harm could result from a condition." Even assuming that an employee could not fall through the gaps, the Board found that the gaps still posed a risk of "serious physical harm." The gaps were such that an employee might sustain serious physical harm even if it was only their leg, for example, that became lodged in the open space.

¶ 30. Kingsbury argued to the trial court that it was allowed to have gaps larger than the standard set forth at § 1926.451(b)(1) if it could demonstrate that the gaps were necessary. The trial court rejected this argument. It explained that the uncontested facts showed that there were gaps of up to eleven inches in width between the walking surface and the wall. Under § 1926.451(b)(1)(ii), the maximum permissible gap allowed by necessity was nine-and-a-half inches.

¶ 31. The court also rejected Kingsbury's assertion that the scaffolding was not being used. Kingsbury cited to testimony that the scaffolding might not have been in use on the day of the inspection. Kingsbury provided no support for the proposition that a violation was actionable only if there was evidence that it reasonably could have harmed an employee on the day of the inspection. The court also rejected Kingsbury's argument that the violation should not have been treated as "serious" under the Field Operations Manual. It reiterated that the provisions of the manual did not provide Kingsbury with a source of actionable rights and it further found that the record did not support this argument.

¶ 32. Kingsbury argues on appeal that a gap wider than one inch was necessary. It does not address the court's finding that gaps here exceeded the allowable gap-by-necessity under the standard, however. Kingsbury also reiterates its assertion that the scaffolding was not in use. Finally, it argues that the violation was not "serious" because a person could not fall through the gaps.

¶ 33. There was no error. Kingsbury again wars with the Board's assessment of the evidence. We reject these arguments for the reasons identified by the Board and trial court above.

3. Violation 4

¶ 34. This violation concerned unprotected sides and edges that presented a fall risk in violation of 29 C.F.R. § 1926.501(b)(1). The Board found that Kingsbury improperly left the edge

of a hydrolyzer tank (a walking surface) unprotected by a safety system (such as guardrails) to prevent falls of greater than six feet. It found that Kingsbury knew or should have known of this violation and it was clear that Kingsbury had recognized that this unprotected edge presented an issue. The Board determined that respondent's employees were exposed to this hazard. The area was unguarded at the time of the inspection and the presence of electrical conduit at the rim of the tank provided evidence of recent activity, as well as future anticipated activity, in the area.

¶ 35. Kingsbury argued to the trial court that the edge was not a walking surface, no work was performed in the area, and the area was restricted to prevent use. The court found that the Board's findings were to the contrary and those findings were supported by the evidence. It cited the inspector's testimony in support of this conclusion.

¶ 36. On appeal, Kingsbury reiterates its argument that the edge of the hydrolyzer tank was not a walking surface. It contends that this was a restricted area and not a work area so there was no need for a safety system. As indicated above, the Board found otherwise and its decision is supported by substantial evidence in the record, as recounted by the trial court. There was no error.

4. Violation 5

¶ 37. This violation concerned whether a guardrail system on scaffolding next to an open-air tank could withstand sufficient force as required by 29 C.F.R. § 1926.451(g)(4)(vii). The inspector testified that the flexible "strapping" used by Kingsbury was insufficient to comply with the requirement that the guardrail withstand 200 pounds of force. Kingsbury asserted that it had consulted with an engineer who believed that Kingsbury's proposed support system would comply with the standard. Kingsbury indicated that it had tested a piece of the strapping by setting it up similarly to how it would be used in the scaffolding and hanging approximately 215 pounds of material from it, which held without issue.

¶ 38. The Board found that Kingsbury could not provide evidence of its consultation with an engineer, or even the engineer's name, either to the inspector at the time of the inspection or at the time of the hearing. There was also no documentary evidence of the testing that was allegedly conducted on the strapping, and the Board found it questionable whether simply hanging 200 pounds of material from a bent piece of strapping would suffice to establish the guardrail's compliance with the standard. The Board did not credit the testimony offered by Kingsbury on this point. It found that the standard was violated and that Kingsbury knew or should have known of this violation.

¶ 39. The trial court similarly rejected Kingsbury's challenge to this violation. It noted that the Board, as factfinder, credited the inspector's testimony as to the inadequacy of the strapping and it found that the evidence supported this violation.

¶ 40. Kingsbury argues on appeal that the Board should have credited the testimony of its engineer over the inspector. As stated above, we do not reassess credibility or reweigh the evidence on appeal. This claim of error is without merit.

5. Violation 7

¶ 41. Finally, this violation related to Kingsbury's failure to properly identify "confined spaces" on the site in violation of 29 C.F.R. § 1926.1203(a). A confined space is defined as "a space that: (1) [i]s large enough and so configured that an employee can bodily enter it; (2) [h]as limited or restricted means for entry and exit; and (3) [i]s not designed for continuous employee occupancy." 29 C.F.R. § 1926.1202. The purported "confined spaces" here were the north and south digester tanks and the hydrolyzer. There was no dispute that these three locations satisfied requirements one and three above; the sole question was whether they satisfied the second requirement.

¶ 42. The inspector testified that the hydrolyzer had only one extension ladder to get in and out, while the digesters were both accessible only by stair towers. Kingsbury argued that, in addition to the stair towers, the spaces were equipped with emergency ladders, which could be used as a means of egress in case of an emergency. It also noted that both digesters were built with two "man hatches" or "ports" that, once the facility was put into operation, would allow access to the insides of the tanks. Kingsbury argued that these could be used as a means of emergency egress, if needed.

¶ 43. Citing testimony in the record, the Board found that the standard did not require a certain number of exit mechanisms but rather referred to spaces with "limited or restricted" means of access, meaning that an employee could not exit the space as they would normally exit a room. The Board found this interpretation consistent with the standard interpretation of the requirement by OSHA. See Opinion Letter (Sept. 8, 2016), https://www.osha.gov/laws-regs/standardinterpretations/2016-09-08 [https://perma.cc/3MUC-Y5JS]. The Board determined that Kingsbury violated the standard because it had not identified or assessed the locations in question as "confined spaces."

¶ 44. There was no dispute that Kingsbury's employees worked within the spaces that should have been identified as confined spaces. The Board rejected Kingsbury's contention that there were no hazards created by these spaces that necessitated extra protection. As the inspector explained, the purpose of the confined-spaces standard was not just to protect against catastrophic hazards; it also existed to ensure that appropriate planning was made for the potential need to respond to more prosaic hazards, such as applying first aid or removing persons injured within a confined space. Had these areas been evaluated as confined spaces, it would have allowed such issues to be planned for appropriately. The Board concluded that the violation exposed

Kingsbury's employees to the type of hazard that the standard was designed to avoid. The trial court agreed with the Board's assessment and found its decision supported by substantial evidence.

¶ 45. On appeal, Kingsbury reiterates its argument that there was no violation of the standard because the tank had multiple means of access and egress. It also advances the same hazard argument. Kingsbury does not directly address the Board's contrary interpretation of this standard, which is consistent with the standard interpretation of the requirement by OSHA. For the reasons outlined above, the standard does not hold that there must be a certain number of exit mechanisms but instead encompasses spaces with "limited or restricted" means of access. The Board did not err in finding that the digesters and hydrolyzer met the requirements of confined spaces or that they presented hazards to employees. We reject these arguments for the same reasons as the Board and the trial court.

Affirmed.

FOR THE COURT:

Associate Justice