

SECRETARY OF LABOR,

Complainant,

v.

OBERDORFER INDUSTRIES, INC.,

Respondent.

OSHRC Docket Nos. 97-0469 & 97-0470

DECISION

Before: RAILTON, Chairman; and STEPHENS, Commissioner.

BY THE COMMISSION:

Oberdorfer Industries, Inc. (“Oberdorfer”) operates an aluminum foundry in Syracuse, New York, where it produces custom molded castings for a wide variety of industries. From September 10, 1996, to January 31, 1997, the Occupational Safety and Health Administration (“OSHA”) conducted a comprehensive safety and health inspection of Oberdorfer’s foundry as part of OSHA’s Local Emphasis Program in primary metal industries.¹ As a result of the inspection, OSHA issued Oberdorfer numerous citations alleging health and safety violations of the Occupational Safety and Health Act of 1970, 29 U. S. C. §§ 651-678 (“the Act”). A total penalty of \$109,500 was proposed.

Oberdorfer contested the citations, and the health and safety cases were docketed separately under numbers 97-0469 and 97-0470, respectively. Administrative Law Judge ovette Rooney, who consolidated the cases, vacated 7 items, affirmed thirty-six items, and assessed penalties totaling \$58,800. The case was directed for review to consider seven issues raised by the parties in their respective petitions for review. For the reasons that follow, we affirm the judge’s decision in part and reverse in part.

I. ISSUES ON REVIEW FROM DOCKET 97-0469 (HEALTH INSPECTION)

A. Serious Citation 1, Items 1b and 2

¹Under the Local Emphasis Program, OSHA inspected a random selection of establishments categorized as primary metal industries.

Under item 1b, the Secretary alleged a failure to post “no-smoking” signs in spraying areas as required by 29 C.F.R. § 1910.107(g)(7).² Under item 2, the Secretary alleged a failure to use explosion proof electrical wiring and equipment in spraying areas as required by 29 C.F.R. § 1910.107(c)(6).³ The alleged spraying areas were located in the core finishing area where employees sprayed sand cores with Paraspray and in the chill coating spray area where employees sprayed chill pieces with Thermocoat Z-A Premix (“Thermocoat”).

The threshold issue before the Commission is whether the cited areas were, in fact, “spraying areas” within the meaning of section 1910.107(a)(2), which defines a “spraying area” as “[a]ny area in which dangerous quantities of flammable vapors or mists, or combustible residues, dusts, or deposits are present due to the operation of spraying processes.”⁴ To prove that a cited area is a “spraying area,” the Secretary must show that

²The standard provides:

§ 1910.107 Spray finishing using flammable and combustible materials.

* * *

(g) *Operations and maintenance ... (7) “No Smoking” signs.* “No smoking” signs in large letters on contrasting color background shall be conspicuously posted at all spraying areas and paint storage rooms.

³The standard provides:

§ 1910.107 Spray finishing using flammable and combustible materials.

* * *

(c) *Electrical and other sources of ignition ... (6) Wiring type approved.* Electrical wiring and equipment not subject to deposits of combustible residues but located in a spraying area as herein defined shall be of explosion-proof type approved for Class I, group D locations and shall otherwise conform to the provisions of subpart S of this part, for Class I, Division 1, Hazardous Locations. Electrical wiring, motors, and other equipment outside of but within twenty (20) feet of any spraying area, and not separated therefrom by partitions, shall not produce sparks under normal operating conditions and shall otherwise conform to the provisions of subpart S of this part for Class I, Division 2 Hazardous Locations.

⁴To establish a violation of an OSHA standard, the Secretary must prove that: (1) the standard applies to the cited conditions; (2) the terms of the standard were not complied with; (3) employees had access to the violative conditions; and (4) the employer knew of the violative conditions or could have known with the exercise of reasonable diligence. *Astra*

either dangerous quantities of flammable vapors or mists were present or that combustible residues, dusts, or deposits were present. *Ed Jackman Pontiac-Olds, Inc.*, 8 BNA OSHC 1211, 1215, 1980 CCH OSHD ¶ 24,351, p. 29,681 (No. 76-20, 1980) (“*Ed Jackman*”).

OSHA Industrial Hygienist Donalea Landes (“IH Landes”), who conducted the health inspection, testified that she observed and photographed a buildup of 1/4 to 1 inch of Paraspray and Thermocoat residue on the walls, floors, and electrical receptacles in the cited areas.⁵ She did not obtain sampling of either the residue or the atmosphere in the cited areas, but she consulted the Material Safety Data Sheets (MSDS) for Paraspray and Thermocoat and noted that both substances are flammable liquids. She also consulted the National Fire Protection Association’s (NFPA) publications, NFPA 30, *Flammable and Combustible Liquids Code*, and NFPA 33, *Standard for Spray Application Using Flammable and Combustible Materials* (1989 Edition), both of which state that combustible residues and vapors from flammable or combustible liquids may ignite spontaneously. Therefore, IH Landes concluded that the cited conditions presented a fire hazard and exposure could result in serious burn injuries.

Michael Casler (“Casler”), who testified as an expert witness on behalf of the Secretary, stated that according to two NFPA publications, *Fire Protection Handbook* (Sixteenth Edition), and *Industrial Fire Hazards Handbook* (Third Edition), a residual buildup of flammable liquids, such as Paraspray and Thermocoat, constitutes a “solid form of fuel.”⁶ He explained that the residue would combust when heated to its flash point, which

Pharmaceutical Prods., Inc., 9 BNA OSHC 2126, 1981 CCH OSHD ¶ 25,578 (No. 78-6247, 1981), *aff’d*, 681 F.2d 69 (1st Cir. 1982). Here, Oberdorfer challenges only the applicability of the cited standards.

⁵As the judge noted, the transcript contained a typographical error in IH Landes’ testimony indicating “12 inch” instead of “1 inch” of residue in the Paraspray area. The Secretary’s reply brief noted without comment on the transcript error that IH Landes’ testimony demonstrated that “1/4 to 1 inch of combustible residue was present in the spray area.”

⁶Casler’s credentials include training and professional experience as a firefighter. He graduated from the New York State Academy of Fire Science and taught fire science at Onondaga Community College. His professional experience includes 16 years for the fire department at New York International Guard Air Base, 8 of those years as fire chief. He also

he described as the temperature at which a solid produces vapors that will ignite and flash across the surface of the solid. According to Casler, the only acceptable method for testing residue is the “open cup or the closed cup tagged test.” This test involves heating an object under controlled conditions to determine the flashpoint temperature – the point at which a flame flashes across the surface of the object. Casler stated that exposing the residue to a lit match or torch is not an acceptable test. He further stated that, once a determination is made regarding residue combustibility, “it [i]s difficult to tell without laboratory testing just how long without knowing the specifics of the humidity and the atmosphere of the area that it will remain a combustible.”

Although Casler did not observe the cited conditions, he examined the photographs of the residues taken by IH Landes and did not view the overspray on the walls to be the actual hazard. Instead, he had “more concern with the fact that th[e] overspray ... has the ability to create crevices and pockets where fresh flammable liquids can accumulate and ... continue to release vapors into the atmosphere that could be ignited.” He stated that if the vapors were to exceed the lower explosive limit (LEL) – the point at which the vapors in the air are ignitable – of the flammable liquid being sprayed, a fire could occur. According to Casler, any quantity of flammable vapors within the lower and upper explosive limits is dangerous and that various factors – including the atmosphere, ventilation system, and flow of air across the surface – determined whether vapors would fall within these limits. He further stated that as an investigator, he would use a “combustible gas indicator” to test for the presence of vapors within lower and upper explosive limits.

The judge found that the testimony of IH Landes and Casler established that the cited areas contained dangerous quantities of flammable vapors, or combustible residues; and thus, were “spraying areas” as defined in section 1910.107(a)(2). Therefore, she affirmed item 1b for failure to post “no smoking” signs in those areas in violation of section 1910.107(g)(7)

worked for 16 years as a certified New York State Fire Investigator. He estimated that he has fought over 2,000 fires and taught over 300 firefighters in the suppression of flammable liquid fires. In addition, he was formerly employed for 9 years as a safety compliance officer with OSHA.

and item 2 for failure to use explosion proof electrical wiring and equipment in those areas in violation of section 1910.107(c)(6).

We find that the evidence fails to establish that these areas were spraying areas. Although the terms of section 1910.107(a)(2) do not require that sampling results be obtained to establish applicability, *see Air-Kare Corporation*, 10 BNA OSHC 1146, 1149, 1981 CCH OSHD ¶ 25,758, p. 32,177 (No. 77-1133, 1981); *Ed Jackman*, 8 BNA OSHC at 1215, 1980 CCH OSHD at p. 29,681, there is uncontroverted testimony from the Secretary's own expert witness that such sampling was necessary here. Casler specifically testified that testing would have been necessary to confirm the presence of dangerous quantities of flammable vapors, or combustible residues in the cited areas. According to Casler, the overspray in the cited areas appeared hazardous, but he also stated a combustible gas indicator would have confirmed the presence of hazardous vapors, and the open cup closed cup tagged test would have determined whether the residue was combustible. No such testing was performed in this case. Under these circumstances, we find that the Secretary has failed to establish that the cited areas were "spraying areas" as defined in section 1910.107(a)(2). We therefore conclude that the Secretary did not establish the applicability of sections 1910.107(g)(7) and 1910.107(c)(6) to the conditions cited in item 1b and 2, respectively.⁷ Accordingly, we vacate both items.

⁷In light of Casler's testimony that it was not possible to determine the combustibility of the residue here without testing, we have no occasion to consider the correctness of the interpretation of § 1910.107(a)(2) set forth in *Ed Jackman* that in order for an area to be considered a "spraying area," a combustible residue need only be present, without regard to whether it must be at or above a "dangerous quantities" threshold as in the case of flammable vapors or mists. *Cf.* NFPA 33, *Standard for Spray Application Using Flammable and Combustible Materials*, § 104(c).

B. Serious Citation 1, Item 5

Under item 5, the Secretary alleged a serious violation of 29 C.F.R. § 1910.151(c) for failure to provide “suitable facilities for quick drenching or flushing of the eyes and body” for employees who changed 100 pound chlorine cylinders in the chlorine storage and pot line areas of the foundry.⁸ **The facts are largely undisputed. Every three days, employees replaced empty chlorine gas cylinders with full ones in the cited areas. Employees wore full-face respirators and rubber gloves while performing this work but did not wear protection for the neck, arms, and legs.**

In recommending the citation, IH Landes consulted the MSDS for chlorine, which describes chlorine as a corrosive chemical. The MSDS also indicates that when chlorine comes into contact with a person’s skin, the first aid requirement is to “[i]mmediately flush with water for at least 15 minutes.” Landes testified that if chlorine were to come into contact with an employee’s eyes, it could cause severe corneal damage, and if it contacted skin, it could cause severe burns and tissue damage. She stated that an acceptable distance for the location of a quick drenching or flushing area in the cited circumstances would be within ten feet.

Facilities for drenching and flushing were located within Oberdorfer’s foundry but could not be seen from the cited work areas. Oberdorfer’s safety director, Villeta Linton (“Linton”), testified that, after the inspection, she took measurements showing that the nearest facilities were located 70 to 75 feet from the cited areas. According to Linton, she was able to walk from the cited areas to the existing facilities within 10 seconds. She believed that as a “rule of thumb” an emergency drenching or flushing area had to be located within 100 feet of a given work area.

⁸The standard provides:

§ 1910.151 Medical services and first aid.

* * *

(c) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

During her testimony, counsel for Oberdorfer introduced into evidence a copy of the American National Standard for Emergency Eyewash and Shower Equipment, ANSI Z358.1-1981, which had been provided to Oberdorfer by OSHA. Section 5.4.4 of the ANSI standard states that “[e]yewash units shall be in accessible locations that require no more than 10 seconds to reach and should be within a travel distance no greater than 30.5 meters (100 feet) from the hazard.” An explanatory note in this provision recommends that for strong acids or caustics, the eyewash facility should be immediately adjacent to or within 3 meters [10 feet] of the hazard. Safety director Linton acknowledged that chlorine gas was a strong acid when it came into contact with skin or eyes.

The Commission has long held that section 1910.151(c) “does not require water facilities to be within any specific linear distance.” *Gibson Discount Center, Store No. 15*, 6 BNA OSHC 1526, 1527, 1978 CCH OSHD ¶ 22,669, p. 27,357 (No. 14657, 1978). Rather, the issue of “[w]hether an employer’s facilities are adequate to comply with the standard depends on the particular circumstances present at the workplace, including the nature and amount of corrosive materials to which employees are exposed, the configuration of the work area, and the distance between the spot where corrosive chemicals are used and the drenching facilities.” *Bridgeport Brass Company*, 11 BNA OSHC 2255, 2256, 1984-85 CCH OSHD ¶ 27,054, p. 34,860 (No. 82-899, 1984) (“*Bridgeport Brass*”) (citing *Gibson Discount Center, Store No. 15*, 6 BNA OSHC at 1527, 1978 CCH OSHD at p. 27,357). See also *ConAgra Flour Milling Co.*, 16 BNA OSHC 1137, 1142, 1993-95 CCH OSHD ¶ 30,045, p. 41,235 (No. 88-1250, 1993) (“*ConAgra*”), *rev’d on other grounds*, 25 F.3d 653 (8th Cir. 1994) (violation depends on “totality of the circumstances, including the nature and amount of the substance in question”).

In affirming the violation, the judge concluded that a facility located 70 to 75 feet from the cited areas did not meet the standard’s requirement that it be located “within the work area for immediate emergency use.” Applying the factors set forth in *Bridgeport Brass* to this case, the judge found that a violation was established based on the highly corrosive nature of the chlorine gas to which employees were exposed; the inability to view existing

drenching facilities from the work area; and the 75 foot distance between the work area and the existing drenching facilities.

We have examined the record in its entirety, considered the arguments of the parties on review, and conclude that the judge's decision is supported by the evidence and applicable legal precedent. Accordingly, we affirm the violation.

The judge reduced the Secretary's proposed penalty from \$2,500 to \$2,125 based on evidence of Oberdorfer's good faith efforts to enhance employee safety, *i.e.* developing modernization plans, taking advantage of a state consulting service, participating in an Occupational Health Hazard Survey, and implementing job hazard assessments. The parties do not challenge the judge's penalty assessment. Upon consideration of the gravity of the violation, the employer's size, the employer's prior history of violations, and good faith, section 17(j) of the Act, we assess the \$2,125 penalty assessed by the judge.

II. ISSUES ON REVIEW UNDER DOCKET 97-0470 (SAFETY INSPECTION)

A. Serious Citation 1, Item 1, Instances a-c.

Under item 1, the Secretary alleged a violation section 5(a)(1) of the Act⁹ for three instances of missing and broken throat latches on hooks attached to the end of air operated chain hoists.¹⁰ The hoists were used to moved molds, cores, and castings in the foundry. The hooks went through either a "master ring" of another chain or a "casting catcher," a steel device used to move castings. Compliance Officer Tom Rezsnyak ("Rezsnyak"), who conducted the safety inspection, testified that each of the cited hooks was designed with a

⁹ This provision states:

Sec. 5. (a) Each employer – (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

¹⁰ During the inspection, Oberdorfer abated the condition cited under Instance a by installing a throat latch on the hook in question, and in Instance c by attaching an "Out of Service" tag to the hoist until the throat latch could be repaired or replaced. The Secretary alleged a fourth instance of violation (Instance d) under this item that was affirmed by the judge. Oberdorfer did not petition for review of this instance, and the Commission did not direct it for review.

hole to accommodate a latch and that operating the hoists with missing or broken throat latches exposed employees to the hazard of being struck by the falling load. The latches are spring-loaded devices that attach to the collar of the hook and close across the “throat” or open part of the hook. Robert Wolf, Oberdorfer’s plant engineer at the time of the inspection, testified that it was “good practice” to have a latch on these hooks.

According to Rezsnyak, if a load were to come across a raised area while being moved and became supported by that raised area, creating a slackened condition in the chain or slings, then a hook with a missing or broken latch could disengage, potentially causing the load to tumble off and hit an employee.¹¹ However, Oberdorfer’s environmental manager, Douglas Pomphrey (“Pomphrey”), testified that the throat latches were of “thin design,” and while they could provide a “resistive force” for retaining chains under slack conditions, they had no capacity to prevent the load from falling and hitting an employee.

In recommending the citation, Rezsnyak relied on a 1979 Parts List that was published by the hoist manufacturer and shows that the hooks had been originally manufactured with throat latches. Rezsnyak also relied on ANSI/ASME HST-5M-1985, *Performance Standard for Air Chain Hoists* (“1985 ANSI standard”), which states:

Hooks shall be equipped with latches unless the application makes use of the latch impractical. When required, a latch shall be provided to bridge the opening of the hook for the purpose of retaining slings, chains, etc., under slack conditions.

However, Oberdorfer challenged the admission of the 1985 ANSI standard on the grounds that it was not relevant to the alleged hazard as pleaded. During voir dire, Rezsnyak conceded that it did not identify the alleged hazard of the load falling and striking an employee.

The Secretary also introduced two predecessors to the 1985 ANSI standard: ANSI B30.16-1981, *Overhead Hoists* (“1981 ANSI standard”), and ANSIB30.16-1973, *Overhead*

¹¹On redirect when asked whether the missing and broken latches made it “possible” to get hit by anything else other than the load, Rezsnyak replied, “You could get hit by a chain sling.” However, Rezsnyak otherwise consistently testified that the alleged hazard to employees was “being struck by the load should the load slip off the hook.”

Hoists (“1973 ANSI standard”). The 1981 ANSI standard contains a similar requirement to the 1985 version that latches be used where practical.¹² Incorporated by reference into the 1981 ANSI standard is ANSI B30.10-1975, *Hooks*, an excerpt of which shows illustrations of 4 hooks, three of which are equipped with latches. Below each illustration of the latch type hooks is a parenthetical note stating, “Latch is optional.” The 1973 ANSI standard states that “[l]atch type hooks shall be used unless the use of the latch increases the hazard.”

In concluding that the conditions cited in Instances a, b, and c violated section 5(a)(1), the judge found that the missing and broken latches exposed employees to the hazard of being struck by a falling load and/or chain sling and that recognition of this hazard was established by the ANSI standards, the manufacturer’s 1979 Parts List, testimony by Pomphrey and Wolf, and Oberdorfer’s abatement actions during the inspection. The judge also found that being struck by the load or chain sling would likely result in death or serious physical harm and that Oberdorfer could have abated the conditions by using throat latches on the hooks.

We reverse and vacate instances a, b, and c. A hazard is “recognized” within the meaning of the general duty clause if the hazard is known either by the employer or its industry.¹³ *Kastalon, Inc.*, 12 BNA OSHC 1928, 1931, 1986-87 CCH OSHD ¶ 27,643, p. 35,973 (No. 79-3561, 1986) (consolidated). Voluntary industry codes and guidelines may

¹²ANSI B30.16-1981 states in pertinent part:

If hooks are of the swiveling type, they should rotate freely. Hooks shall be equipped with latches unless the application makes the use of the latch impractical. When required, a latch shall be provided to bridge the throat opening of the hook for the purpose of retaining slings, chains, etc., under slack conditions. Refer to ANSI B30.10.

