



OSHA 30/30®

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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ALJ Addresses Six-Month Limitations Defense

December 17th, 2025

Manesh Rath

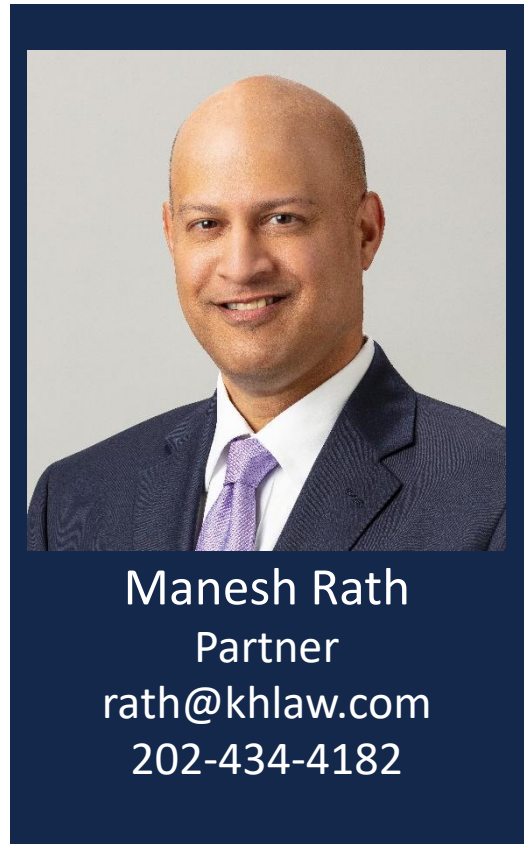


Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court. He has been called to testify before Congress in several hearings relating to OSHA law.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been interviewed in The Wall Street Journal, Bloomberg, Smart Money, Entrepreneur, on PBS's Nightly Business Report, and C-SPAN.

Mr. Rath served on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center and on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by fellow members to The Best Lawyers in America 2016-2025 (in 2023, was voted as Lawyer of the Year); selected by Super Lawyers 2016 – 2023; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



Manesh Rath
Partner
rath@khlaw.com
202-434-4182

Benjamin Idzik



Benjamin (Ben) Idzik advises Keller and Heckman clients on regulatory compliance matters under state and federal environmental, occupational safety and health, transportation, and employment laws.

Specifically, Ben assists clients on issues arising under the Occupational Safety and Health (OSH) Act, Federal Motor Carrier Safety Administration (FMCSA) regulations, and U.S. Environmental Protection Agency (EPA) regulations, such as the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Prior to joining Keller and Heckman, Ben focused on regulations affecting trade associations and their members. While in law school, Ben served as a legal intern for an advanced nuclear reactor and fuel company and was the Note & Comment Editor for the Catholic University Law Review. He also completed a clerkship at the Montgomery County Circuit Court.



Benjamin Idzik
Associate
idzik@khlaw.com
202.434.4308

Topics to Be Discussed

- ◆ Background
- ◆ Metro Ports' Limitation Defense
- ◆ Limitation Defense: General Principles
- ◆ *Sec'y of Lab. v. Johnson Brass & Machine Foundry, Inc.*
- ◆ *Volks Constructors v. Sec'y of Lab. (D.C. Cir. 2012)*
- ◆ ALJ's Decision
- ◆ What Employers Should Do

