

Oil and Gas Operators Could be Cited for Safety Violations That Endanger Their Drilling Contractors or Other Non-Employees

March 8, 2019 Matthew Deffebach, Mini Kapoor

PRACTICES OSHA, Energy, Power and Natural Resources

In November 2018, the Fifth Circuit Court of Appeals held in *Acosta v. Hensel Phelps Construction Company*, that “the Secretary of Labor has the authority under ... the Occupational Safety and Health Act ... to issue citations to controlling employers at multi-employer worksites for violations of the act’s standards.” No. 17-60543. In other words, under this case, any employer having control over a worksite or who could have by reasonable exercise of its supervisory authority, detected and prevented a safety violation, may be cited for a violation, whether or not its own employees were exposed to the hazard (the “multi-employer policy”).

With this decision, the Fifth Circuit mooted its 1981 decision in *Melerine v. Avondale Shipyards, Inc.*, 659 F.2d 706, which held that “OSHA regulations protect only an employer’s own employees.” Under *Hensel Phelps*, it may be prudent for any employer having control over a worksite, such as an operator at a drilling site in Texas (a state located in the Fifth Circuit) where the operator’s contractors or other parties work or provide services, to monitor the site and ensure that the site is in compliance with OSHA requirements even if the operator’s own employees do not work at the site.