¹³To establish a violation of the section 5(a)(1) of the Act, the Secretary must show that a workplace condition presented a hazard, the employer or industry recognized the hazard, the hazard was likely to cause death or serious physical harm, and a feasible and useful means of abatement existed by which the employer could eliminate or materially reduce the hazard. *Kokosing Constr. Co.*, 17 BNA OSHC 1869, 1872, 1995-97 CCH OSHD ¶ 31,207, p. 43,724 (No. 92-2596, 1996).

be used to demonstrate industry recognition. *Kokosing Constr. Co.*, 17 BNA OSHC at 1873, 1995-97 CCH OSHD at p. 43,725. However, the ANSI standards in evidence here do not establish that Oberdorfer's industry recognized that using hooks without latches presented a hazard of the load falling and striking an employee. While the 1973 ANSI standard states that "[l]atch type hooks shall be used unless the use of the latch increases the hazard," it does not indicate that a hazard would result if the latch were not in place. The 1981 and 1985 ANSI standards state only that throat latches are required where practical to retain chains on the hooks under slack conditions. Incorporated by reference into the 1981 ANSI standard is ANSI B30.10-1975, *Hooks*, which states that latches are "optional."

The other evidence on which the judge relied also falls short of establishing industry recognition of the alleged hazard. The 1979 Parts List simply depicts hooks with latches. It does not identify any hazards associated with using the hooks without latches. Similarly, while plant engineer Wolf testified that it was "good practice" to have a latch on the hook, he did not identify any hazard associated with using hooks without latches. In addition, Pomphrey testified that although the latch served to retain the chain on the hook, it did not serve to keep the load from falling and striking an employee. Finally, with respect to the abatement actions taken by Oberdorfer during the inspection, such precautions do not establish hazard recognition in the absence of other supporting evidence. *See Waldon Healthcare Center*, 16 BNA OSHC 1052, 1061-1062, 1993-95 CCH OSHD ¶ 30,021, p. 41,154-55 (No. 89-2804, 1993) (consolidated).

Because the evidence is insufficient to establish that the alleged hazard was recognized either by the employer or its industry, we find that the Secretary failed to prove a violation of section 5(a)(1) of the Act. Accordingly we vacate Instances a, b and c of Citation 1, item 1.¹⁴

The judge assessed a total penalty of \$4,250 for all 4 instances of violation alleged under item 1. As noted, Oberdorfer did not petition for review of the judge's decision to affirm Instance d, and the Commission did not direct it for review. Having vacated three of

¹⁴In light of our disposition of this item, we need not address Oberdorfer's due process objection to the Judge's post-hearing admission of the 1973 ANSI standard.

the four alleged instances, and upon due consideration of the four penalty factors set forth in section 17(j) of the Act, we find a penalty of \$1,060 is appropriate for Instance d.

B. Serious Citation 1, Item 11, Instances a-d

Under item 11, the Secretary alleged four instances¹⁵ of violation for Oberdorfer's failure to provide guarding on rotating lathe chucks as required by section 1910.212(a)(1).

¹⁶ The lathes are used to produce mold patterns from pieces of metal. The lathe chucks are cylindrical devices, each with three "jaws" or "dogs" that are adjusted at the perimeter of the chuck to lock a metal work piece into the lathe for tooling or machining. A photograph of the lathe cited in Instance a shows a small work piece locked into the chuck by three irregularly shaped dogs that protrude noticeably from the chuck's front and slightly from its perimeter. The lathe operators are highly skilled and stand approximately two feet away from the chuck while operating the machine. During the machining process, lathe operators apply oil to the area of the metal work piece where it comes into contact with the cutting tool to avoid heat damage to the work piece. While applying oil, the lathe operator's proximity to the rotating chuck depends on the size of the work piece and whether the operator applies oil with a brush or spray can. When using a brush, the operator's hand is approximately three to eight inches from the chuck.

The judge affirmed all instances of violation alleged under item 11. She found that "while the skill of the lathe operators and the two foot distance from the lathes may lessen the probability of the occurrence of an injury, these factors do not negate an inadvertent

¹⁵The Secretary also alleged a fifth instance of violation under item 11, which was affirmed by the judge. Oberdorfer did not petition for review of this instance and the Commission did not direct it for review.

¹⁶The standard provides:

§ 1910.212 General requirements for all machines.

(a) *Machine guarding* – (1) *Types of guarding*. One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are – barrier, guards, two-hand tripping devices, electronic safety devices, etc.

exposure to unguarded moving parts.”

We have reviewed the record in its entirety, considered the arguments of the parties on review, and conclude that the evidence and applicable legal precedent support the judge’s findings, with one modification. We would limit the finding of exposure requiring guarding to those circumstances in which the lathe operators’ hands are three to eight inches from the unguarded rotating chucks when brushes are used to apply oil to work pieces. This evidence clearly establishes that employees are “exposed to a hazard as a result of the manner in which the machine functions and is operated.” *ConAgra*, 16 BNA OSHC at 1147, 1993-95 CCH OSHD at p. 41,240. *See also Armour Food Co.*, 14 BNA OSHC 1817, 1821, 1987-90 CCH OSHD ¶ 29,088, p. 38,883 (No. 86-247, 1990).

Accordingly, we affirm the violation and assess the \$1,700 penalty assessed by the judge, an amount not disputed by the parties.

C. Serious Citation 1, Item 13

Under item 13, the Secretary alleged three instances of serious violation of section 1910.212(b) based on Oberdorfer’s failure to anchor three separate machines: an Edlin drill press in the metal shop (Instance a); a Delta drill press in the wood pattern shop (Instance b);

and a Jet drill press in the maintenance shop (Instance c).¹⁷ Rezsnyak testified that pre-drilled holes had been cast into the base of each machine for attachment to the floor. He stated that when he touched the Edlin drill press (Instance a), “it rocked back and forth with very little effort.” He attributed its instability to the location of the motor at the top of the seven-foot machine. He estimated that the Edlin press “weigh[ed] quite a bit” based on its size and the cast iron with which it was made.

Apart from testifying that the Delta drill press cited in Instance b was five feet in height, Rezsnyak provided no information about the configuration, weight, or stability of the other two cited machines. He testified only that drill presses in general had a tendency to be unstable because they usually had a high center of gravity with the motor located at the top, but provided no information about the location of the motor on the Delta and Jet drill presses or the width of the bases on any of the cited machines. In recommending a citation, he concluded that the pre-drilled holes at the base of each of the machines indicated that they were designed for a fixed location and should have been anchored to the floor as required by the standard.

Oberdorfer’s tool and die manager testified that the Edlin drill press had a very large base underneath it to hold it vertical. He also stated that it had been operating in the metal shop for over 20 years, and he had never observed it moving during operations. However, he admitted that he had never examined the machine for its propensity to tip over. With respect to the Delta press cited in Instance b, he stated that the machine also had “a substantial base underneath it to hold it vertical” and did not have a propensity to move. He provided no information about the Jet drill press cited in Instance c.

The judge affirmed all three instances. She found that the presses presented a tipping or falling over hazard, giving dispositive weight to Rezsnyak’s testimony that the cited

¹⁷ The standard provides:

§ 1910.212 General requirements for all machines.

* * *

(b) *Anchoring fixed machinery.* Machines designed for a fixed location shall be securely anchored to prevent walking or moving.

machines had pre-drilled holes for anchoring the base to the floor, that drill presses in general had a tendency to move because of a high center of gravity, and that the Edlin drill press did, in fact, move. Ruling that “stability is a principal factor in determining whether something must be anchored,” the judge found that Rezsnyak’s testimony on this point was not rebutted by the tool and die manager’s testimony that the Edlin and Delta drill presses had large bases to hold them vertical and did not move or vibrate during operation.

We affirm the judge’s finding with respect to the Edlin drill press cited in Instance a, but vacate as to Instances b and c. Section 1910.212(b) requires that “[m]achines designed for a fixed location shall be securely anchored to prevent walking or moving.” The Secretary argues that evidence of pre-drilled holes in the base of the machine is sufficient to prove that the cited machines in fact were designed for a fixed location and must be anchored. Oberdorfer argues that proof of a machine’s instability must be shown in order for the standard to apply.

To determine the meaning of a standard, the Commission and the courts consider the language of the standard, the legislative history, and, if the drafter’s intent remains unclear, the reasonableness of the agency’s interpretation. *Arcadian Corporation*, 17 BNA OSHC 1345, 1346, 1995-97 CCH OSHD ¶ 30,856, p. 42,916 (No. 93-3270, 1995), *aff’d*, 110 F.3d 1192 (5th Cir. 1997). Here, the language of the standard does not define or describe, “machines designed for a fixed location.” Nor does the standard’s legislative history provide guidance for interpreting its meaning.¹⁸ When the meaning of a standard cannot be determined from its language or the available legislative history, deference will be given to the Secretary’s interpretation if it is reasonable, taking into account such factors as the consistency with which the interpretation has been applied, adequacy of notice to regulated parties, and the quality of the Secretary’s elaboration of pertinent policy considerations. *Martin v. OSHRC*, 499 U.S. 144, 157-58 (1991).

Our primary concern here is with the adequacy of the Secretary’s notice to regulated parties. The interpretation of section 1910.212(b) that the Secretary advances in this case is

¹⁸The standard was originally issued under the Walsh-Healey Act and later adopted as an “established Federal standard” under section 6(a), 29 U.S.C. § 655(a), of the Act.

inconsistent with a previous OSHA “clarification letter” dated November 2, 1978, which is still available on OSHA’s website. In the letter, which Oberdorfer introduced into evidence at the hearing and cited in its post-hearing brief, OSHA’s then Chief of Occupational Safety Programming states that “[m]achines that do not walk, move or present a tipping or falling-over hazard do not need to be anchored.”

On review, the Secretary provides neither a response to Oberdorfer’s notice argument regarding this letter nor any rationale for changing her interpretation. *See Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971) (agency changing course must provide a reasoned analysis for the change). Under these circumstances, we cannot find that the Secretary’s interpretation is reasonable or that Oberdorfer was afforded fair notice of the Secretary’s interpretation that the standard applied to machines with pre-punched holes in the bases in the absence of evidence showing instability. *See Gates & Fox Co. v. OSHRC*, 790 F.2d 154, 156 (D.C. Cir. 1986) (due process prevents deference from validating the application of a regulation that fails to give fair warning of the conduct it prohibits or requires). Accordingly, we vacate instances b and c. We do find, however, that the standard applied to the Edlin drill press cited in Instance a. Although the Edlin press was also fitted with pre-drilled holes, Rezsnyak’s testimony specifically established that the Edlin press was unstable.

Oberdorfer argues that the Secretary failed to establish knowledge of the cited conditions. In order to satisfy her burden of establishing knowledge, the Secretary must prove that a cited employer either knew, or, with the exercise of reasonable diligence, could have known of the presence of the violative condition. *United States Steel Corp.*, 12 BNA OSHC 1692, 1699, 1986-87 CCH OSHD ¶ 27,517, p. 35,671 (No. 79-1998, 1986). Reasonable diligence involves several factors, including an employer’s “obligation to inspect the work area, to anticipate hazards to which employees may be exposed, and to take measures to prevent the occurrence.” *Frank Swidzinski Co.*, 9 BNA OSHC 1230, 1233, 1981 CCH OSHD ¶ 25,129, p. 31,032 (No. 76-4627, 1981).

The judge found that knowledge was established based on Rezsnyak’s undisputed testimony that the cited conditions were in plain view. We find no error in this finding.

Oberdorfer claims that it lacked knowledge that the Edlin drill press was not anchored as the standard requires because it had been in the same position without moving for over 20 years. Although Oberdorfer's tool and die manager testified that he never observed the Edlin press move in 20 years, he also conceded that he had never examined the machine for its propensity to move during that time. We find that this evidence demonstrates a failure to exercise the reasonable diligence that would have led to discovery of the condition cited in Instance a.

Accordingly, we affirm a serious violation of section 1910.212(b) for failure to anchor the Edlin drill press as cited in Instance a. We vacate Instance b involving the Delta press and Instance c involving the Jet press. The judge assessed a total penalty of \$2,125 for all 3 instances of violation. Having vacated two of these instances, and upon due consideration of the factors set forth in section 17(j) of the Act, we adjust the penalty assessed to \$700 for Instance a.

D. Serious Citation 1, Item 15

Under item 15, the Secretary alleged a violation of section 1910.219(c)(2)(i) for failure to guard a revolving shaft on a universal horizontal boring machine located in Oberdorfer's metal shop.¹⁹ The standard imposes a mandatory requirement that horizontal shafting no more than 7 feet or less from the floor be guarded. While the standard presumes a hazard, and the Secretary is not obligated to show that the conditions in question are themselves hazardous in order to prove a violation, she must establish that employees have access to the hazard. *ConAgra*, 16 BNA OSHC at 1147, 1993-95 CCH OSHD at p. 41,241-42.

¹⁹The standard provides:

§ 1910.219 Mechanical power-transmission apparatus.

* * *

(c) *Shafting ...* (2) *Guarding horizontal shafting.* (i) All exposed parts of horizontal shafting seven (7) feet or less from floor or working platform, excepting runways used exclusively for oiling, or running adjustments, shall be protected by a stationary casing enclosing shafting completely or by a trough enclosing sides and top or sides and bottom of shafting as location requires.

The horizontal shaft is approximately 36 inches in length and three and a half inches in diameter. It has a smooth round surface and is approximately 50 inches above the floor. The operator works in front of the shaft, and a round coupling encircles and moves along the shaft toward the operator during operation. Rezsnyak explained that during the operation of the machine, the operator turns a hand-operated adjustment control handle that is located about 11 inches in front of the shaft. As the operator turns the control handle, the coupling travels along the shaft to within 6 or 7 inches in front of the control handle. Rezsnyak's opinion was that there was a risk of bone fractures if the operator's hand was to slip off the handle and contact the shaft.

The judge found that access was established based on this testimony. On review, Oberdorfer argues that the judge's reliance on Rezsnyak's testimony was a "speculative basis for finding a violation" because Rezsnyak did not actually observe the machine but rather had an employee "demonstrate" the machine. Oberdorfer, however, fails to explain the difference, if any, between observing the machine and observing a demonstration of the machine in operation. Moreover, Oberdorfer does not dispute that the machine was used in the manner that Rezsnyak described or that when operating the spindle adjustment control handle, an employee's hand is in close proximity to the revolving shaft. We therefore find no basis for reversing the judge's finding on the merits.

The record, however, does not support a finding that the violation was serious. Under section 17(k) of the Act, 29 U.S.C. § 666(k), a violation is serious in nature if it presents a substantial probability of death or serious physical harm. Rezsnyak's testimony on this point is unconvincing. Photographic evidence shows that the shaft has a smooth surface, and Rezsnyak failed to explain how inadvertent contact with the smooth surface of the shaft would present a substantial probability of bone fractures. We therefore find that the violation was other-than-serious. Giving due consideration to the factors set forth in section 17(j) of the Act, assess a penalty of \$250.

E. Serious Citation 1, Item 22

Under item 22, the Secretary alleged that Oberdorfer violated 29 C.F.R. § 1910.303(c)

by failing to use suitable splicing on energized conductors.²⁰ The judge affirmed the item, but she characterized it as “other than serious” and assessed no penalty. The Secretary petitioned for review of the judge’s other-than-serious finding with respect to Instance a involving the uninsulated free ends of an energized 440-volt conductor inside a Wadkin disc sander.

We agree with the Secretary that the judge applied the wrong test. Under Section 17(k) of the Act, a violation is serious if there is “a substantial probability that death or serious physical harm could result” from the violation.²¹ “This does not mean that the occurrence of an accident must be a substantially probable result of the violative condition but, rather, that a serious injury is the likely result if an accident does occur.” *ConAgra Flour Milling Co.*, 15 BNA OSHC 1817, 1824, 1991-93 CCH OSHD ¶ 29,808, p. 40,594 (No. 88-2572, 1992). Here, the compliance officer’s undisputed testimony was that if the uninsulated wiring were to come into contact with the frame of the sander during operation, the result would be electrocution and the likely consequence of electrocution would be death. This testimony establishes a substantial probability that death or serious harm could result if an

²⁰ The standard provides:

§ 1910.303 General requirements.

* * *

(c) *Splices.* Conductors shall be spliced or joined with splicing devices suitable for the use or by brazing, welding, or soldering with a fusible metal or alloy. Soldered splices shall first be so spliced or joined as to be mechanically and electrically secure without solder and then soldered. All splices and joints and the free ends of conductors shall be covered with an insulation equivalent to that of the conductors or with an insulating device suitable for the purpose.

²¹ Section 17(k) of the Act, 29 U.S.C. § 666(k), provides, as follows:

[A] serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

accident were to occur as a result of the violation. Accordingly, we affirm the violation as serious.²² Giving due consideration to the four factors listed in section 17(j) of the Act, we assess a penalty of \$2,500.

²²Oberdorfer did not petition for review of the merits of this item and the Commission did not direct the merits for review. We briefly note the argument presented in Oberdorfer's brief that the cited wire was stationary and exposure to a hazard could not occur unless the wire "jumped" into contact with the backside of the access plate cover. The standard requires that the free ends of conductors be covered with suitable insulation and thus presumes the existence of a hazard when its terms are not met. *See Kaspar Electroplating Corp.*, 16 BNA OSHC 1517, 1523, 1993-95 CCH OSHD ¶ 30,303, p. 41,759-60 (No. 90-2866, 1993), citing *Bunge Corp.*, 638 F.2d 831, 834 (5th Cir. 1981) (unless standard incorporates a hazard as a violative element, the proscribed condition or practice is all that the Secretary must show; hazard is presumed and is relevant only to whether the violation constitutes a "serious" one). We agree with the judge that the record establishes both noncompliance with the terms of the standard and access to the cited conditions. The wiring inside the sander was not properly covered with insulation or a suitable insulating device as required by the terms of the standard. Employees used the sander and were therefore within the "zone of danger" created by the cited condition. *See Gilles & Cotting, Inc.*, 3 BNA OSHC 2002, 2003, 1975-76 CCH OSHD ¶ 20,448, p. 24,425 (No. 504, 1976).

ORDER

Docket No. 97-0469

Serious Citation 1, Item 1b and 2 are vacated.

Serious Citation 1, Item 5 is affirmed. A penalty of \$2,125 is assessed.

Docket No. 97-0470

Serious Citation 1, Item 1, Instances a-c are vacated. A penalty of \$1,060 is assessed for instance d.

Serious Citation 1, Item 11, is affirmed. A penalty of \$1,700 is assessed.

Serious Citation 1, Item 13, Instance a is affirmed; Instances b and c are vacated. A penalty of \$700 is assessed.

Serious Citation 1, Item 15, is affirmed as other than serious. A penalty of \$250 is assessed.

Serious Citation 1, Item 22, is affirmed as serious. A penalty of \$2,500 is assessed.

/s/

W. Scott Railton
Chairman

/s/

James M. Stephens
Commissioner

Dated: August 29, 2003

SECRETARY OF LABOR,

Complainant,

v.

OBERDORFER INDUSTRIES, INC.

Respondent.