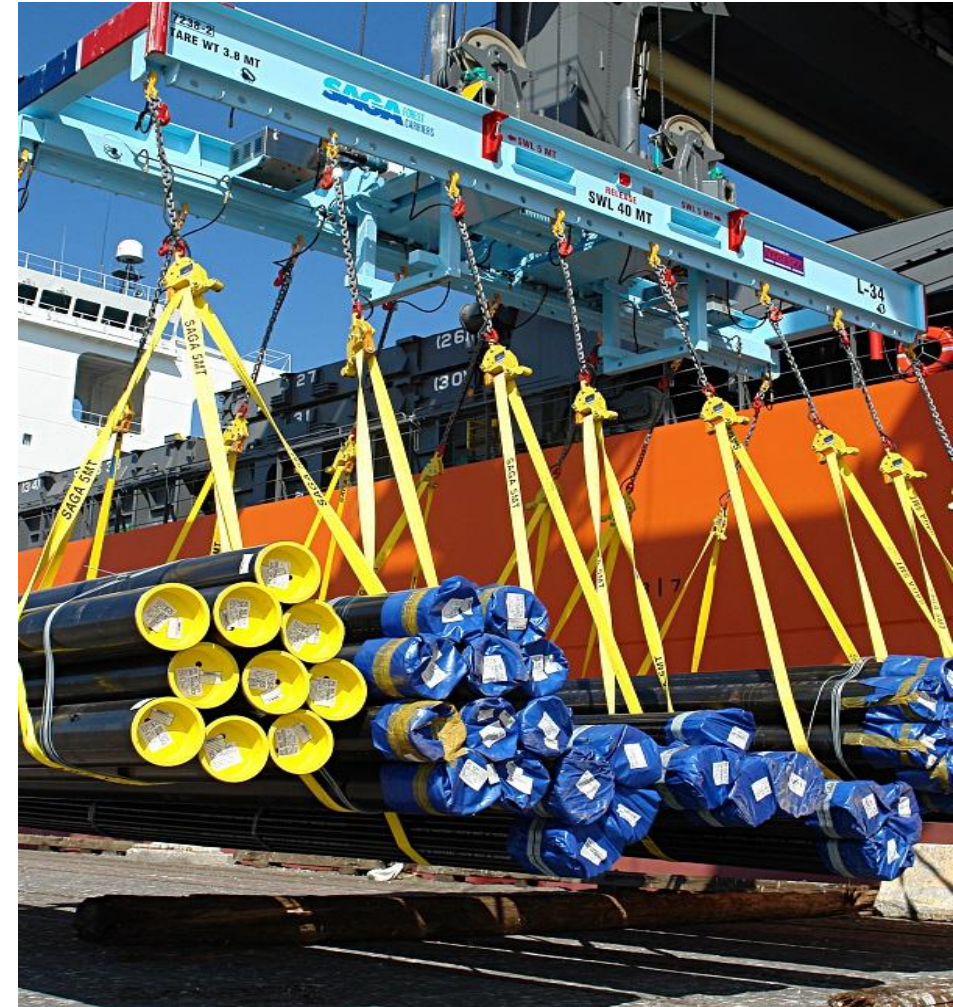
Background

- ◆ Metro Ports (d/b/a Southeast Crescent Shipping) is a stevedoring company that operates a marine terminal at the Port of Wilmington, North Carolina
- ◆ OSHA received a complaint regarding Metro's handling of hazardous cargo shipped in "super sacks"
 - ◇ Initiated inspection
 - ◇ Confirmed worker exposure to Waelz oxide
- ◆ Five citations issued



