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### SEVERE BURN CASE

Severe Burn Case from Slip, Trip, and Fall  
*Safety, Health, and Environmental expert*

**Case Synopsis:** The plaintiff, an engineer doing boiler flue stack gas sampling/analyzing, ran backwards as he was winding up his plastic tubing and fell into an open storm water ditch that received hot water from a boiler continuous blow down line. The engineer received severe burns to over 75% of his body, his heart stopped several times, and he is partially blind as a result of the burns. He eventually returned to work after many skin grafts and is very fortunate to be alive. He was winding the tubing up as another employee was lowering the tubing which got caught on a light "goose-neck." The engineer whipped the tubing to dislodge it and ran backwards to wind up the slack in tubing quickly to prevent kinking. The defendant was the power plant.

**Expert Analysis:** The defendant's safety expert discovered that the engineer had worked on this site for approximately 15 years and had seen steam rising from the ditch many times. When he ran back he should have been aware he was off the gravel roadway that should have acted as a "warning track" which is analogous to an outfielder running back against the fence to catch a fly ball. He failed to assess the hazard of an unguarded drop off that resulted in the ditch with water of 170F peak temperature at the time. OSHA regulation 29 CFR 1910.176(g) states:

Guarding. Covers and/or guard- rails shall be provided to protect personnel from the hazards of open pits, tanks, vats, ditches, etc.

However, since 1910.176(g) is under Material Handling, it is easily overlooked by even seasoned safety professionals. The defendant's expert argument was the guarding of ditches should have be a part of Walking-Working Surfaces instead of Material Handling. The Plaintiff's attorney was placing all of his "eggs in one basket" with the fact that the ditch was not guarded. The defendant's expert had pictures of irrigation ditches throughout the country that were unguarded, making his point that it is not feasible or practical to guard all ditches. He treated the ditch as similar to a "leading edge" on an unguarded roof where workers should not be within 6 feet of the edge. A worker must be accountable for their actions or inactions. OSHA is only a subset

of a Safety and Health Program. If a hazard can't be removed, work practices become the next preferred means of preventing an accident. The plaintiff was accountable for his quick decision to run backwards. The power plant did nothing to create an emergency situation that provoked the plaintiff to run backwards.

**Result:** The case was settled earlier than expected. While strict OSHA compliance is ideal, it does not always determine the outcome of a litigation case. The plaintiff should have assessed the hazard and been aware that running backwards on an industrial site is a very unsafe practice, regardless of the hazard of an open ditch containing hot water. The power plant's safety handbook included "no running" in their rules.

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