DOCKET NOS. 97-0469 and 97-0470

Appearances: For Complainant: Nancee Adams-Taylor, Esq., Office of the Solicitor, U. S. Department of Labor, New York, NY.; For Respondent: Paul M. Sansoucy, Esq. and Thomas Owens, Esq., Bond, Schoeneck & King, LLP., Syracuse, NY.

Before: Judge Covette Rooney

DECISION AND ORDER

This proceeding is before the Occupational Safety and Health Review Commission pursuant to Section 10(c) The Occupational Safety and Health Act of 1979 (29 U.S.C. §651, *et seq.*)(“the Act”). Respondent, Oberdorfer Industries, at all times relevant to this action maintained a worksite at 6259 Thompson Road, Syracuse, NY. Respondent is a foundry that uses molten aluminum to manufacture castings. Respondent admits that it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

From September 10, 1996 to January 31, 1997, Industrial Hygienist (“IH”) Donalea Landes and Compliance Safety and Health Officer (“CO”) Thomas Rezsnyak conducted a health (Docket No. 97- 469) and safety (Docket No. 97-470) inspection of the aforementioned worksite pursuant to a Local Emphasis Program in primary metals. After an opening conference was held, the inspection commenced with area department managers accompanying the compliance officers at various points. As a result of this joint inspection, Respondent was issued five citations - three (3) in the health and two (2) in the safety - consisting of fifty-one (51) items and subitems, with total penalties of \$123,000.00. These citations have been amended to reflect an amended proposed penalty of \$109,500.00 (\$48,000.00 - health and \$61,000.00 - safety). By timely Notice of Contest

Respondent brought this proceeding before the Review Commission. A hearing was held before the undersigned on January 12 through 16, and January 21 through 23, 1998. Counsel for the parties have submitted Post-Hearing Briefs and Reply Briefs, and this matter is ready for disposition.

Admission of employees

The Review Commission has acknowledged that statements to compliance officers by employees and foremen during the course of inspections are not hearsay but admissible admissions under Rule 801(d)(2)(D) of the Federal Rules of Evidence. *Regina Construction Co.*, 15 BNA OSHC 1044, 1048 (No.87-1309, 1991). The rule states:

(d) Statements which are not hearsay.

A statement is not hearsay if . . . (2) Admissions by party opponent.

The statement is offered against a party and is . . . (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship.

“Although admissions under Rule 801(d)(2)(D) are not inherently reliable, there are several factors that make them likely to be trustworthy, including: (1) the declarant does not have time to realize his own self-interest or feel pressure from the employer against whom the statement is made; (2) the statement involves a matter of the declarant is well-informed and not likely to speak carelessly; (3) the employer against whom the statement is made is expected to have access to evidence which explains or rebuts the matter asserted. 4 D. Louisell & C. Mueller, *Federal Evidence* §426 (1980 & Supp. 1990).” *Id.* The record reveals that statements made by employees met the aforementioned tests. The record reveals that as the compliance officers conducted their inspections they simultaneously questioned employees and management as they made their observations. The employees were persons who actually worked with the equipment and their statements were made spontaneously. There was no evidence introduced by Respondent that these employees were concerned about their own self interest or felt pressure from the employer. Respondent has had ample opportunity to rebut these statements, an unless otherwise indicated, these statements remain unrebutted. Accordingly, these statements constitute admissions whose reliability is unrefuted. *See George Campbell Painting Corp.*, 17 BNA OSHC 1979, n. 7 (No. 93-0984, 1997).

The Secretary’s Burden of Proof

The Secretary has the burden proving her case by a preponderance of the evidence. In order to establish of violation of an occupational safety or health standard, the Secretary had the burden

of proving: (a) the applicability of the cited standard, (b) the employer's noncompliance with the standard's terms, Landes, (c) employee access to the violative conditions, and (d) the employer's actual or constructive knowledge of the violation (*i.e.* the employer either knew, or with the exercise of reasonable diligence could have known, of the violative conditions).

Atlantic Battery Co., 16 BNA OSHC 2131, 2138 (No. 90-1747, 1994). Unless otherwise noted, the undersigned finds the cited standards address each of the hazards described within each item where noncompliance has been affirmed.

Exposure

The Secretary must show employee access to the condition by a preponderance of the evidence. *Olin Constr. Co. v. OSHRC*, 525 F.2d 464 [3 BNA OSHC 1526] (2d Cir. 1975). The Secretary may prove employee exposure to a hazard“ by showing that, during the course of their assigned working duties, their personal comfort activities on the job, or their normal ingress-egress to and from their assigned workplaces, employees have been in a zone of danger or that it is reasonably predictable that they will be in a zone of danger.(citations omitted) The zone of danger is determined by the hazard presented by the violative condition, and is normally that area surrounding the violative condition that presents the danger to employees which the standard is intended to prevent.(citation omitted)”. *RGM Construction*, 17 BNA OSHC 1229, 1234 (No. 91-2107). Thus, the Secretary may prove exposure by actual exposure or that it was reasonably foreseeable that they would have access to the violative conditions.

Employer Knowledge: Generally

To satisfy the element of knowledge, the Complainant must prove that a cited employer either knew, or with the exercise of reasonable diligence could have known of the presence of the violative condition. *Seibel Modern Manufacturing & Welding Corp.*, 15 BNA OSHC 1218, 1221 (No. 88-821, 1991); *Consolidated Freightways Corp.*, 15 BNA OSHC 1317, 1320-1321 (No. 86-351, 1991). Employer knowledge is established by a showing of employer awareness of the physical conditions constituting the violation. It need not be shown that the employer understood or acknowledged that the physical conditions were actually *hazardous*. *Phoenix Roofing, Inc.*, 17 BNA OSHA 1076,1079 (No. 90-2148, 1995), *aff'd without op.*, 79 F. 3d 1146 (5th Cir. 1996) citing *East Texas Motor Freight v. OSHRC*, 671 F.2d 845, 849 [10 BNA OSHA 1456] (5th Cir. 1982); *Vanco Constr.*, 11 BNA OSHA 1058, 1060 n.3 (No. 79-4945, 1982). With respect to constructive knowledge, the Secretary establishes it by showing that an employer could have known of the

violative conditions if it had exercised reasonable diligence. In *Pride Oil Well Service*, 15 BNA OSHC 1809 (No. 87-692, 1992), the Review Commission set forth criteria to be considered when evaluating reasonable diligence.

Reasonable diligence involves several factors, including an employer's "obligation to inspect the work area, to anticipate hazards to which employees may be exposed, and to take measures to prevent the occurrence." *Frank Swidzinski Co.*, 9 BNA OSHC 1230, 1233 (No. 76-4627, 1981) . . . Other factors indicative of reasonable diligence include adequate supervision of employees, and the formulation and implementation of adequate training programs and work rules to ensure that work is safe. (citations omitted).

Id. at 1814.

"Because corporate employers can only obtain knowledge through their agents, the actions and knowledge of supervisory personnel are generally imputed to their employers, and the Secretary can make a prima facie showing of knowledge by proving that a supervisory employee knew of or was responsible for the violation." *Todd Shipyards Corporation*, 11 BNA OSHC 2177, 2179 (No. 77-1598, 1984). *See also Superior Electric Co.*, 17 BNA OSHA 1636 (No. 91-1597, 1996)(when an supervisory employee has actual or constructive knowledge of the violative conditions, that knowledge is imputed to the employer). Where the record establishes that the cited conditions were in plain view and that supervisory personnel were present throughout the work operation, this constitutes constructive of the violative conditions. *Kokosing Construction Co.*, 17 BNA OSHC 1869 (No. 92-2596, 1996) and cases cited therein; *American Airlines, Inc.* 17 BNA OSHC 1552, 1555 (No. 93-1817 and 93-1965, 1996).

Docket No. 97-469¹

CITATION 1, ITEM 1a

29 C.F.R. §1910.106(e)(6)(I) "General." Adequate precautions shall be taken to prevent the ignition of flammable vapors. Sources of ignition include but are not limited to open flames; lightning; smoking; cutting and welding; hot surfaces; frictional heat; static, electrical, and mechanical sparks; spontaneous ignition, including heat-producing chemical reactions; and radiant heat.

a) CORE FINISHING: ROCKER BOX/PARASPRAY PREP

¹ Citation 1, Item 8, instances b, c and d, and Citation 3, Item 2 has been withdrawn by the Secretary.

AREA, ON OR ABOUT 9/16/96: AN EMPLOYEE WAS OBSERVED SMOKING WHERE EMPLOYEES SPRAY CORES WITH PARASPRAY, A CLASS 1B FLAMMABLE LIQUID, THUS EXPOSING EMPLOYEES TO A FIRE HAZARD.

- b) CORE BOX STAGING: CHILL COATING SPRAY AREA, ON OR ABOUT 9/16/96: EMPLOYEES WERE ALLOWED TO SMOKE WHERE EMPLOYEES SPRAY CHILL PIECES WITH THERMOCOAT Z-A PREMIX, A CLASS 1B FLAMMABLE LIQUID, THUS EXPOSING EMPLOYEES TO A FIRE HAZARD.**

Employer Noncompliance

Michael Casler, an OSHA compliance officer with nine years of experience and 24 years of experience in the fire fighting industry, testified as to the flammable properties of Paraspray (Tr. 287-88).² He referred to the Material Safety Data Sheet (“MSDS”) for the chemical, and noted that the compound's main catalyst is the chemical toluene (Ex. C-6)³. With regard to instance a, IH Landes observed employees smoking in the area where the Paraspray was sprayed. (Tr. 24-25). She also observed cigarettes on the floor of the rocker box/para spray prep area.(Tr. 25-28, Ex. C-8, C-14, p. 2, photo 2). IH Landes testified that she also relied on NAPA 30, Flammable and Combustible Liquids Code, Sections 5-6.1 and 5-6.2 in issuing the citation. (Tr. 27-28; Ex. C-9, p. 30-46).⁴ With regard to instance b, Michael Casler testified that Thermocoat is a flammable liquid base. Its most

²Michael Casler has also been a certified New York State fire investigator for the past 16 years. He is a volunteer fireman, and trains other firefighters in the suppression of flammable liquid fires. (Tr. 288-89)

³ The term “Ex.” refers to exhibits introduced into evidence at the hearing. The term “Tr.” refers to the official transcript as transcribed by the court reporting service present at the hearing.

⁴ The national consensus standards are occupational safety and health standards adopted and promulgated either by the American National Standards Institute (ANSI) or by the National Fire Protection Association [NAPA] under procedures where it can be determined that persons interested and affected by the scope or provisions of the standards have reached substantial agreement on their adoption.... The national consensus standards contain only mandatory provisions of the standards promulgated by those two organizations.

NAPA Section 5-6.2.1 provides: “[p]recautions shall be taken to prevent the ignition of flammable vapors. Sources of ignition included, but are not limited to: . . . (e) Smoking.

Section 5-6.2.2 provides: “Smoking shall be permitted only in designated and properly identified areas.” 1993 Edition.

dangerous ingredients are isopropanol and methanol. (Tr. 292, Ex. C-7). IH Landes testified with regard to instance b, although she did not observe employees actually smoking during her inspection, she observed cigarettes on the floor, an indication that employees smoked in the area (Tr. 25; Ex. 8). In both instances she determined that the use of flammable materials in the area was not incidental (Tr. 30).

The standard requires that adequate precautions be taken to avoid ignition of “flammable vapors”. It is undisputed that Respondent’s employees sprayed Paraspray and Thermocoat, both of which it is undisputed were Class IB flammable liquids (Tr. 23 ; Exs. C-6 and 7). Flammable liquids are defined as liquids which give off vapors which become flammable at specified flashpoints.⁵ The record contains undisputed evidence that smoking is a source of ignition. Accordingly, the undersigned finds that the standard is applicable and non compliance has been established.

Employee Access to the Violative Condition

IH Landes testified that she observed an employee smoking in the Paraspray area, and there was evidence of smoking (cigarette butts) in the rocker box Paraspray prep area(Tr. 24-25; 204). Both of these areas were areas where she observed employees working with flammable liquids.

⁵ §1910.106 (a)(14)"Flashpoint" means the minimum temperature at which a liquid gives off vapor within a test vessel in sufficient concentration to form an ignitable mixture with air near the surface of the liquid . . .

§1910.106 (a)(19)"Flammable liquid" means any liquid having a flashpoint below 100 deg. F. (37.8 deg. C.), except any mixture having components with flashpoints of 100 deg. F. (37.8 deg. C.) or higher, the total of which make up 99 percent or more of the total volume of the mixture. Flammable liquids shall be known as Class I liquids. Class I liquids are divided into three classes as follows: . . .(ii) Class IB shall include liquids having flashpoints below 73 deg. F. (22.8 deg. C.) and having a boiling point at or above 100 deg. F. (37.8 deg. C.).

Employer Knowledge of the Violation

The undersigned finds that with the exercise of reasonable diligence Respondent could have known of the violative condition. IH Landes testified that Oberdorfer “could tell that the employee was smoking in the area.” (Tr. 28-29). The conspicuous location, the readily observable nature of the violative condition, and the presence of supervisory personnel throughout the plant warrant a finding of constructive knowledge.

CITATION 1, ITEM 1b

29 C.F.R. §1910.107(g)(7) "No Smoking" signs. "No smoking" signs in large letters on contrasting color background shall be conspicuously posted at all spraying areas and paint storage rooms.

- a) **CORE FINISHING: ROCKER BOX/PARASPRAY PREP AREA, ON OR ABOUT 9/16/96: NO SMOKING SIGNS WERE NOT POSTED WHERE EMPLOYEES SPRAY CORES WITH PARASPRAY, A CLASS 1B FLAMMABLE LIQUID, THUS EXPOSING EMPLOYEES TO A FIRE HAZARD.**
- b) **CORE BOX STAGING: CHILL COATING SPRAY AREA, ON OR ABOUT 9/16/96: NO SMOKING SIGNS WERE NOT POSTED WHERE EMPLOYEES SPRAY CHILL PIECES WITH THERMOCOAT Z-A PREMIX, A CLASS 1B FLAMMABLE LIQUID, THUS EXPOSING EMPLOYEES TO A FIRE HAZARDS.**

Employer Noncompliance

IH Landes testified that she did not observe no-smoking signs in the Paraspray and Thermocoat spraying areas (Tr. 33). The cited standard requires “No smoking” signs in “spraying areas”. The term “spraying area” within in the meaning of the standard is defined at §1910.107(a)(2) as “[a]ny area in which dangerous quantities of flammable vapors or mists, or combustible residues, dusts, or deposits are present due to the operation of spraying processes.” It is undisputed that the cited areas were areas where spraying occurred. However, in order to determine the applicability of the cited standard to the violative condition an examination of the definition of the “spraying area” within the context of the standard is necessary. The Review Commission in *Ed Jackman Pontiac-Olds, Inc.* 8 BNA OSHC 1211, 1215 (No. 76-20, 1980), interpreted this definition to mean that “a violation is proved if *either* dangerous quantities of

flammable vapors or mists are present *or* if combustible residues, dusts, or deposits are found. . . . Either would be sufficient to sustain a violation”.(emphasis added).

IH Landes testified that she observed combustible residue and deposits in the cited areas. In the Paraspray and Thermocoat spraying areas, flammable vapors were sprayed, resulting in the presence of combustible residues or deposits due to the operations of the spraying process (Tr. 42-44, 207, 209-10, 214; Ex. C-14). She concluded that the deposits were combustible based upon the information within the MSDS which stated that Thermocoat and Paraspray were flammable. Mr. Casler testified that the Paraspray and Thermocoat were flammable and that it remained flammable for some period of time. He testified that the over-spray is a hazard as it is over-sprayed and continually over-sprayed, it creates pockets and valleys and as the spray continues, these pockets start absorbing the liquid and the liquid does not have a chance to evaporate (Tr. 293-94). It was his opinion that the cited over-spray was a large accumulation of over-spray and was hazardous (Tr. 294-95). He opined that the residues of spray material cited were a solid form of fuel (Tr. 299). The undersigned finds that the record contains no evidence which rebuts this opinion; and also finds that the cited standard is applicable and noncompliance has been established.

Employee Exposure

IH Landes observed Respondent’s employees working in the cited areas where there were no “No Smoking” signs . She also observed employees smoking in said area (Tr. 33-34).

Employer Knowledge.

The undersigned finds that with the exercise of reasonable diligence Respondent could have known of the violative condition. IH Landes testified that Respondent could have observed the employees smoking in the area (Tr. 34). The conspicuous location, the readily observable nature of the violative condition, and the presence of supervisory personnel throughout the plant warrant a finding of constructive knowledge.

Classification and Penalty - Items 1a and 1b

IH Landes testified that employees were exposed to a fire hazard. She classified the violation as serious based upon the nature of resultant injury - severe burns (Tr. 31, 36). IH Landes recommended a grouped penalty of \$2,500.00. She testified that the gravity of the violation reflected that the severity of the violative condition was high, citing a possible injury of severe burns, and that there was a “lesser” probability of an accident occurring, based upon the amount of time the employees performed the operation (Tr. 31). She testified Oberdorfer received no

reductions for size - Respondent employed more than 250 employees; no reductions for history - Respondent had been cited within the prior three years for serious violations, and no reductions for good faith- there was a repeat violation and the citation had a greater probability and a high severity violation (Tr. 31-32; 1551; Ex-C-1).⁶

The undersigned is not bound by OSHA's internal policies and finds that the record supports an adjustment in the gravity based penalty. The record establishes that the Respondent's attitude toward employee safety and its cooperation during the inspection were indicative of good faith. Respondent put forth great effort in abating the cited conditions, such as hiring outside contractors and requiring maintenance employees to work additional shifts to make corrections (Tr. 1538). Additionally, the Respondent had recognized in June 1996, that there was a need to modernize the facility and was in the planning stages at the time of the inspection (Tr. 1572-73).⁷ The Respondent also had taken advantage of a state consulting service and participated in a Occupational Health Hazard Survey in 1995, which included various sampling (Tr. 452-53, 1569-71; Ex. C-45). Respondent's health and safety program also included job hazard assessments (Tr. 1539). The undersigned finds that these factors indicate a commitment to safety by Respondent. Accordingly, the undersigned finds that a reduction in penalty in the amount of 15% for good faith would be appropriate, for a penalty of \$2,125.00.

CITATION 1, ITEM 2

29 C.F.R. §1910.107(c)(6) "Wiring type approved." Electrical wiring and equipment not subject to deposits of combustible residues but located in a spraying area as herein defined shall be of explosion-proof type approved for Class I, group D locations and shall otherwise conform to the provisions of subpart S of this part, for Class I, Division 1, Hazardous Locations. Electrical wiring, motors, and other equipment outside of but within twenty (20) feet of any spraying area, and not separated therefrom by partitions, shall not produce sparks under normal operating conditions and shall otherwise conform to the provisions of subpart S of this part for Class I, Division 2 Hazardous Locations.

a) CORE FINISHING: ROCKER BOX/PARASPRAY PREP

⁶ The record reflects that IH Landes did not award any penalty reductions to Oberdorfer in recommending any of the penalties. In each item, she testified that this decision was based on the same reasons articulated in Citation 1, Item 1.

⁷ In early 1997, there was a decision by the parent corporation to commit \$11.5 million dollars to this project. This included an overhaul of the electrical system (Tr. 1574).