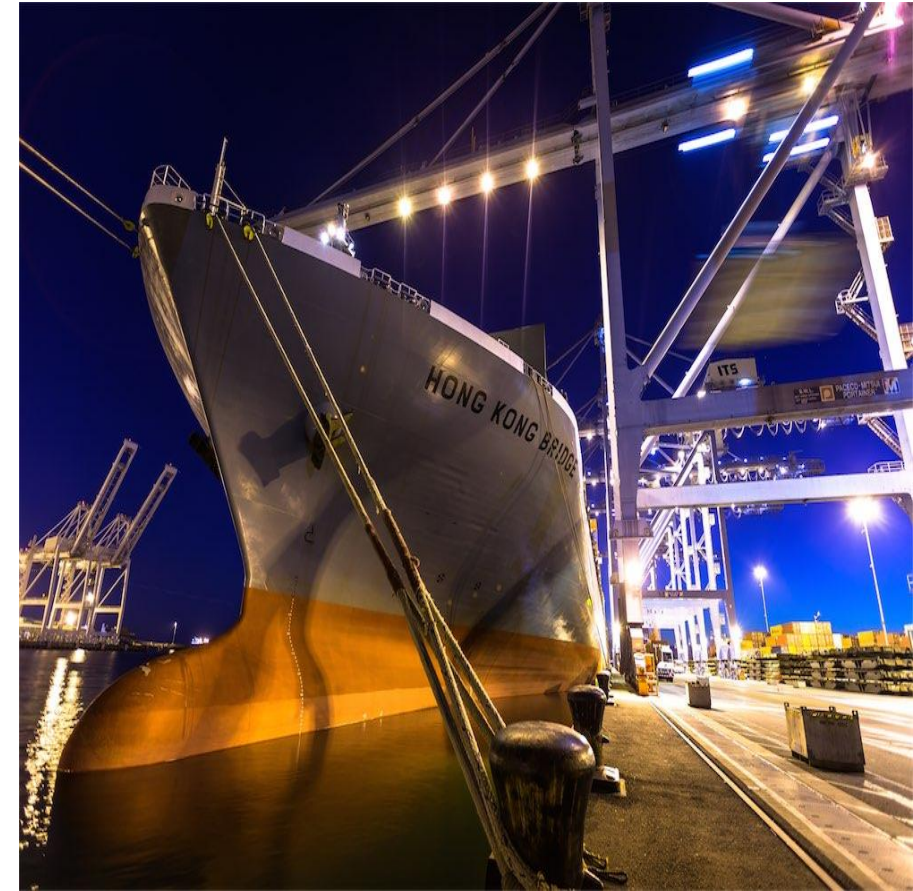
Metro's Limitation Defense

- ◆ Citation untimely
- ◆ Last documented release of Waelz oxide occurred in Feb. 2023
- ◆ OSHA conducted inspection in July 2023
- ◆ Citation issued Sept. 2023
- ◆ OSHA had (6 months) until August 1 to issue a citation since the last release occurred in February.



Limitation Defense: General Principles

- ◆ OSH Act § 9(c): “No citation may be issued . . . after the expiration of six months following the occurrence of any violation”
- ◆ “Occurrence” depends on the nature of the violation
 - ◇ Completed violation (e.g., failing to post an OSHA poster)
 - ◇ Ongoing violation (e.g., unguarded machinery in use)
- ◆ *Gabelli v. S.E.C.*, 568 U.S. 442 (2013): Discovery of a violation by agency is not relevant; focus is on whether a violation is complete or ongoing



Sec'y of Lab. v. Johnson Brass & Machine Foundry, Inc.

- ◆ Johnson Brass operated unguarded machinery
 - ◇ OSHA conducted inspection for unrelated safety issues
 - ◇ Observed unguarded machine but did not issue citation
 - ◇ After subsequent inspection, OSHA issued citation
- ◆ Employer: Citation untimely
 - ◇ Clock to issue citation began to run when OSHA observed the unguarded machine during first inspection
- ◆ ALJ: Citation timely, violation was ongoing during both first and second inspection



Volks Constructors v. Sec'y of Lab. **(D.C. Cir. 2012)**

- ◆ Volks failed to properly record workplace injuries and illnesses on its OSHA Form 300 and 301 Forms
 - ◇ Recordable incidents dated back to 2002
 - ◇ Citation issued in 2006
- ◆ Issue: Was failing to maintain records that were never created a continuing violation?
- ◆ Court: No, citation untimely
 - ◇ The violation was completed when the record was not created; 6-month clocks begin to run from the date when the violation was completed
- ◆ 2016 Rulemaking and subsequent rollback