AREA, ON OR ABOUT 9/16/96: FIRE IGNITION SOURCES INCLUDING BUT NOT LIMITED TO: NON-EXPLOSION PROOF LIGHTS; NON-APPROVED WIRING THROUGHOUT SPRAYING AREA; NON-APPROVED CORDS PLUGGING IN LIGHTS AND PORTABLE FAINÉANT NON APPROVED DUPLEX RECEPTACLES WERE LOCATED WITHIN AN AREA WHERE EMPLOYEES SPRAY CORES WITH PARASPRAY, C CLASS 1B FLAMMABLE LIQUID, EXPOSING EMPLOYEES TO A FIRE HAZARD.

- b) **CORE BOX STAGING: CHILL COATING SPRAY AREA, ON OR ABOUT 9/16/96: FIRE IGNITION SOURCES INCLUDING BUT NOT LIMITED TO NON-APPROVED WIRING AND NON-APPROVED DUPLEX RECEPTACLES, WERE LOCATED WITHIN AN AREA WHERE EMPLOYEES SPRAY CHILL PIECES WITH THERMOCOAT Z-A PREMIX, A CLASS 1B FLAMMABLE LIQUID, EXPOSING EMPLOYEES TO A FIRE HAZARD.**

Employer Noncompliance

The standard is applicable in that the cited areas were within “spraying areas”. *supra*. The standard requires that proper electrical wiring and equipment be used within the spray area that conforms to Class 1, Division 2. IH Landes testified that she observed employees using Paraspray to spray cores in the rocker box Paraspray prep area and that there were fire ignition sources, including non-explosion approved lights, non-approved wiring and cords, and non-approved duplex receptacles within ten feet of the spray area (Tr. 37-38 , Ex. C-14, p. 2, C-15). She also observed employees spraying chilled pieces with Thermocoat; and within ten feet of the area, she observed non-approved wiring and duplex receptacles, and a chill blaster without approved wiring (Tr. 38-39, C-14, p. 2, photo 1). She testified that she determined that the electrical connections were not approved from her conversation with Mr. Wolf , who informed her that the wiring for a spraying operation was not approved wiring, it was just normal wiring (Tr. 215-16). She indicated that in issuing the citation for this item, she also relied on NFPA 33, Standard for Spray Application Using

Flammable and Combustible Materials (Ex. C-13).⁸

Employee Exposure

IH Landes observed Respondent's employees working in the cited areas (Tr. 45-46).

Employer Knowledge

IH Landes testified that she noticed the violation as she walked through the area (Tr. 42, 215). The employer with the exercise of reasonable diligence during its inspection of the work area could have known of the presence of the violative condition.

Classification and Penalty

IH Landes testified that employees were exposed to a fire or explosion hazard (Tr. 45). She classified the violation as serious based upon the nature of resultant injury- severe burns (Tr. 47). IH Landes recommended a grouped penalty of \$2,500.00. She testified that the gravity of the violation reflected that the severity of the violative condition was high, citing a possible injury of severe burns, and that there was a "lesser" probability of an accident occurring, based on the amount of time the employees performed the operation (Tr. 31). The undersigned finds that for the reasons set forth above, "good faith" factors should be applied to the proposed penalty. Accordingly, the undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate.

CITATION 1, ITEM 3

29 C.F.R. §1910.107(e)(6)(iv) Piping systems conveying flammable or combustible liquids shall be of steel or other material having comparable properties of resistance to heat and physical damage. Piping systems shall be properly bonded and grounded.

- a) **CORE FINISHING: ROCKER BOX/PARASPRAY PREP AREA, ON OR ABOUT 9/16/96: EMPLOYEE SPRAYING CORES WITH PARASPRAY, A CLASS 1B FLAMMABLE LIQUID, WAS USING A SPRAYER TO APPLY THE PARASPRAY AND THE SPRAY NOZZLE WAS NOT BONDED TO THE SPRAYER, EXPOSING EMPLOYEES TO A FIRE HAZARD.**

⁸Section 4-7.1 provides: "Equipment outside of, but within 20 ft. (6 m) horizontally and 10 ft (3 m) vertically of, any spray area, and not separated from it by partitions extending at least to the boundary of the Division 2 location shall not produce sparks under normal operating conditions, and shall otherwise conform to the provisions of NFPA 70, *National Electrical Code*, for Class I of Class II, Division 2 locations (as applicable)." 1989 Edition (Ex. C-13, p. 33-7)

Employer Noncompliance

CO Rezsnyak testified that he tested the continuity between the Paraspray sprayer and the nozzle of the sprayer, and found that they were not bonded. (Tr. 159-62). CO Rezsnyak testified that the hazard was an explosion or fire. (Tr. 161). The condition could have been abated by installing a semi-conductor post between the sprayer body and the nozzles, or by attaching a wire between the sprayer body and the nozzle (Tr. 161).⁹

Section 107(e)(6) addresses “pipes and hoses.” Subsection (iv) thereof provides that piping systems conveying flammable liquids shall be of steel or other comparable material. The cited condition was for the spray nozzle not being bonded to the sprayer. The Secretary explains that the piping system consisted of a “metal container, a flexible rubber hose, and a nozzle with a shutoff valve” (Secretary’s Post- Hearing Memorandum, p. 15). IH Landes testified that her recommendation was based upon her observation of a sprayer that was used to apply Paraspray, and on the sprayer there was a spray nozzle that was not bonded to the sprayer (Tr. 48, 51; Ex. C-17). She described the sprayer as a can with a black hose (Tr. 220). She further testified that she relied upon NFPA Section 33-10, paragraph 6-4 in issuing this citation, which addresses piping systems conveying flammable or combustible liquids between storage tanks, mixing room, and spray areas (Ex C-13).¹⁰

The cited standard does not define “piping system”, however, the undersigned finds that at §1910.106 (c) the design specifications of piping systems containing flammable or combustible liquids are specified.¹¹ The undersigned finds that a metal can/container was not a piping system

⁹ CO Rezsnyak tested the sprayer, while IH Landes actually wrote the citation (Tr. 221-22, 225-26).

¹⁰ **6-4 Distribution Systems - Piping**

6-4.1 Piping systems conveying flammable or combustible liquids between storage tanks, mixing room (paint kitchen), and spray area shall be of steel or other material having comparable properties of resistance to heat and physical damage; they shall be so installed that a rupture of the system for any reason is unlikely. Piping systems shall be properly bonded and grounded.(Ex. C-13. 33-10) 1989 Ed.

¹¹ 29 CFR §1910.106 (c) Piping, valves, and fittings—

(1) General— (I) Design. The design (including selection of materials) fabrication, assembly, test, and inspection of piping systems containing flammable or combustible liquids shall be suitable for the expected working pressures and structural stresses. Conformity with the applicable provisions of Pressure Piping, ANSI B31 series and the provisions of this paragraph, shall be considered prima facie evidence of compliance with the foregoing provisions. (ii) . . . (iii) Definitions. As used in this paragraph, piping systems consist of pipe, tubing, flanges,

within the meaning of the flammable or combustible liquid OSHA standard. Furthermore, the metal can/ container was not conveying flammable liquids from a storage tank, mixing room or mixing room per paragraph 6-4.1, NFPA 33. The undersigned also notes that the IH testified that she does not recall the basis for the conclusion that this was a piping system and that she had no understanding of a piping system (Tr. 226-28).

In view of the above, the undersigned finds that the cited standard is not applicable, and thus, the violation is Vacated.

CITATION, ITEM 4

29 C.F.R. §1910.107(g)(2)"Cleaning." All spraying areas shall be kept as free from the accumulation of deposits of combustible residues as practical, with cleaning conducted daily if necessary. Scrapers, spuds, or other such tools used for cleaning purposes shall be of non-sparking material.

bolting, gaskets, valves, fittings, the pressure containing parts of other components such as expansion joints and strainers, and devices which serve such purposes as mixing, separating, snubbing, distributing, metering, or controlling flow.

(2) Materials for piping, valves, and fittings—

(I) Required materials. Materials for piping, valves, or fittings shall be steel, nodular iron, or malleable iron, except as provided in paragraph (c) (2) (ii), (iii) and (iv) of this section.

(ii) Exceptions. Materials other than steel, nodular iron, or malleable iron may be used underground, or if required by the properties of the flammable or combustible liquid handled.

Material other than steel, nodular iron, or malleable iron shall be designed to specifications embodying principles recognized as good engineering practices for the material used. (iii)

Linings. Piping, valves, and fittings may have combustible or noncombustible linings. (iv)

Low-melting materials. When low-melting point materials such as aluminum and brass or materials that soften on fire exposure such as plastic, or non-ductile materials such as cast iron, are necessary, special consideration shall be given to their behavior on fire exposure. If such materials are used in above-ground piping systems or inside buildings, they shall be suitably protected against fire exposure or so located that any spill resulting from the failure of these materials could not unduly expose persons, important buildings or structures or can be readily controlled by remote valves.

(3) Pipe joints. Joints shall be made liquid tight. Welded or screwed joints or approved connectors shall be used. Threaded joints and connections shall be made up tight with a suitable lubricant or piping compound. Pipe joints dependent upon the friction characteristics of combustible materials for mechanical continuity of piping shall not be used inside buildings. They may be used outside of buildings above or below ground. If used above ground, the piping, shall either be secured to prevent disengagement at the fitting or the piping system shall be so designed that any spill resulting from such disengagement could not unduly expose persons, important buildings or structures, and could be readily controlled by remote valves.

(4) Supports. Piping systems shall be substantially supported and protected against physical damage and excessive stresses arising from settlement, vibration, expansion, or contraction.

- a) **CORE FINISHING: ROCKER BOX/PARASPRAY AREA, ON OR ABOUT 9/16/96: THERE WAS AN ACCUMULATION OF COMBUSTIBLE RESIDUES THROUGHOUT THE SPRAYING AREA ON THE WALLS AND FLOORS WHERE EMPLOYEES SPRAY CORES WITH PARASPRAY, A CLASS 1B FLAMMABLE LIQUID, EXPOSING EMPLOYEES TO A FIRE HAZARD.**
- b) **CORE BOX STAGING: CHILL SPRAY AREA, ON OR ABOUT 9/16/96: THERE WAS AN ACCUMULATION OF COMBUSTIBLE RESIDUES ON THE WALL, QUICK DISCONNECT AND DUPLEX RECEPTACLE WHERE EMPLOYEES SPRAY CHILL PIECES WITH THERMOCOAT Z-A PREMIX, A CLASS 1B FLAMMABLE LIQUID, EXPOSING EMPLOYEES TO A FIRE HAZARD**

Employer Noncompliance

The cited standard requires that spraying areas be kept free of accumulations of deposits of combustible residue. IH Landes testified that she observed combustible residue and deposits in the cited spray areas (Tr. 53). IH Landes testified that the residue in the rocker box/Paraspray area was approximately 1/4" to 1/2" thick (Tr. 53-54¹², 56, 59; Ex. C-14, p. 1, p. 2, photo 2; Ex. C- 17). IH Landes testified that she observed a residue of 1/8" to 1/4" thick on the walls, quick disconnect, and the duplex receptacles in the chill coat spray area where employee were using Thermocoat (Tr. 53-54, 57-58 Ex. C-14, p. 2, photo 1). She testified that she examined the residue, and measured it. In issuing both items, she also relied on MSDS for the Paraspray and Thermocoat, and NFPA 33, Standard for Spray Application Using Flammable and Combustible Materials¹³ (Tr. 61).

Employee Exposure

IH Landes observed Respondent's employees working in the cited areas. She learned through speaking to employees that the spray area was being used in the condition in which she

¹²The transcript incorrectly states "12 inch." (Tr. 54)

¹³She considered Section 8-3, p. 33-21, and Appendix A, specifically: A-8-1 "Control of Spray Residue"; A-8-3, "Cleaning"; A-8-5 "Spontaneous Ignition." p. 33-20

observed it (Tr. 60).¹⁴

Employer Knowledge

The employer with the exercise of reasonable diligence during its inspection of the work area could have known of the presence of the cited accumulations of combustible residue. The violative condition was readily observable.

Classification and Penalty

IH Landes testified that employees were exposed to a fire hazard (Tr. 60). She classified the violation as serious based upon the nature of resultant injury - severe burns (Tr. 64). She testified that the gravity of the violation reflected that the severity of the violative condition was high, citing a possible injury of severe burns; and that there was a “lesser” probability of an accident occurring, based on the amount of time the employees performed the operation (Tr. 31, 64). She recommended a penalty of \$2,500.00. The undersigned finds that for the reasons set forth above, “good faith” factors should be applied to the proposed penalty. Accordingly, the undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate.

CITATION 1, ITEM 5

29 C.F.R. §1910.151(c) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

- a) **CYLINDER HEAD LINE, CHLORINE STORAGE AREA, ON OR ABOUT 9/24/96: NO QUICK DRENCH FACILITY FOR FLUSHING OF THE EYES AND BODY WAS MADE AVAILABLE FOR USE BY EMPLOYEES IN THE EVENT THEY COME IN CONTACT WITH CHEMICALS INCLUDING BUT NOT LIMITED TO CHLORINE CONTAINED IN 100 POUND CYLINDERS, WHILE PERFORMING OPERATIONS SUCH AS BUT NOT LIMITED TO CHANGING THE CYLINDERS OF CHLORINE.**
- b) **GENERAL METAL MOLDING, POT LINE AREA, ON OR**

¹⁴ The Review Commission had acknowledged that statements to compliance officers by employees and foremen during the course of inspections are not hearsay but admissible admissions under Rule 801(d)(2)(D) of the Federal Rules of Evidence. *Regina Construction Co.*, 15 BNA OSHC 1044, 1048 (No.87-1309, 1991).

ABOUT 9/25/96: NO QUICK DRENCH FACILITY FOR FLUSHING OF THE EYES AND BODY WAS MADE AVAILABLE FOR USE BY EMPLOYEES IN THE EVENT THEY COME IN CONTACT WITH CHEMICALS INCLUDING BUT NOT LIMITED TO CHLORINE CONTAINED IN 100 POUND CYLINDERS, WHILE PREFORMING OPERATIONS SUCH AS BUT NOT LIMITED TO CHANGING THE CYLINDERS OF CHLORINE.

Employer Noncompliance

IH Landes testified that there was no quick drench facility in the immediate area of the cylinder head line (Tr. 66, Ex. C-20, photo 1). She also testified that in general metal molding hot line there was not a quick drench facility in the immediate area (Tr. 66, Ex. C-20, photo 2). She testified that employees change the chlorine cylinders in the area every three days. She made this determination after speaking with an employee who changed the cylinder, although she did not observe the actual change (Tr. 66,70, 234). She did not measure the distance from the cylinders to the quick drench facility in the rocket machine area or the maintenance area. In her opinion, it was “too far” away to measure and she could not see them from the chlorine storage area (Tr. 234-35). The employee told her that he wore a full-face respirator and rubber gloves while changing the cylinder (Tr. 236-38). She testified that this equipment would not completely protect the employee from chlorine exposure should an accident occur. The chlorine could “leak” through the employee's clothes and burn the skin on his arms, body, neck and/or leg (Tr. 237-39). She determined that the material was corrosive by consulting the MSDS for chlorine. (Tr. 68, Ex. C-21). In her opinion, a quick drench facility should have been located within 10 feet of the area where exposure to the corrosive material may occur. (Tr. 240)

Viletta Linton, Citation Corporation Safety Director, testified that at the time of the inspection, when one of the cylinders was empty, a new one would be brought in and hooked up. The employees wore a full face respirator and gloves while performing this task. Furthermore, she testified that there was an eye-wash and shower approximately 70-75 feet away from both locations. In her opinion, these facilities complied with the general rule of thumb calling for a 100 foot

distance (Tr.1634).¹⁵

The primary purpose of §1910.151(c) is to assure that employees who work with corrosive chemicals have facilities readily available to wash such chemicals from their eyes or body before they suffer injury. *Bridgeport Brass Co.*,¹¹ BNA OSHC 2255 (No. 82-899, 1984). This requirement provides a type of protection separate and dissimilar from that afforded by personal protective equipment, such as chemical goggles, gloves and aprons, all of which are designed to shield the eyes and body from any physical contact with such materials.

The record contains unrefuted evidence that chlorine is a corrosive (Ex. C-2. ¶ 20, 21). Thus, the standard is applicable to the cited condition. The standard, which does not state what distance the quick drenching facilities must be from a given work area, requires that such facilities be placed within the work area. Review Commission precedent has recognized that whether an employer's facilities are adequate to comply with the standard depends on the particular circumstances present at the workplace, including the nature and amount of corrosive materials to which employees are exposed, the configuration of the work area, and the distance between the spot where corrosive chemicals are used and the drenching facilities. *Gibson Discount Center, Store No. 15*, 6 BNA OSHC 1526, 1527, (No. 14657, 1978). The undersigned finds that the quick drenching facilities were not within the cited work areas for immediate emergency use. IH Landes testified that she could not view the available facilities from the cited areas. The configuration of the facility corroborates the fact that the cited work areas were not within the work areas containing the drenching facilities some 70-75 feet away. Accordingly, the cited condition is violative of the standard.

Employee Access to the Violative Condition

Employees were exposed to this condition when they changed the chlorine cylinders (Tr. 70).

Employer Knowledge of the Violation

IH Landes testified that the employer knew that the employees changed the chlorine cylinders. (Tr. 70). The record establishes that there were quick drenching facilities in other work

¹⁵ Both Safety Director Linton and IH Landes make reference to the distances set forth in the American National Standard for Emergency Eyewash and Shower Equipment. Section 5.4.4 states that “[e]yewash units shall be in accessible locations that require no more than 10 seconds to reach and should be within a travel distance no greater than 30.5 meters (100 feet) from the hazard.” (Ex. R-9, p. 14). The explanatory note for that section - Section E.5.4.4 - recommends that the eyewash be “immediately adjacent to or within 3 meters (10 feet) of the hazard” where the chemical is a “strong acid or strong caustic.” (Ex. R-9, p. 14).

areas of the plant. Furthermore, the Hazard Evaluation Report prepared by State of New York consultant in 1995 contained a recommendation that “eyewash stations always be near the hazardous work areas” (Ex. C-45).

Classification and Penalty

IH Landes testified that employees were exposed to the hazard of severe skin burns or corneal damage (Tr. 68, 70) She recommended that the item be classified as serious (Tr. 70-71). The record establishes that the gravity of the violation reflected that the that the resultant injury or illness would be of a high severity; and the probability of an accident occurring was “lesser.”in light of the protective equipment employees wore when performing this task (Tr. 71). The undersigned finds that for the reasons set forth above, “good faith” factors should be applied to the proposed penalty. Accordingly, the undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate.

CITATION 1, ITEM 6

29 C.F.R. §1910.215(b)(9) Exposure adjustment. Safety guards of the types described in Subparagraphs (3) and (4) of this paragraph, where the operator stands in front of the opening, shall be constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (b)(3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed one-fourth inch. (See Figures O-18, O-19, O-20, O-21, O-22, and O-23.)

- a) **PATTERN SHOP: METAL SHOP, ON OR ABOUT 9/20/96: BALDOR GRINDER/BUFFER SERIAL NO W683 WAS MISSING TONGUE GUARDS ON BOTH LEFT AND RIGHT SIDES, EXPOSING EMPLOYEES TO BEING STRUCK BY WHEEL PARTS SHOULD THEY BREAK.**
- b) **MAINTENANCE SHOP, ON OR ABOUT 9/24/96: BALDOR GRINDER/BUFFER SERIAL NO. F579: OPENINGS**

MEASURED ONE INCH AT LEFT WHEEL AND 3/4-INCH AT RIGHT WHEEL. G.E. GRINDER/BUFFER SERIAL NO. 219502 WAS MISSING TONGUE GUARDS ON BOTH LEFT AND RIGHT SIDES, EXPOSING EMPLOYEES TO BEING STRUCK BY WHEEL PARTS SHOULD THEY BREAK.

Employer Noncompliance

IH Landes testified that the standard requires that abrasive wheels, adjustable tongues be adjusted within 1/4 of an inch, and that tongue guards be adjusted within 1/4 of an inch (Tr. 71). The Respondent does not dispute the applicability of the standards. IH Landes testified that the tongue guard was missing from both the right and left side of the Baldor grinder in the pattern shop (Tr. 72, 74-75, 241; Ex. C-22, p.1, photo 1). She also referenced the results of a New York State Department of Labor Safety Survey of Oberdorfer's facilities, conducted on August 22, 1995, which indicated that in "various locations," the "[d]istance between abrasive wheel peripheries and adjustable tongue or end of safety guard peripheral member at the top exceeded one-fourth inch." (Ex. C-23, p. 6).

IH Landes testified that the guards on the Baldor grinder were not adjusted properly (Tr. 241). The opening on the left measured 1", and the opening on the right measured 3/4". (Tr. 72, C-22, p. 1, photo 2). She further testified that the G.E. grinder/buffer was missing the tongue guards on both the right and left side. (Tr. 72, C-22, p. 2).

Employee Access to the Violative Condition

IH Landes testified that she determined that employees used the grinder from her conversations with Respondent's employees. They informed her that they used the grinder on an as needed basis in the condition in which she observed them (Tr. 75, 242-43). They worked in close proximity to the grinder (Tr. 75). The undersigned finds that with respect to instance b, the Baldor grinder in the maintenance shop, the Secretary has not proven employee exposure. The guards on this grinder were not properly adjusted at the time of the inspection. IH Landes conceded it was possible that the guards could be adjusted before the grinder was used (Tr. 243). Accordingly, this violative condition is vacated from this item.

Employer Knowledge of the Violation

The Respondent had at least 10 to 15 other grinders on the worksite which had the tongue guards properly adjusted (Tr. 241-42). Respondent could have determined the violation through observation (Tr. 76).

Classification and Penalty

IHLandes testified that if an accident were to occur, the grinder wheel could break, exposing employees to the hazard of being struck by wheel parts. (Tr. 76). She recommended that the violation be classified as serious, based on a possible injury of severe abrasions (Tr. 78). She recommended that the gravity of the violation reflect the severity of any potential injuries as “low,” and the probability of an accident occurring as “lesser.” (Tr. 78). Again, all but two grinders on site were properly adjusted. The undersigned finds that for the reasons set forth above, “good faith” factors should be applied to the proposed penalty. Accordingly, the undersigned finds that a penalty in the amount of \$1,275.00 would be appropriate.

CITATION 1. ITEM 7

29 C.F.R. §1910.304 (e)(1)(iv) Location in or on premises. Overcurrent devices shall be readily accessible to each employee or authorized building management personnel. These overcurrent devices may not be located where they will be exposed to physical damage nor in the vicinity of easily ignitable material.

- a) COMPRESSOR ROOM, ON OR ABOUT 10/9/96: ACCESS TO 440 VOLT DISTRIBUTION PANEL 600A WAS BLOCKED BY A 55 GALLON DRUM, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

1. Employer Noncompliance

CO Rezsnyak testified that he observed that access to a 440 volt distribution panel was blocked by a 55 gallon drum with a wooden pallet blocking the panel door from being open fully for access (Tr. 163, Ex. C-24). He indicated that employees may need access to the panel to shut off or to replace a breaker (Tr. 163). He further testified that by not having the door fully open, an employee accessing inside to shut off a breaker or repair a breaker could be subject to an electrical hazard (Tr. 164-65, 1108).

On cross-examination, CO Rezsnyak admitted that the door was not blocked by the 55-gallon drum. He amended his testimony to reflect that the wooden pallet sat on top of a 55 gallon drum and as on opened the door, it made contact with the edge of the pallet (Tr. 1107, 1113-14). Thus, instead of opening to a 90 degree angle the door opened to approximately a 70 degree angle - opening 2/3's or 3/4's of the way (Tr. 1109-1110). He testified that in this position, the door would restrict access to all parts of the panel - you would not have access to hinged right side of the panel as you would

on left side (Tr. 1109)

The undersigned finds that the testimony of the compliance officer was at best speculative and uncertain. Additionally, the photo of the alleged violation shows the door open and readily accessible. The Secretary has not proven by a preponderance of the evidence that the panel was not fully accessible. Accordingly, this violation is Vacated.

CITATION 1, ITEM 8 ¹⁶

29 C.F.R. §1910.303(g)(2)(I) “Guarding of Live Parts” Except as required or permitted elsewhere in this subpart, live parts of electric equipment operating at 50 volts or more shall be guarded against accidental contact by approved cabinets or other forms of approved enclosures, or by any of the following means:

(A) By location in a room, vault, or similar enclosure that is accessible only to qualified persons.

(B) By suitable permanent, substantial partitions or screens so arranged that only qualified persons will have access to the space within reach of the live parts. Any openings in such partitions or screens shall be so sized and located that persons are not likely to come into accidental contact with the live parts or to bring conducting objects into contact with them.

(c) By location on a suitable balcony, gallery, or platform so elevated and arranged as to exclude unqualified persons.

(D) By elevation of 8 feet or more above the floor or other working surface.

The undersigned finds that in each instance the standard was applicable. The record establishes that Respondent’s operations were 120-volt, 220-volt and 460 (average) systems (Tr. 1197). Thus, the voltage of exposed wire exceeded 50 volts. In each case IH Landes determined that the wires were live by the use of an AC sensor (Tr. 92). As discussed below the Secretary proved by a preponderance of evidence these exposed wires were subject to accidental contact by any employee in the area or who had access to the panels. IH Landes determined that Respondent’s were exposed to the violative conditions. She either observed or talked to employees near the cited areas (Tr. 93). The Respondent argues that in those instances where the “live parts” were located

¹⁶ Instances b, c, and d were withdrawn at the hearing (Tr. 84). The undersigned finds that none of the remaining instances were located in any of the permissible alternative locations which were “required or permitted elsewhere in this subpart” - there were no permanent screens involved, no balcony locations such as to exclude unqualified persons, and none were located 8 feet or more above the ground or platform but indeed were near ground level.

within panels there was no violation because they were guarded against accidental contact by doors of the panel. The undersigned finds that the record does not contain evidence which reveals that these panels were locked in any manner or off limits to any group of employees. For example, the record contains no evidence that the doors of the panels were not marked to indicate that only qualified persons were permitted to open and/or access them. Upon anyone opening said panel there was exposure to any employee. The record also establishes employer knowledge.

- a) **CYLINDER HEAD LINE: LADLE REPAIR AREA, ON OR ABOUT 9/24/96 VOLT MAIN DISTRIBUTION PANEL HAD ONE BLANK MISSING, EXPOSING EMPLOYEES TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

IH Landes testified that in the cylinder head line, in the ladle repair area, she observed that a 440 volt main distribution panel was missing a blank. (Tr. 82, Ex. C-25. photo 2). This opening was 15 inches by 7 inches, and was 44 inches from the floor (Tr. 84). The missing blank would have provided protection against accidental contact by an employee who was engaged at the panel.

Employee Access to the Violative Condition

IH Landes testified that employees would be exposed to this condition when they attempted to use the distribution panel. They would be right there at the hazard as they accessed the panel (Tr. 93). Thus, exposure would occur when an employee opened the door to the panel to turn something on or off, or servicing needed to be done with that panel (Tr. 246).

Employer Knowledge

This violation was readily observable by anyone at the panel.

- e) **CYLINDER HEAD LINE: PLATFORM FOR CLAM PUMPS, ON OR ABOUT 9/26/96: 440 VOLT HEATER CONNECTION JUNCTION BOX WAS MISSING COVER, EXPOSING EMPLOYEES TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

CO Rezsnyak testified that he observed 440 volt heater connection junction box in the cylinder head line that was missing its cover exposing employees to electrical parts (Tr. 166-67, Ex. C-26, photo 1 and photo 2). He testified that maintenance technician, Earl Wicks was with him when he observed this condition. Mr. Wicks used CO Rezsnyak's voltage tester and determined that

the box was energized (Tr. 171).

Employee Access to the Violative Condition

The box was located on top of the platform which was not blocked off to anyone and, where an employee, such as a molder, could walk by and accidentally strike it (Tr. 173-74, 1136). The condition was abated immediately - a cover was placed over the heater (Ex. 26, photo 2).

Employer Knowledge

This condition was readily observable.

- f) **PERMANENT MOLD AREA, SERVICE TRENCH TERMINAL, ON OR ABOUT 9/25/96: ON ONE DUPLEX RECEPTACLE BOX WIRING GOING TO BOX WAS PULLED OUT, EXPOSING ENERGIZED CONDUCTOR (HOT LEG) WHILE THE NEUTRAL LEG WAS STILL CONNECTED TO BOX. EMPLOYEES WERE EXPOSED TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

IH Landes observed a service trench terminal with a wire pulled from the box, exposing the energized conductor (Tr. 85-86, Ex. C-27). The neutral wire was still connected to the box (Tr. 85-86). The exposed wire protruded approximately two or three inches (Tr. 87). A voltage indicator device was used to determine that the wire was energized (Tr. 171-72, 251).

Employee Access to the Violative Condition

Employees in the mold area, walked through this area on a daily basis (Tr. 93, 1137). The area was not locked or blocked off. The terminal was in the middle of an aisle which was accessed by employees and subject to accidental contact (Tr. 173, 252-53, 1137).

3. Employer Knowledge of the Violation

The condition was in plain view, and testing revealed that the wiring was energized (Tr. 174).

- g) **GREEN SAND DEPARTMENT: 6A FEED BELT, ON OR ABOUT 9/27/96: 220 VOLT ELECTRICAL PANELS MOUNTED ON WEST WALL UNDERNEATH 6A FEED BELT WERE MISSING PANEL COVERS, EXPOSING EMPLOYEES TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

IH Landes and CO Rezsnyak testified that they observed 220 volt electrical panels mounted on the west wall under the 6-A feed belt that were missing covers and exposing employees to live wires (Tr. 89, 169, Ex. C-28). CO Rezsnyak testified that he used the voltage tester to determine that the exposed wires were live (Tr. 170). He testified further that Richard Tucci indicated that the panels operated the lighting circuit for the foundry area (Tr. 172).

Employee Access to the Violative Condition

CO Rezsnyak testified that employees would be exposed to the hazard while shutting off or turning on a breaker (Tr. 173). IH Landes testified that the panel was located on an elevated platform which she accessed by ladder. Employees informed her that they would be on that platform when they needed to repair equipment or replace a light bulb. She also learned that an employee would go up there to check the sand line. Although this was not a general work area accessible to anyone other than maintenance employees, she recalled that the area was not blocked off (Tr. 246-48).

Employer Knowledge of the Violation

CO Rezsnyak testified that the condition was in plain view. (Tr. 174)

- I) MAINTENANCE SHOP, ON OR ABOUT 9/24/96: CIRCUIT-BREAKER PANEL ON WALL NEAR MAINTENANCE OFFICE HAD TWO BLANKS MISSING, EXPOSING EMPLOYEES TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

IH Landes testified that she observed a circuit breaker panel on the wall in the maintenance shop near the maintenance office that was missing two blanks exposing employees to accidental contact (Tr. 89, C-29).

Employee Access to the Violative Condition

IH Landes testified that employees were close to exposed electrical parts when they opened the panel doors and turned the breakers on or off. (Tr. 91, 93, 254). They would be exposed to live wires from these open spaces within the panel. She testified that maintenance employees or other employees in the area, who were not necessarily electricians had access to the panel (Tr. 254).

Employer Knowledge of the Violation

This violation was readily observable by anyone at the panel.

- j) CYLINDER HEAD LINE: DRY SAND POUR OFF AREA, ON OR ABOUT 9/26/96: CIRCUIT-BREAKER PANEL HAD ONE BLANK MISSING, EXPOSING EMPLOYEES TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

IH Landes testified that in the dry sand pour-off area she observed a circuit panel box with one blank missing exposing employees to accidental contact with electrical parts. (Tr. 91)

Employee Access to the Violative Condition

IH Landes testified that employees in the area as well as maintenance employees would have access to this condition when turning on or off breakers at the panel. An employee was exposed to live electrical wire at the open space (Tr. 93, 254).

Employer Knowledge of the Violation

This violation was readily observable by anyone at the panel.

- k) METAL LAB, ON OR ABOUT 10/8/96: CIRCUIT-BREAKER PANEL HAD TWO BLANKS MISSING, EXPOSING EMPLOYEES TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

IH Landes testified that in the metal lab, she observed a circuit breaker panel that was missing two blanks exposing employees to accidental contact with live electrical parts (Tr. 91).

Employee Access to the Violative Condition

IH Landes testified that employees in the area as well as maintenance employees would have access to this condition when turning on or off breakers at the panel (Tr. 93, 254).

Employer Knowledge of the Violation

This violation was readily observable by anyone at the panel.

- l) CORE ROOM: COLUMN 10' WEST OF STATION #37, ON OR ABOUT 9/11/96: A DUPLEX RECEPTACLE OUTLET HAD THE COVER PULLED AWAY FROM BOX, EXPOSING EMPLOYEES TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

IH Landes testified that in the core room, she observed a duplex receptacle outlet with the cover pulled away (Tr. 91, Ex. C-25).

Employee Access to the Violative Condition

IH Landes testified that employees would have access to this condition when they attempted to use the outlet which was available for use (Tr. 94).

Employer Knowledge of the Violation

This violation was readily observable by anyone at the panel.

- m) CORE ROOM: CORE BOX STAGING AREA, ON OR ABOUT 9/16/96: A DUPLEX RECEPTACLE OUTLET WAS DAMAGED, EXPOSING EMPLOYEES TO LIVE ELECTRICAL PARTS.**

Employer Noncompliance

IH Landes testified that she observed a damaged duplex receptacle outlet in the core box staging area (Tr. 92).

Employee Access to the Violative Condition

IH Landes testified that employees would be exposed to this condition when they went to use the outlet. The cited outlet was available for use (Tr. 94).

Employer Knowledge of the Violation

IH Landes and CO Rezsnyak testified that the cited conditions were in plain view. (Tr. 94, 174)

Classification and Penalty

IH Landes testified that in each instance, employees were exposed to the hazard of live electrical parts, and that employees could be exposed to an electric shock possibly resulting in death (Tr. 94). Thus, the item was classified as serious. The record reflects that gravity of the violation reflects that the severity of injury was high - death; and the probability of an accident occurring was “greater” in light of the number of instances, and the fact that these panels were accessible to employees other than electricians (Tr. 94-95, 245-54). IH Landes proposed a penalty of \$5,000.00 (Tr. 95). The undersigned finds that for the reasons set forth above, “good faith” factors should be applied to the proposed penalty. Accordingly, the undersigned finds that a penalty in the amount of \$4,250.00 would be appropriate.

CITATION 1, ITEM 9

29 C.F.R. §1910.304(a)(2) Polarity of connections. No grounded conductor may be attached to any terminal or lead so as to reverse designated polarity.

Employee Exposure and Employer Knowledge

This standard requires that grounded conductors attached to terminal or leads not have reverse polarity. IH Landes testified that in each instance, using the receptacle tester, (Ex. C-30), she determined whether the outlet was wired properly. She also determined by speaking to employees in each of the instances that Respondent's employees were exposed. In each instance, if the employees in the area were to plug something into one of the outlets, they would be exposed to an electrical hazard. The outlets were used in the condition in which she observed them - an outlet with reverse polarity will continue to operate. She determined this by observing that there were items plug into the outlets, or by speaking to the employees (Tr.105-06). Because of the reverse polarity employees were exposed to electrical shocks and even to electrocution when they used the equipment with reverse polarity or plugged equipment into outlets with reverse polarity (Tr. 105-06). The Secretary's electrical expert, Phil Peist, further explained the principles of reverse polarity (Tr. 1232-39).

IH Landes testified that Respondent could have determined that the violations existed by using a circuit tester to determine the proper wiring. This is how she determined that the violation existed (Tr. 97-98, 106). Respondent argues that the Secretary did not establish knowledge of the alleged violations - the Secretary must prove more than "it is theoretically possible for an employer it obtain knowledge of the violation"(Respondent's Post-Hearing Memorandum, p. 31). The company electrician, Richard Tucci, testified that did not receive complaints from employees concerning the receptacles with perverse polarity and without receiving a complaint, he would have no way of knowing. He stated that the problem with an outlet with perverse polarity is that no matter how something is plugged in, it will work. Unless a meter is plugged in, one would not know about the problem (Tr. 1446-47).

The undersigned finds that the Respondent has not disputed the applicability of the cited standard. The discussion above in conjunction with the discussion below establishes noncompliance in each instance and employee exposure. The undersigned further finds that constructive knowledge of the violation has been established - with the exercise of reasonable diligence Respondent would have been aware of this condition. Furthermore, Respondent's obligation to inspect the workplace was not theoretical. Review Commission precedent has established that an employer's reasonable diligence includes an obligation to inspect and take measures to prevent the occurrence of exposure to hazards. *Swidzinski, supra*. The record establishes that Respondent had no such inspections and had no preventative measures in place. Respondent placed the duty to locate electrical hazards upon

the employees. Respondent's maintenance technician, Mr. Tucci testified that he had the responsibility to ensure that electrical equipment was working properly. He had no way of knowing that there was a problem unless someone reported it to him. He did not check equipment and this had been his practice during his employment with Respondent which began in 1988 to the present (except for a period of time in 1990 to 1993)(Tr. 1448-50, 1460-61).

- a) **INSPECTION DEPARTMENT: ZYGLO DIG OUT STATION, ON OR ABOUT 10/8/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED INSIDE STATION WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that she observed a duplex outlet wired in reverse polarity in the zyglo dig out station (Tr. 96-97). Additionally, there was 4.5 amp fan plugged into the outlet (Tr. 108-09).

- b) **GREENSAND DEPARTMENT: 6A GREEN MOLDING LINE, ON OR ABOUT 9/27/96: DUPLEX RECEPTACLE OUTLETS MOUNTED ON THIRD COLUMN EAST SIDE; SECOND COLUMN EAST SIDE; FIRST COLUMN EAST SIDE; AND POST BEHIND "L" OVEN WERE WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that she observed a duplex receptacle outlet wired in reverse polarity in the green sand department, on the 6-A green sand molding line (Tr. 98; Ex. C-31). Additionally, there was a .5 amp timer plugged into the outlet. (Tr. 108-09).

- c) **CORE ROOM: N OR ABOUT 9/12/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED ON FIRST COLUMN EAST OF CORE ROOM WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that she observed a duplex receptacle outlet on the first column east of

the core room office wired in reverse polarity (Tr. 100, Ex. C-32). The record also contains undisputed evidence that this outlet had a fan plugged into it and it was plugged in and out at the beginning and end of the shift by an employee (Tr. 255).