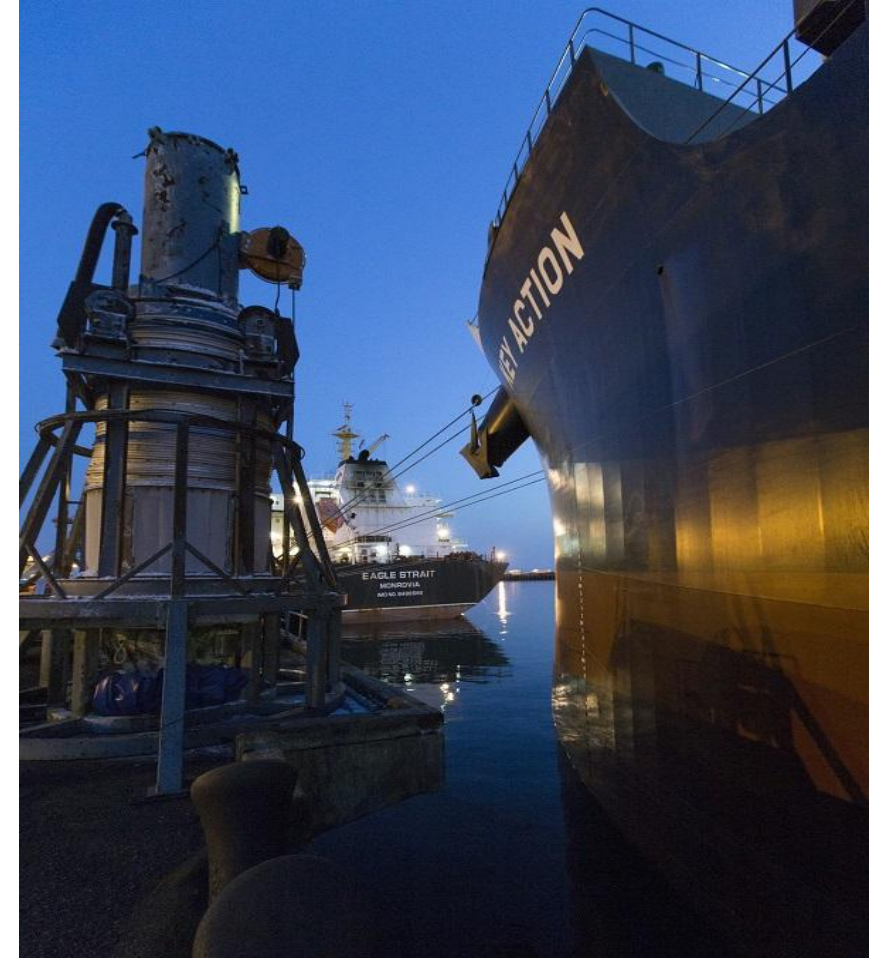
ALJ's Decision

- ◆ Relevant issue is when the violations “occurred,” not when Waelz oxide was last released
- ◆ Even though the last documented release took place in Feb. 2023, Metro employees continued to handle the super sacks after that date
- ◆ **The alleged violations were ongoing making the citation timely**
- ◆ 6-month limitations period begins to run once the violation is complete



What Employers Should Do

- ◆ Document, and date, all internally discovered safety issues and the date of remediation
- ◆ Develop system for internal complaints
- ◆ Prepare operating procedures for investigating internal complaints
- ◆ When cited, prepare an evaluation of whether the alleged violation is discrete or continuous





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at 1:00 p.m., Eastern Time

January 21st, 2026

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Please join us at 10:00 AM Eastern U.S.
February 25th, 2026
www.khlaw.com/REACH-3030



Please join us at 1:00 PM Eastern U.S.
TBD
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Thank You

Manesh Rath

Partner

1001 G Street N.W. Ste. 500W

202.434.4182

rath@khlaw.com



Benjamin Idzik

Associate

1001 G Street N.W. Ste. 500W

202.434.4308

idzik@khlaw.com