- d) **CORE ROOM: SHELL CORE PRODUCTION AREA, ON OR ABOUT 9/12/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED ON EAST WALL BEHIND 44 REDFORD MACHINE WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that she observed a duplex receptacle outlet mounted on the East wall in the core room, behind the 44 Redford machine, that was wired in reverse polarity (Tr. 101, C-32, photo 2).

- e) **CORE FINISHING: ROCKER BOX/PARASPRAY PREP AREA, ON OR ABOUT 9/16/96: ONE DUPLEX RECEPTACLE ON FLOOR WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that she observed a duplex receptacle on the floor of the core finishing area that was wired in reverse polarity (Tr. 101-02; Ex. C-15).

- f) **CORE ROOM: CORE BOX STAGING AREA, ON OR ABOUT 9/16/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED ON NORTHEAST COLUMN NEAR C&D BATTERY CHARGER WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that she observed a duplex receptacle outlet on the north-east column in the core room wired in reverse polarity (Tr. 102-03, Ex. C-15, photo 2).

- g) **PATTERN SHOP: METAL SHOP, ON OR ABOUT 9/20/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED ON WALL BEHIND PARTS WASHER WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN**

ELECTRICAL HAZARD.

Employer Noncompliance

IH Landes testified that she observed a duplex receptacle outlet in the pattern shop, behind the parts washer, that was wired in reverse polarity (Tr. 103) .

- h) PATTERN SHOP: METAL SHOP, ON OR ABOUT 9/20/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED ON WALL BEHIND SURFACE GRINDER WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that she observed a duplex receptacle outlet mounted on the east wall of the metal shop, behind the surface grinder, wired in reverse polarity (Tr. 103, C-32).

- I) PATTERN SHOP: MOLD & DIE STOCK ROOM, ON OR ABOUT 9/20/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED ON WALL WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that in the mold and die stock room of the pattern shop, she observed a duplex receptacle outlet wired in reverse polarity (Tr. 104).

- j) FINISHING DEPARTMENT: KNOCKOUT CELLAR, ON OR ABOUT 10/2/96: DUPLEX RECEPTACLE OUTLETS MOUNTED ON EAST AND WEST WALL WERE WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that in the knockout cellar of the finishing department, she observed a duplex outlet wired in reverse polarity (Tr. 104).

- k) FINISHING DEPARTMENT: NORTH WALL, ON OR ABOUT 10/4/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED UNDERNEATH CIRCUIT-BREAKER PANEL WAS WIRED**

**IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES
TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that on the north wall of the finishing department, she observed a duplex receptacle outlet mounted underneath the circuit breaker panel, wired in reverse polarity. (Tr. 104).

- 1) FINISHING DEPARTMENT: SOUTHEAST WALL, ON OR ABOUT 10/4/96: ONE DUPLEX RECEPTACLE OUTLET MOUNTED ON SOUTHEAST COLUMN NEAR ACME SAW ENCLOSURE WAS WIRED IN REVERSE POLARITY MODE, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that on the southeast wall of the finishing department, near the Acme saw enclosure, she observed a duplex receptacle outlet wired in reverse polarity (Tr. 104-05).

Classification and Penalty

The employees could have been protected if the duplex receptacle outlets were wired correctly. If an accident were to occur, depending on whether the outlet had something plugged into it, and on the amps, the injury could be anything from death to minor shocks. She classified the violation as serious because of the range of injuries. She classified the potential injury in instance “a” as ventricular fibrillation, possibly resulting in death. She indicated the potential injury in instance “b” could be respiratory arrest and severe muscular contraction, while the potential injury in instances “c” through “l” could be minor shocks or burns (Tr. 107-08). She proposed a penalty of \$2,500, based on possible injuries of a “high” severity, and the “lesser” probability that an accident would occur (Tr. 108). The undersigned finds that for the reasons set forth above, “good faith” factors should be applied to the proposed penalty. Accordingly, the undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate.

CITATION 1, ITEM 10

29 C.F.R. §1910.305(g)(2)(iii) Flexible cords shall 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.

- a) CORE ROOM: CORE BOX STAGING AREA, ON OR ABOUT 9/16/96: 3 PHASE 440 VOLT WIRING ENTERING**

DISCONNECT FOR C&D BATTERY CHARGER SERIAL NO. PIU780267 WAS MISSING STRAIN RELIEF, EMPLOYEES USE BATTERY CHARGER TO CHARGE FORK TRUCKS, EXPOSING EMPLOYEES TO A FIRE HAZARD.

Employer Noncompliance

Respondent does not dispute the applicability of the cited standard. Both IH Landes and CO Rezsnyak testified that they observed a three-phase 440 volt battery charger missing the strain relief device (Tr. 110, 175). IH Landes explained that a strain relief device prevents tension from being transmitted between a joint and the terminal screws, protecting wires from becoming exposed (Tr. 110-12)

- b) GREENSAND DEPARTMENT: 5A GREENSAND MOLDING LINE, ON OR ABOUT 9/27/96: 220 VOLT POWER CABLE FEEDING INTO DISCONNECT FOR TUNNEL HEATER WAS NOT HELD IN PLACE BY EXISTING STRAIN RELIEF, EMPLOYEES USE BATTERY CHARGER TO CHARGE FORK TRUCKS, EXPOSING EMPLOYEES TO A FIRE HAZARD.**

Employer Noncompliance

Both IH Landes and Rezsnyak testified that they observed that a 220 volt cable power cable feeding into the disconnect for the tunnel heater that was not held in place by the existing strain relief. (Tr. 110, 175, Ex. C-35).

Employee Access to the Violative Condition

IH Landes testified that employees worked in the area where both hazardous conditions were observed. She learned by speaking to employees that the cords were used in the conditions observed (Tr. 113).

Employer Knowledge of the Violation

IH Landes indicated that the violations were in plain view (Tr. 113).

Classification and Penalty

IH Landes testified that employees were exposed to a fire hazard, causing severe burns. Thus, the violations were classified as serious. She determined that the gravity of the violation reflected a high severity because of the potential resultant injury - severe burns, and that the

probability of an accident occurring could be classified as “lesser” (Tr. 113-14). She proposed a penalty of \$2,500. The undersigned finds that for the reasons set forth above, “good faith” factors should be applied to the proposed penalty. Accordingly, the undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate.

CITATION 1, ITEM 11

29 C.F.R. §1910.1048(i)(3) If there is any possibility that an employee's eyes may be splashed with solutions containing 0.1 percent or greater formaldehyde, the employer shall provide acceptable eyewash facilities within the immediate work area for emergency use.

- a) **CORE ROOM: SAND HEATER AREA, ON OR ABOUT 9/11/96: NO EYE WASH FACILITY FOR FLUSHING OF THE EYES WAS MADE AVAILABLE FOR USE BY EMPLOYEES IN THE EVENT THEY COME IN CONTACT WITH CHEMICALS INCLUDING BUT NOT LIMITED TO: FORMALDEHYDE IN THE RANGE OF .1-1 PERCENT, CONTAINED IN ACME-FLOW 2021, WHILE PERFORMING OPERATIONS SUCH AS BUT NOT LIMITED TO CHANGING THE BUNG ON THE BULK CONTAINER OF ACME-FLOW 2021.**

Employer Noncompliance

IH Landes testified that there was no eye wash facility in the stand heater area of the core room (Tr. 115-16). She indicated that employees change the bung on a bulk container of formaldehyde, exposing them to formaldehyde ranging from .1 to 1 percent (Tr. 116; Ex. C-116 [formaldehyde MSDS]). There was an eye wash facility located 48 feet from this area (Tr. 116, 120-21). In her opinion, a distance of 48 feet would be too far to travel if an employee's eyes came in contact with formaldehyde. Formaldehyde could destroy the eye tissue if drenching facilities were not immediately available (Tr. 121; Ex C-4, “E” and “F”).

When employees change the container, they wear safety glasses with side shields, and gloves (Tr. 263). IH Landes conceded that being splashed in the eye with the material was the primary risk associated with the process (Tr. 263). She indicated that safety glasses are not sealed on the top or bottom, thus an employee could still be exposed to the hazard while wearing glasses (Tr. 284-85).

Safety Director Villeta Linton testified that when the drum is changed, the new valve is inserted into the opening at the top of the drum. She considered it “very unlikely” that an employee could be splashed during the operation (Tr. 1639). She acknowledged that the walkway to the eyewash facility was not perfectly straight (Tr. 1646). Employee Lance Taylor testified that formaldehyde is “gravity fed” from the barrel while it is laying on its side (Tr. 1337-38). When the barrel is changed, hoses are disconnected and the drum is removed from its horizontal position in the cradle. The bung valve assemble is then removed from the barrel (Tr. 1338). When a new barrel is positioned, the bung valve is placed in the barrel while it is in the upright position, the barrel is then returned to a horizontal position for dispersal (Tr. 1337).

The undersigned finds that the aforementioned description of the work process demonstrates a “possibility” of the splashing formaldehyde. The standard is applicable. The undersigned finds in light of the nature of the product, and the location where it was used from the eyewash facilities, the distance of 48 feet was not within the immediate area for emergency use. The undersigned also finds that the access to the eyewash was not in a perfectly straight direction.

Employee Access to the Violative Condition

IH Landes testified that employees would be exposed to the possibility of their eyes being splashed with a solution containing formaldehyde when they changed the bung on the bulk container of formaldehyde (Tr. 122). She did not observe the container being changed, but was told by an employee that it was changed approximately once a month (Tr. 261, 263).

Employer Knowledge of the Violation

IH Landes testified that the employer could have readily observed that employees were using formaldehyde, and that the nearest eye wash facility was located 48 feet away (Tr. 122).

Classification and Penalty

IH Landes testified that an employee could received chemical burns to their eyes should an accident occur, classifying the violation as serious (Tr. 122-23). This potential injury was classified as high severity. IH Landes indicated that the possibility of an accident occurring was “lesser” (Tr. 123, 263). The employee wore safety glasses with side shields and gloves while performing this task once a month.¹⁷ She proposed a penalty of \$2,500 (Tr. 123). The undersigned finds that for the reasons set forth above, “good faith” factors should be applied to the proposed penalty.

¹⁷ IH Landes noted that the glasses were not sealed around the top or bottom of the glasses. These were safety glasses which fit over the eyes like eyeglasses with side shields (Tr. 284-85).

Accordingly, the undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate.

CITATION 1, ITEM 12 a and 12b

29 C.F.R. §1910.1200(f)(5) Except as provided in paragraphs (f)(6) and (f)(7) of this section, the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

- (I) -- Identity of the hazardous chemical(s) contained therein; and...
- (ii) -- Appropriate hazard warnings, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical.

IH Landes testified that Respondent's employees worked with the following containers which were not labeled with either the identity of the chemicals or with hazard warnings (Tr. 123, 127, 130-35):

- a) **CORE ROOM: DRY SAND ASSEMBLY AREA, ON OR ABOUT 9/12/96: BOTTLES, COFFEE CANS AND PLASTIC JUGS WERE NOT LABELED WITH THE IDENTITY OF THE HAZARDOUS CHEMICALS THEY CONTAINED. EMPLOYEES HAVE THE POTENTIAL FOR ABSORPTION OF HAZARDOUS CHEMICALS INCLUDING BUT NOT LIMITED TO : NITROSEL CORE CEMENT SL-144; IFS SOLVENT 99; #7 CEYLON AND BASIC FORMALAC. EMPLOYEES BRUSH THESE MATERIALS ONTO CORES. ADDITIONALLY, THESE CONTAINERS WERE NOT LABELED WITH THE APPROPRIATE HAZARD WARNINGS.**
- b) **CORE ROOM: CORE FINISHING DEPARTMENT, OR ABOUT 9/16/96: "GLUE" BOTTLES WERE NOT LABELED WITH THE IDENTITY OF THE HAZARDOUS CHEMICALS THEY. EMPLOYEES HAVE THE POTENTIAL FOR ABSORPTION OF HAZARDOUS CHEMICALS INCLUDING**

BUT NOT LIMITED TO : NITROSEL CORE CEMENT SL-144. EMPLOYEES BRUSH THESE MATERIALS ONTO CORES. ADDITIONALLY, THESE CONTAINERS WERE NOT LABELED WITH THE APPROPRIATE HAZARD WARNINGS.

- c) CORE FINISHING: ROCKER BOX/PARASPRAY PREP AREA, ON OR ABOUT 9/16/96: SPRAYER USED TO SPRAY CORES WAS NOT LABELED WITH THE IDENTITY OF THE HAZARDOUS CHEMICALS IT CONTAINED. EMPLOYEES HAVE THE POTENTIAL TO BE EXPOSED TO A FIRE HAZARD FROM HAZARDOUS CHEMICALS INCLUDING BUT NOT LIMITED TO PARASPRAY. ADDITIONALLY, THESE CONTAINERS WERE NOT LABELED WITH THE APPROPRIATE HAZARD WARNINGS.**
- d) CORE BOX STAGING: CHILL COATING SPRAY AREA, ON OR ABOUT 9/16/96: TWO ONE GALLON JUGS WERE NOT LABELED SPRAYER USED TO SPRAY CORES WAS NOT LABELED WITH IDENTITY OF THE HAZARDOUS CHEMICALS THEY CONTAINED. EMPLOYEES HAVE THE POTENTIAL FOR ABSORPTION OF HAZARDOUS CHEMICALS INCLUDING BUT NOT LIMITED TO THERMOCOAT Z-A PREMIX, EMPLOYEES USES MATERIAL ON CHILL PIECES. ADDITIONALLY, THESE CONTAINERS WERE NOT LABELED WITH THE APPROPRIATE HAZARD WARNINGS.**

Employer Noncompliance

IH Landes testified that she observed bottles, coffee cans, and plastic jugs that were not properly labeled (Tr. 123). She observed that in the dry sand assembly area, employees from two shifts used the materials (Tr. 268). She determined the identity of the materials, and obtained the corresponding MSDSs from Bob Wolf (Tr. 123-24, Exs. C-36-43; See also Ex. C-14, p. 2, photo 1). In the core room finishing department, she observed unlabeled bottles identified as “glue bottles.”

(Tr. 127-28). She determined that the bottles contained nitrosel core cement SL-144. (Tr. 128). She also determined that in the core finishing department, employees from two shifts used the materials (Tr. 268). In the rocker box Paraspray prep area, the sprayer used to spray the cores was not labeled with the identity of the chemicals contained therein (Tr. 128). She determined that in the core finishing department, employees from two shifts used the materials (Tr. 268). In the chill coat spray area, she observed two one-gallon jugs that were not labeled with the identity of the hazardous materials contained therein. She spoke with Bob Wolf, and determined that the contents were Thermocoat Z-A Premix (Tr. 130). She determined that the chemicals were left in this condition throughout the week. (Tr. 131)

She testified that employees referred to the materials as “glue,” “alcohol,” and “black lead.” (Tr. 129). She also conceded that employees knew how to use the materials, and that they appeared to be using the materials safely. (Tr. 269)

Safety Director Linton testified that employees fill up their own containers, and know the contents of the containers. She also indicated that employees have been trained with respect to the hazards of the chemicals they are working with. She testified that and the at the time of the inspection there was only one shift of employees working in the core room, therefore, materials were not passed from shift to shift. (Tr. 1641-42). However, she conceded that she was not present when IH Landes made her observations of the area (Tr. 1645).

The record reveals that the standard is applicable. The undersigned finds that in spite of the fact that employees were familiar with the contents of the containers, that the unrefuted testimony of IH Landes establishes violations of the cited standards.

2. Employee Access to the Violative Condition

IH Landes testified that the chemicals were left in each instance on the shelves throughout the day and week. She observed employees working with the “various” chemicals. (Tr. 131-32)

3. Employer Knowledge of the Violation

IH Landes testified that Respondent could have observed the existence of the violations (Tr. 132). Additionally, Respondent’s hazard communication program required labels on portable containers “used across shifts or by more than one individual.” (Ex. C-44). Furthermore, the New York State Hazard Survey contained similar findings of these violations (Ex. C-45; Tr. 132-34).

Classification and Penalty

Item 12a and 12b were grouped because both dealt with the same condition. (Tr. 137-38).

IH Landes determined that the potential injury in instances “a” and “b” would be mild irritation of the ears, nose, throat, and upper respiratory tract; while the potential injury in instances “c” and “d” could be first degree burns (Tr. 132, 137). She classified the violation as serious after reviewing the MSDS's associated with the chemicals and the potential injury (Tr. 134, 270). She recommended a penalty of \$1,500.00 based on the low severity of the potential injuries, and a probability of an accident occurring of “lesser” (Tr. 134-35, 137-38). Ms Linton’s testimony supports this finding (Tr. 1641-42). The undersigned finds that for the reasons set forth above, “good faith” factors should be applied to the proposed penalty. Accordingly, the undersigned finds that a penalty in the amount of \$1,275.00 would be appropriate.

CITATION 2, ITEM 1

29 C.F.R. §1910.132(a) Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

- a) **FOUNDRY AREAS INCLUDING BUT NOT LIMITED TO: CYLINDER HEAD DEPARTMENT, PERMANENT MOLD DEPARTMENT, MELT DEPARTMENT AND GREEN SAND LINE, ON OR ABOUT 9/25/96: EMPLOYEES WERE TRANSPORTING, SKIMMING AND MANUALLY POURING MOLTEN ALUMINUM FROM LADLES INTO MOLDS AND WERE OBSERVED NOT WEARING PERSONAL PROTECTIVE EQUIPMENT INCLUDING COTTON CLOTHING, HEAT RESISTANT CLOTHING, AND/OR FLAME RETARDANT CLOTHING, INCLUDING BUT NOT LIMITED TO, LONG SLEEVE SHIRTS TO PROTECT THEM FROM BURNS.**

CITATION CORPORATION WAS PREVIOUSLY CITED AT ITS MANSFIELD FOUNDRY CORPORATION DIVISION FOR A VIOLATION OF THIS STANDARD OR ITS EQUIVALENT 29 C.F.R. 1910. 132(a), which was contained in OSHA INSPECTION NO, 121977870, Citation 1,

Item 1 ISSUED on 4/13/95 with a final order date of 4/26/95 with respect to a workplace located at Mansfield, OH.

Employer Noncompliance

IH Landes testified in the foundry areas, including the cylinder head department, the permanent mold department, the melt department, and the green sand line, she observed employees transporting, scanning, and manually pouring molten aluminum from ladles into molds. The employees were not wearing appropriate personal protective equipment. Employees were wearing jeans, sweat shirts, safety glasses, steel-toed boots. There were pockets in the shirts. She did not know if the blue jeans were old or new (Tr. 434).¹⁸ She testified that Ex. C-46, photo 1, depicts an employee working in the cylinder head line pouring molten aluminum into molds. He was wearing gloves, safety glasses, jeans, steel-toed shoes with metatarsals and a sweat shirt with a hole under the right arm (Tr. 436; Ex. C-46, p. 2, photos 1 and 2).¹⁹ Ex. C-46, p. 2, depicts an employee wearing boots, a sweat shirts, jeans, gloves, and a protective shield up to his knees (Tr. 436-37). Ex. C-46, p. 2, photo 2 also depicts the same employee with a hat (Tr. 437). Ex. C-46, p. 3, photos 1 and 2 depict employees wearing a long sleeved shirt, gloves, safety glasses, steel-toed boots and a hat. (Tr. 437-38). Ex. C-46, p.4 employee in the green sand line is pouring molten aluminum into molds. He has on a long sleeve shirt, gloves, safety glasses and a hat (Tr. 438).

IH Landes testified that in order to be protected, employees should have been wearing “at least” 100 percent cotton, and that employees should not wear short-sleeved shirts (T-shirts) or clothes with holes in them (Tr. 442-43). She indicated that she relied on the hazard assessment created by the employer, which indicated the type of PPE necessary (Tr. 458-61, Ex. C- 54 and 55). With respect to heat resistant clothing for the cylinder head pourer, this assessment requires “cotton

¹⁸ Q What did you observe employees wearing?

A I observed employees wearing several things from jeans to shirts to sweatshirts to t-shirts, safety glasses, steel toe boots.

Q Any pockets in the shirts?

A There were pockets in shirts yes.

Q With respect to the jeans, do you know if they were new blue jeans?

A They were blue jeans. That's the color they were. They were blue jeans.

Q Do know if they were new or old or worn?

A I don't know if they were new. They could have possibly been old and worn but I don't know if they were new.

¹⁹ The Secretary's witness, Charles Schuldt testified that assuming the alleged hole was not a defect in the photographic process, such a hole would indicate that the sweatshirt was not 100% cotton. When molten metal hits cotton it flakes off. (Tr. 571-72).

or heat resistant clothing.” for the cylinder head pourer (Ex. C-55, p. 3). IH Landes asserted that “cylinder head people” were not wearing this PPE. (Tr. 461). The hazard assessment for a general metal operator or pourer indicated that to protect the feet and legs, such employees should wear “heat resistant clothing.” (Ex. C-54, p. 3). IH Landes stated that she did not observe this PPE in the areas she cited (Tr. 459-60). IH Landes also testified that she reviewed the Respondent’s OSHA 200 logs for 1994-96. These records showed that employees had received burns (Tr. 458; Ex. C-51).²⁰

IH Landes also testified to a telephone conversation she had with Oberdorfer employee Tom Ballard approximately two months before the hearing. (Tr. 462, 473). She stated that Mr. Ballard told her he “always” wore 100 percent cotton clothing, and that he “sometimes” wore clothing that was 50 percent cotton and 50 percent polyester (Tr. 462). She stated that he told her that he wore t-shirts during the hotter months, however, he did not go into “great detail, [h]e just said t-shirts” (Tr. 462-63). She later testified that Mr. Ballard told her that he did not wear arm coverings (Tr. 482). She also testified that she had observed employees pouring molten aluminum in t-shirts during the course of her inspection (Tr. 463).²¹ However, during cross-examination, IH Landes testified that the employee whom she had observed wearing a t- shirt was Mr. Ballard. She stated that this observation occurred at the beginning of the inspection. She could not recall the date and she did not record this observation in her notes, and she did not discuss this observation with anyone (Tr. 470-72). She acknowledged that there were employees wearing the foundry shoes - some with metatarsal guards, and obviously employees wore long sleeve shirts. She acknowledged that she did not ask them if the shirts were cotton (Tr. 486, 489). She later testified that other than Mr. Ballard , she did not recall seeing any other employee wearing short-sleeves. (Tr. 486-87).²² She

²⁰ IH Landes later acknowledged that in her review she assumed that any burn entry was relevant to the PPE citation (Tr. 485). Linda Becker, safety manager for Respondent, reviewed each of the recorded burns for the years 1994-1996 - Ex. C-51(Tr. 1541-1546). She testified that in each instance employees wore PPE, and none of the injuries were the result of an employee wearing improper PPE (Tr. 1547).

²¹ Q During the course of your inspection, did you observe employees wearing t-shirts?

A Yes, I did.

Q Were these employees pouring -- what activities were these employees performing?

A They were pouring molten aluminum.

²² Q You observed once an employee ---

A I didn't say once. I said in the beginning of the inspection.

further explained that the basis for her conclusion that employees did not wear heat resistant clothing was that there was an employee wearing a sweat shirt with a hole under the arm, and the fact the employees were wearing jeans and no protective aprons - in her judgment an apron would be heat resistant. She also based the citation on her observation of Mr. Ballard wearing a short-sleeved shirt and other employees were pouring in sweatshirts (Tr. 488-90). She indicated that she did observe some employee wearing aprons during the course of her inspection (Tr. 510).

Charles Schuldt, who testified for the Secretary with regard to the industry practice with regards to PPE, indicated that at a minimum, 100 percent cotton clothing is required. (Tr. 531-32, 562). He explained that painters are required to wear 100% cotton clothing - long sleeves, gloves and spats. He also explained that when a short sleeve shirt is worn, a protective sleeve is required (Tr. 564). He stated that based on IH Landes' testimony, it was his opinion that Oberdorfer was not in compliance with PPE requirement. However, he indicated that employees may safely wear denim jeans, and a 100 percent cotton long-sleeved shirt (Tr. 571). He indicated that a shirt made of 50 percent cotton and 50 percent polyester would not provide acceptable protection, because the polyester could melt when contacted by molten metal. (572). He also indicated that shirts with pockets may allow molten material to be trapped and burn an employee's chest. Worn jeans would also not be acceptable PPE (Tr. 574).

Permanent Mold Operator Timothy Barnes provided testimony with regard to Respondent's the personal protective equipment policy since his date of hire.²³ He testified that the policy with respect to PPE or protective clothing is that when you were working around metal, you must wear a long sleeve shirt. If you wore a t-shirt, you had to wear long sleeves that went over the t-shirt with Velcro to protect the arms. He has seen Tom wear these in the past. He testified that he always

Q You said there was one observation of an employee without a long sleeve shirt and you identified Mr. Ballard.

A Okay.

Q Did you see any others?

A No, not that I recall.

²³ Counsel for the Secretary objected to this witness's testimony - he was not listed as a witness originally as a witness and his name had not been mentioned by IH Landes. Respondent's counsel represented that this witness would provide testimony regarding PPE which would rebut the compliance officer's testimony (Tr. 1422-23). The undersigned has balanced the two arguments and finds that the PPE testimony which this witness provided is fully accepted. This witness provided relevant evidence essential to Respondent's case. Furthermore, this witness was always available to the Secretary who had photographed him at Ex. C-46(Tr. 1430).

wore flame resistant or retardant clothing. In the past he always wore dickies, long sleeve T-shirt, spats, and gloves. He described a Dickie shirt as one pockets in it, wherein the flap that buttoned down - Ex. C-46, p. 3, is an example of such a shirt. He testified that if a supervisor saw an employee wearing short sleeves, the supervisor would require the employee to put sleeves on. He testified that he had seen Mr. Ballard work in a t-shirt, however, he would have to put sleeves on (Tr. 1427-28, 1432, 1434). He identified himself in Ex. C-46, p. 3, top photo. He identified Mr. Ballard as the employee depicted in Ex. C-46, p.1(Tr. 1430-31).

Linda Becker testified that the PPE policy is 100 percent cotton clothing, long sleeve shirt, in heat resistant clothing. Respondent also purchased a sleeve that attaches with a band to protect an employee's arms. She indicated that if an employee reports to work with improper clothing, a supervisor would provide the employee with sleeves (Tr. 1538-40).

The undersigned finds that the Secretary has failed to sustain her burden of proof with respect to this violation. The undersigned finds that the Secretary's assertions of violative conduct were at times contradictory and at other times inconclusive and uncorroborated. The Secretary's witness initially set forth that she had observed "employees" in a number of departments skimming and pouring molten aluminum who were not wearing appropriate PPE (Tr. 434). However, as the record was developed, these employees were in fact wearing what was commonly accepted in the industry and conformed to Respondent's own hazard assessment which provided for, inter alia, 100% cotton clothing consisting of long sleeve shirts and jeans. The testimony as well as the photographic evidence establishes that employees wore jeans and long sleeve sweat shirts, and sleeves with Velcro attachments were provided for short sleeve shirts. The compliance officer's allegation that she had observed an employee working in a short sleeve shirt at the beginning of her inspection, was by her own admission one which she could not recall any dates, did not record notes or take a photo, or one which she discussed with anyone (Tr. 470-72). The undersigned finds that the lack of corroboration in any form is surprising in view of the abundance of documentation which existed for all other allegations of violative conditions. IH Landes interviewed employees observed and/or working in the cited area with regard to the previously cited violations. Additionally, this short sleeve observation involves the employee, identified as Mr. Ballard, who is depicted in Ex. C-46 with a long sleeve sweat shirt on the date in which the citation states violative observations were made. The undersigned also finds that her description of her first interview with Mr. Ballard which occurred via telephone the two months prior to the hearing is inconclusive with respect to what she

observed the day of the inspection or the Respondent's work practices.. We have only IH Landes' interpretation of that conversation, and her notes do not contain a verbatim recording of said interview. The undersigned also finds that compliance officer's testimony with regard to what Mr. Ballard told her about t-shirts is inconclusive with regard her allegations.²⁴ This testimony is especially inconclusive in light of the testimony of Mr. Barnes and Ms Becker who explained that although t-shirts were permitted, long sleeve attachments were provided to employees. The undersigned finds that Mr. Barnes testimony was very helpful in resolving the issues in this item. His firsthand knowledge of the PPE policy provided support for a finding that a violation was not established. The compliance officer's investigation appeared to have been inconclusive as was apparent in her responses to the questioned posed to her during the hearing. For example, by her own admission she did not ask employees if their shirts were cotton (Tr. 486, 490). Thus, her theory with regard to the origin of the alleged "hole" which is depicted in Ex. C-46, p. 2, is speculative. The record contains no evidence as to its origin or the length of time it was present.

Accordingly, I conclude that the Secretary has failed to sustain her burden of proof. The cited violation is Vacated.

CITATION 3, ITEM 1

29 C.F.R. §1904.2(a) Each employer shall, except as provided in paragraph (b) of this section, (1) maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment; and (2) enter each recordable injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable injury or illness has occurred. For this purpose form OSHA No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions on form OSHA No. 200.

a) OBERDORFER INDUSTRIES, ON OR ABOUT 10/9/96: THE

²⁴ Q Did he tell you when he wore t-shirts?

A Yes, he did. He said that he normally would wear a t-shirt during the hotter months.

Q Did he indicate what months those were?

A Usually July, August and sometimes throughout September. Obviously Syracuse gets cold so that's basically the time frame. He said when it was hot.

Q And with respect to t-shirts, just what are we talking about?

A He said short t-shirts. He just said regular t-shirts. He didn't go into great detail. He just said t-shirts.

FOLLOWING CASES WERE TECHNICALLY MISRECORDED ON THE 1995 AND 1996 OSHA 200 LOGS:

²⁵

- b) OBERDORFER INDUSTRIES, CASES OF DOCUMENTED RECORDABLE HEARING LOSS WERE NOT RECORDED ON THE 1995 AND 1996 OSHA 200 LOGS FOR EMPLOYEES, SUCH AS BUT NOT LIMITED TO, THE FOLLOWING:²⁶**

Employer Noncompliance

IH Landes testified with regard to instance a that in the examples listed below, injuries were technically misrecorded on the 1995 and 1996 Oberdorfer OSHA 200 log (Tr. 138, 142, Ex. C-51). She testified that in the instances listed in instance b, the items were not recorded on the OSHA 200 Log. (Tr. 275). She reviewed Ex. C-56, the results of hearing tests conducted by Oberdorfer (Tr. 142-43). The tests revealed standard threshold shifts of 25 db or greater, which must be recorded in the log (Tr. 144, 275).

Employee Access to the Violative Condition

Review Commission precedent has established that the Secretary need not prove harm to any particular employee resulting from a recordkeeping violation. The Act's recordkeeping requirements "play a crucial role in providing the information necessary to make workplaces safer and healthier." *General Dynamics Corp., Electric Boat Div.*, 15 BNA OSHC 2122, 2131, n.17 (No. 87-1195, 1991), citing *General Motors Corp., Inland Div.*, 8 BNA OSHC 2036, 2040-41 (NO. 76-5033, 1980).

Employer Knowledge of the Violation

IH Landes testified that information concerning how to maintain the logs is readily available to the public (Tr. 145-46). She also testified that instructions on how to maintain the log are printed on the back of the form (Tr. 144-45). As such, the employer could have determined how to properly fill out the form. (Tr. 146).

Classification and Penalty

IH Landes testified that lapses in recording in both instances amounted to significant deficiencies in the OSHA 200 Log. As such, she recommended a penalty of \$1,000 (Tr. 147, 273-75). In view of the fact that the violations would not result in serious physical or death, the

²⁵ See Ex. C-5, pp. 19-20 for the twelve violative instances of cited standard.

²⁶ See Ex. C-5, pp.20-21 for 32 cited violative instances of standard.

conditions were classified as other than serious violation does have a direct and immediate relationship to health and safety. (Tr. 147). The undersigned finds the recommended penalty appropriate in order to achieve the necessary deterrent effect.

CITATION 3, ITEM 3

29 C.F.R. §1910.303(f) Identification of disconnecting means and circuits. Each disconnecting means required by this subpart for motors and appliances shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident. Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident. These markings shall be of sufficient durability to withstand the environment involved.

- a) **CORE ROOM: SAND HEATER PLATFORM, ON OR ABOUT 9/11/96: TWO ELECTRICAL DISCONNECT SWITCHES WERE NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**
- b) **CORE ROOM: DRY SAND ASSEMBLY AREA, ON OR ABOUT 9/12/96: CIRCUIT-BREAKER LIGHTING PANEL - BREAKERS WERE NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**
- c) **CORE ROOM: BEHIND 44 REDFORD MACHINE, ON OR ABOUT 9/16/96: CIRCUIT-BREAKER PANEL ON EAST WALL-FIFTEEN BREAKERS WERE NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**
- d) **PATTERN WAREHOUSE STORAGE AREA, ON OR ABOUT 9/16/96: CIRCUIT-BREAKER PANEL - TWENTY BREAKERS WERE NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**
- e) **PERMANENT MOLD AREA: LARGE TILT MACHINE AREA MEZZANINE AREA, ON OR ABOUT 9/25/96: SIX ELECTRICAL DISCONNECT SWITCHES WERE NOT**

LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.

- f) CYLINDER HEAD LINE: PLATFORM FOR CLAM PUMPS, ON OR ABOUT 9/26/96: SEVEN ELECTRICAL DISCONNECT SWITCHES WERE NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**
- g) CYLINDER HEAD LINE: PLATFORM FOR CLAM PUMPS, ON OR ABOUT 9/26/96: CIRCUIT-BREAKER LIGHTING PANEL-SIXTEEN BREAKERS WERE NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**
- h) SPECIAL METALS AREA: NEAR COMBUSTION AIR BLOWER OR CLAM PUMPS, ON OR ABOUT 9/26/96: FIVE ELECTRICAL DISCONNECT SWITCH ON WEST WALL WERE NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**
- I) FINISHING DEPARTMENT: KNOCKOUT CELLAR, ON OR ABOUT 10/2/96: ONE ELECTRICAL DISCONNECT SWITCH ON WEST WALL WAS NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**
- j) FINISHING DEPARTMENT: NORTH WALL, ON OR ABOUT 10/4/96: CIRCUIT-BREAKER PANEL - BREAKERS WERE NOT LABELED AS TO WHAT THEY CONTROL, EXPOSING EMPLOYEES TO AN ELECTRICAL HAZARD.**

Employer Noncompliance

IH Landes testified that she observed five instances involving unlabeled electrical disconnect switches (disconnecting means) (instances a, e, f, h, I), and five instances involving unlabeled circuit breaker panels and breakers (overcurrent devices) (instances b, c., d, g, j) (Tr. 147-49; Ex C-60 - instances a and b).

Employee Access to the Violative Condition

In each instance, the electrical equipment they were using could unexpectedly be turned off or on by an employee disconnecting or connecting the wrong switch or breaker, because said switches and breakers were not labeled (Tr. 152).

Employer Knowledge of the Violation

IH Landes testified that in each of the instances, Respondent could have observed that the disconnects or breakers were not labeled properly (Tr. 153).

Classification and Penalty

IH Landes testified that employees may be exposed to minor burns should an accident occur (Tr. 153). Thus, she recommend that the violation be classified as other than serious. (Tr. 153-54). She testified that the severity of any possible injury would be minimal, and the probability of such as accident occurring as lesser. The undersigned finds that a penalty in the amount of \$0.00 is appropriate.

Docket No. 97-470²⁷

CITATION 1, ITEM 1

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to THE HAZARD OF BEING STRUCK BY THE LOAD SHOULD THE LOAD SLIP OFF THE HOOK:

- a) **PERMANENT MOLD AREA, ON OR ABOUT 9/25/96: ONE GARDNER DENVER MODEL #75016AA5 AIR CHAIN HOIST ½ TON CAPACITY BEING USED TO MOVE CASTING CATCHER FOR THE WEST GOOSE MACHINE. THE HOIST HAD THE HOOK THROAT LATCH MISSING FROM THE LOAD HOOK.**
- b) **GREEN SAND LINE, 6A SHAKEOUT, ON OR ABOUT 10/02/96: ONE GARDNER DENVER MODEL #75106AA4 AIR CHAIN HOIST 4 TON CAPACITY BEING USED TO SHAKEOUT MOLDS. THE HOIST HAD THE HOOK**

²⁷ Citation 1, Items 18, 20 and 21-Instance d have been withdrawn by the Secretary.

THROAT LATCH MISSING FROM THE LOAD HOOK.

- c) **CORE ROOM, 3RDDRY SANDLINE ASSEMBLY AREA, ON OR ABOUT 09/12/96: ONE GARDNER DENVER MODEL #85016AA5, SERIAL NO. A639003, AIR CHAINHOIST ½ TON CAPACITY BEING USED TO MOVE CORES AND MOLDS. THE HOOK THROAT LATCH WAS BROKEN.**

ABATEMENT NOTE

Among other methods, one feasible and acceptable abatement method to correct this hazard is to install and repair hook throat latches, and follow the requirements of American National Standard for air chain hoists (ANSI/ASME HST-5M-1985).

To establish a violation of Section 5(a)(1), the Secretary must prove that : (1) a condition or activity in the employer’s workplace presented a hazard to employees; (2) the cited employer or the employer’s industry recognized the hazard; (3) the hazard was causing or likely to cause death or serious physical harm; and (4) feasible means existed to eliminate or materially reduce the hazard. *Waldon Healthcare Center*, 16 BNA OSHA 1052 (Nos. 89-2804 and 89-3097, 1993); *Tampa Shipyards Inc.*, 15 BNA OSHA 1533 (Nos. 86-360 and 86-469, 1992); *Kastalon, Inc.*, 12 BNA OSHA 1928, 1931 (Nos. 79-3561 and 79-5543, 1986); *Pelron Corp.*, 12 BNA OSHA 1833, 1835 (No. 82-388, 1986).

Did the Employer Keep the Workplace Free of the Hazard?

CO Rezsnyak testified that he observed a Gardner-Denver air chain host that was “missing” a throat latch on the load hook. (Tr. 331; Ex. C-62 -instance a). He testified that the hook had been initially manufactured with a throat latch, and that there was a hole in the shoulder of the hook where the latch was originally connected (Tr. 1143-44). The hoist was used to move castings in and out of an oven. The castings were placed inside of a casting catcher which was right below the hook.²⁸ CO Rezsnyak testified that the bottom of the mold was suspended at approximately chest

²⁸ Employee David Liedka testified that when a casting is ready to be removed from the mold, the casting catcher is positioned at least one and one-half inches under the casting (Tr. 1294). The casting is then it is ejected from the mold onto the catcher (Tr. 1294-95). The fame of the catcher is a combination of steel pipe, steel plate, and angle iron. The bottom of the caster is solid. The hoist is then lowered to clear the mold, and the casting catcher and caster are transported and lower on to the top of a hopper (Tr. 1295). The casting is then inspected, and loaded onto a palette (Tr. 1296). Employee Liedka estimated bottom of the catcher is approximately three to three and one-half feet off the ground (Tr. 1296).

height (Tr. 831). He testified that including the casting catcher assembly, the total weight was approximately 400 pounds (Tr. 831-32, 834). Exhibit C-62 shows the hoist chain is in the slacken position, with the load supported from underneath (Tr. 837, 839). CO Rezsnyak testified that if the load was pulled back, and then slipped off the hook, it could injure an employee. (Tr.837-38). In his estimation, if the casting and the casting catcher were in motion and fell from the hook, 400 pounds hitting an employee in the chest could cause death (Tr. 835-36).

CO Rezsnyak testified that in instance b, he observed this Gardner-Denver air chain hoist missing a throat latch (Tr. 333). This hook had also been manufactured with a throat latch - there was a hole near the shoulder of the hook designed to receive the pin for the latch (Tr. 1144). Ex. C-63 shows the hook after the throat latch was installed (Tr. 335-36, Ex. C-63). He testified that employees used the hook to suspend molds during the “shake out” process (Tr. 336-37). The bottom of the molds were suspended one and one-half to two feet off the floor, approximately knee height. He testified that when employees were shaking out the mold, they would be adjacent to and part of their bodies would be underneath the mold suspended from the hook the hazard would be being struck by the load. CO Rezsnyak testified that he did not see employees using the hook, but that he spoke with employees who had just finished using it (Tr. 829, 831).

CO Rezsnyak observed the Garner-Denver air chain hoist in instance c with a broken hook throat latch (Tr. 337, 1144-45, Ex. C-64, first photo). The latch was bent, and did not come down inside the hook (Tr. 338-39). CO Rezsnyak testified that he was told the air chain hoist was used to move cores and mold - employees swung them off a line. He testified that he briefly observed this operation (Tr. 834). CO Rezsnyak testified that he was told the weight of the cores was 56 pounds (Tr. 835).

In all instances, the hoists, which were air operated, presented a hazard of employees being struck by the falling load and/or the chain sling, which had detached from the hook during maneuvering of the sling and load because of the lack of the throat latch (Tr. 333, 336, 340). The purpose of the hook throat latch was to ensure that the chain sling holding the load on the hook remained attached even when the chain sling was not taut (Tr. 347-350).

Was the Hazard Recognized?

CO Rezsnyak determined that the hazards were recognized in the industry or by the employer by reviewing the ANSI standards, and by contacting the manufacturer of the hoist (Tr. 343). Review Commission precedent has established that the Secretary may show industry

recognition of a hazard through guidelines such as those published by ANSI²⁹. The Secretary relied on ANSI *Performance Standard for Air Chain Hoist* ANSI/ASME HST-5M-1985. Section 3.4(b) states:

Hooks shall be equipped with latches unless the application makes use of the latch impractical. When required, a latch shall be provided to bridge the opening of the hook for the purpose of retaining slings, chains, etc., under slack conditions.

(Ex. C-66). Section 1.3 of this edition contains a Reference to Other Codes and Standards. Among those listed is ANSI B30.16 Overhead Hoists (Underhung). The Secretary introduced into evidence 1981 edition of ANSI B30-16 - Ex. C-111. At Section 16-1.2.9 it sets forth that “[h]ooks shall be equipped with latches unless the application makes the use of the latch impractical. When required, a latch shall be provided to bridge the throat opening of the hook for the purpose of retaining slings, chains, etc., under slack conditions.” (Tr. 1146). Upon the face of this document there is a notation that it is a revision of ANSI B30 16-1973. ANSI B30.16-1973 - Overhead Hoists was marked as Ex. C-118 at the hearing. This also document contains at Section 16-1.1.2.4 a requirement that “[l]atch type hooks be used unless the use of the latch increases the hazard” .

At the hearing, Ex. C-118 was initially not admitted into evidence. The Respondent argued at trial that this document should not be admitted into evidence because this document contained a clause which exempted employers from compliance where it was shown that hoists manufactured prior to the effective date of the standard could not feasibly or economically be altered and that the hoist substantially complies with the requirements of the Standard. (See Section IV).³⁰ The Respondent successfully argued that is up until the last hour of the trial, it had not been given notice

²⁹ Hazard recognition may be shown by either the actual knowledge of the employer or the standard of knowledge in the employer's industry--an objective test. *Continental Oil Co. v. OSHRC*, 630 F.2d 446, 448 (6th Cir.1980). *See also Inland Steel*, 12 BNA OSHC 1968, 1970, 1971 & n. 4 (No. 79-3286, 1986) (necessity for proof of "a hazard that is recognized as such by the employer" or by "general understanding in the [employer's] industry"). [FN15] Industry standards and guidelines such as those published by ANSI are evidence of industry recognition. *See generally, Cargill, Inc.*, 10 BNA OSHC 1398, 1402 (No. 78-5707, 1982).

Koksing Construction Co. Inc., 17 BNA OSHC 1869, 1873 (No. 92-2596, 1996). *See also Kansas City Power & Light Co.*, 10 BNA OSHC 1417, 1422 (No. 76-5255, 1982)(NFPA)

³⁰ Section IV states that “One year after the date on which this standard becomes effective, all new hoists shall conform to these rules. Hoists manufactured prior to that date should be modified to conform to these rules unless it can be shown that the hoists cannot feasibly or economically be altered and that the hoist substantially complies with the requirements of the Standard.”

that it would have to prepare a defense which required it to show feasibility or economic ability - a requirement was not contained within the 1985 standard. In her Post-Hearing Memorandum, the Secretary has renewed her motion to admit this document into evidence (Secretary's Post-Hearing Memorandum, p. 49, n. 57). The undersigned having reviewed the entire record at this time finds the record contains un rebutted evidence that the cited hooks were manufactured in accordance with a 1979 Parts List (Tr. 843-846; Ex. C-68). Thus, the latches were manufactured subsequent to the effective date of the 1973 standard and the Respondent is not required to demonstrate feasibility or economic ability. The undersigned admits the predecessor standard - Ex. C-118 into evidence .

The undersigned also finds that the record contains unrefuted evidence that throat latches had been provided on the cited hooks, and for abatement purposes the cited hooks were repaired with latches. Thus, the use of a latch was not impractical on these applications (Tr. 335, 345, 358). The undersigned further finds industry recognition of the alleged hazard in light of the fact that the manufacturer's parts lists includes latches for the hooks (Ex. C-68). Thus, establishing a recognition on the part of industry of the hazard which the aforementioned ANSI standards address.

The record also establishes that the employer recognized the hazard presented by the missing latches. Douglas Pomphrey, Oberdorfer facility and environmental manager, testified that the function of the throat latch was to prevent cables from slipping off of the hook (Tr. 1484,1487-88). He acknowledged that the condition depicted in Ex. C-62 (showing the hook with no latch and the casting catcher nearly off the hook) was the slackened condition which a throat latch would prevent (Tr. 1521-22). Robert Wolf acknowledged that he was familiar with the safety latch which appeared in Ex. C-63 (instance a abatement), and that in his experience a hook like this one would normally have a safety latch. He further acknowledged that it was good practice to have this type of latch. He likewise concurred that it would have been good practice to have a latch on the hook cited in instance b (Tr. 1203-04).

Would the Hazard Cause Death or Serious Physical Harm?

CO Rezsnyak testified that in all instances, the hazard presented by the condition was that employees could be stuck by the load carried on the hoist (Tr. 343). The undersigned finds that such an accident would result in employees receiving injuries up to and including death (Tr. 359-60).

Feasibility of Eliminating the Hazard

The undersigned finds that as demonstrated by the abatement of this violation, the throat latch could have been replaced. Exhibit C-63 displays the hook after this installation. (Tr. 358). CO

Rezsnyak also recommended that in order to alleviate any problem keeping the throat latches on the hooks, that the employer “mouse” the hook with wire - wrap heavy wire around the outside of the throat or collar of the hook to prevent the load from jumping off when the hoist is in a slackened position (Tr. 358-59).

- d) FINISHING DEPT., CELL #1 FINISHING LINE, ON OR ABOUT 10/04/96: BELOW-THE-HOOK LIFTING DEVICES USED FOR SUSPENDING CASTINGS HAD FABRICATED HOOKS THAT WERE DAMAGED AND REPAIRED. THE REPAIRED WERE NOT INSPECTED AND TESTED FOR NEW LOAD CAPACITY.**

ABATEMENT NOTE

Among other methods, one feasible and acceptable abatement method to: Prior to initial use after each hook is repaired the hook shall be tested by or under the direction of an appointed person and a written report furnished by such person confirming the load rating of the device per ASME B30.20-1993; and conduct initial, frequent and period inspections of the lifting devices by designated personnel for wear, deterioration or malfunction per ASME B30.20-1993.

Did the Employer Keep the Workplace Free of the Hazard?

CO Rezsnyak recommended this violation because Respondent failed to have custom-made hooks (lifting devices) inspected and tested after they had been repaired or altered - one hook had been repaired and one had been altered. The lifting devices were used to suspend and move castings which weighed approximately 56 pounds (Tr. 340-41, Ex. C-65)³¹. An under the hook lifting device is used to handle castings during pouring and finishing (Tr. 1496). CO Rezsnyak testified that he determined that the device had not been inspected by a designated person (Tr. 346). He testified that Robert Wolf, who was with him when he observed the devices, informed him that they had not been submitted to him for testing (Tr. 359). He also told him that him that he was the person designated person to do testing and to assign capacity to the lifting devices; and that those pictured had not been given to him to be checked since their repair, one had been damaged from use and had not been given to him to re-validated (Tr. 346-47). Robert Wolf testified that at one point, he designed and

³¹ The hook displayed in Ex. C-65 had been repaired with added material (Tr. 342-43).

approved lifting fixtures (Tr. 1204). He further testified that approval was the responsibility of a separate group, the manufacturing engineering group, of which he was not a member (Tr. 1205). CO Rezsnyak testified that he did not observe employees using the equipment, but that he spoke with employee who had just finished using the devices (Tr. 357-58). The record establishes that the hazard in not inspecting these devices is that they could fail because of a defect that was not uncovered because the inspection and testing was not conducted, dropping the castings onto employees who worked below.

Was the Hazard Recognized?

CO Rezsnyak testified that the industry recognized the hazard and he relied on ASME B30.20-1993, Below -the-Hook Lifting Devices. The scope of the standard is confined to “structural and mechanical lifting devices”. Section 20-1.3.1. Section 20-1.3.1(a) states, “[p]rior to initial use, all new, altered, modified, or repaired lifting devices shall be inspected by a designated person to verify compliance with the provisions of this volume.” Section 20.1.4 states that “[p]rior to initial use, all new, altered, modified, or repaired lifting devices shall be tested to ensure compliance with this Standard . . .” (Ex. C-67). Furthermore, Mr. Wolf’s statements with regard to his having been the designated person to perform such testing establishes employer recognition (Tr. 346-47, 359).

Would the Hazard Cause Death or Serious Physical Harm?

CO Rezsnyak testified that in all instances, the hazard presented by the condition was that employees could be stuck by the load carried on the hoist (Tr. 343). The undersigned finds that such an accident would result in employees receiving injuries up to and including death. (Tr. 359-60).

Feasibility of Eliminating the Hazard

The record reveals that the Respondent had a policy of testing repaired and altered hooks (Tr. 346-47).

Penalty - Instances a - d

CO Rezsnyak testified that he recommended that the item be classified as serious. He testified that a possible injury resulting from the condition would be death. He classified the severity of this possible injury as high, and he determined that there was a “greater” probability of an accident occurring (Tr. 360). His assessment of the probability was based mainly on the condition in Instance a, where the chain was in a slack condition, and that the operation was performed up to 30 times a day (Tr. 362). He recommended a penalty of \$5,000.00 (Tr. 360). CO Rezsnyak testified that he did not apply any reduction factors to any of the citation items. As to size, he indicated that

the company employed over 250 employees. No reduction for history was given, because the company had received a serious citation within the past three years. He testified that no good faith reduction was given, because the OSHA operations manual, FIRM, dictates that no such reduction be given where there are violations with high severity and greater probability. (Tr. 371-72, 379) The undersigned is not bound by OSHA's internal policies. The record establishes that the Respondent's attitude toward employee safety and its cooperation during the inspection was indicative of good faith. Respondent put forth great effort in abating the cited conditions, such as hiring outside contractors and requiring maintenance employees to work additional shifts to make corrections (Tr. 1538). Additionally, the Respondent had recognized in June 1996, that there was a need to modernize the facility and was in the planning stages at the time of the inspection (Tr. 1572-73). The Respondent also had taken advantage of a state consulting service and participated in a Occupational Health Hazard Survey in 1995 which included various sampling (Tr. 452-53, 1569-71; Ex. C-45). Respondent's health and safety program included job hazard assessments (Tr. 1539). The undersigned finds that these factors indicate a commitment to safety by Respondent. Accordingly, the undersigned finds that a reduction in penalty in the amount of 15% for good faith would be appropriate, for a penalty of \$4,250.00.

CITATION 1, ITEM 2

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to THE HAZARD OF ~~INRUNNING NIP POINTS/OR~~ BEING CAUGHT BY MOVING BELT:³²

- a) **GREEN SAND DEPT., CONVEYOR SYSTEM CONSISTING OF SEVEN CONVEYORS, OR ABOUT 9/27/97: THERE WERE NOT STOP (PULL) CORDS ALONG THE CONVEYOR SYSTEM IN ACCORDANCE WITH ANSI B20.1-1947, SECTION 11-110lb.**

ABATEMENT NOTES:

Among other methods, one feasible and acceptable abatement method correct this hazard is to install stop cords.

Did the Employer Keep the Workplace Free of the Hazard?

³² This item was amended in the Complaint to delete the portion indicated.

CO Rezsnyak testified that in the green sand department, he observed a seven-conveyor system without stop or pull cords (Tr. 364, 1163-64, 1170).³³ He testified that he saw no convenient means of stopping the conveyors. The conveyors could only be stopped from a remotely located conveyor control center (Tr. 1170). CO Rezsnyak testified that one of the employees told him he walked the length of the conveyors during his shift to check for blockages of sand along the conveyors (Tr. 368-69). He testified that an employee's clothing could have been “grabbed” by the metal lacings that bind together the conveyor belt (Tr. 864-65). Accordingly, CO Rezsnyak defined the hazard as being caught in the moving belt as they walked along the belt conveyor checking for plugs (Tr. 366, 869, 1151). CO Rezsnyak acknowledged that there was no work activity along the belt conveyor other than monitoring the belt in case of spillage (Tr. 869, 871)³⁴.

Was the Hazard Recognized?

In issuing the citation, the Secretary relied on ANSI *Safety Code for Conveyors, Cableways, and Related Equipment*, ASA B20.1-1947. Section 11-1101(b) states:

Convenient means for stopping the motor or engine shall be provided at the operator's station. If the operator's station is at a remote point, similar provisions for stopping the motor or engine shall be provided at the motor or engine location. Emergency stop switches should be provided at all points along the conveyor, where potential hazards exist, and the conveyor shall be arranged so that it cannot be started again until the actuating stop switch has been reset to running or “on” position. Means shall be provided for locking the main switch or clutch to prevent accidental starting.

CO Rezsnyak testified that he learned from Bob Wolf that the conveyor system had been installed in 1947. The instant ANSI standard became effective October 9, 1947. (Ex. C-72, p. 4 of 50). The Secretary introduced into evidence, the ANSI interpretation of the applicability of a particular edition of a B20 standard. The interpretation set forth that “[t]he applicability of a particular edition is related to the time when a specific conveyor is designed, manufactured, and installed.” (Tr. 373;

³³ Exhibit C-71, top photo, is an example of Conveyor G. Exhibit C-71, bottom photo, is an example of conveyor 6-A.

³⁴ There are also devices under the conveyors that keep the belts elevated and taut as the conveyor returns. CO Rezsnyak testified that these devices, called “return idlers” create an in-running nip point (Tr. 866-67, Ex. C-113(a), bottom photo). CO Rezsnyak testified that Oberdorfer was not cited for these nip points because, in his opinion, stop cords would serve to protect employees from this hazard (Tr. 876).

Ex. C-73). CO Rezsnyak also testified that at the time this condition was observed, Lance Taylor was with him, and informed him that at his last place of employment stop cords were along the conveyor system (Tr. 370).³⁵

It is Respondent's position that the Secretary offered no proof to demonstrate that the system was installed after ANSI B20.1 went into effect, and that Respondent did not conclude that the conveyors presented a hazard that required stop cords (Respondent's Post-hearing Memorandum, p. 42). Robert Wolf acknowledged that there were no pull cords on the system (Tr. 1212). He testified that the original green sand system had been purchased from a company in Utica, NY, which had used the system, and it was installed at Oberdorfer in 1947. He testified that the 6-A feed belt was installed in that late 1970's or early 1980's (Tr. 1212-14). Respondent introduced into evidence a document which showed that equipment had been purchased from a company in Utica on September 15, 1947 (Tr. 1500-01; Ex. R-10). The undersigned finds that the Mr. Wolf's testimony in conjunction with the documentation of a sale in mid-September 1947 are sufficient to support the Secretary's assertion that the conveyor system was installed subsequent to October 9, 1947.

Mr. Wolf also testified that prior to his employment with Respondent, he worked for a company which manufacture red green sand molding equipment for foundries, including conveyor systems.³⁶ He testified that he had done on-site installations of these systems at various locations, and he had determined that it was advisable to install stop cords where employees were working , e.g., employees leaning over conveyors to pick up cores and place them in molds. He stated that he had looked at the Oberdorfer conveyors with a view towards stop cords and determined that stop cords were not necessary. He saw no potential danger of individuals being caught in the conveyors (Tr. 1219-21).

The undersigned finds that the alleged the Secretary has failed to prove by a preponderance

³⁵ Lance Taylor testified that he had concurred with CO Rezsnyak's suggestion that stop cords be installed. However, he testified that at that time his experience with the operations of the green sand department was limited to his employment with Respondent; and he had not been previously exposed to the pull cords and had no knowledge of their application (Tr. 1335-36). The undersigned finds that Mr. Lance's explanation of his conversation with CO Rezsnyak reveals that he had no previous work experience in any green sand department and he had no knowledge of the application of stop cords.

³⁶ Mr. Wolf was retired at the time of the hearing. His was employed at Oberdorfer from 1991 to October 1997. He had a previous 15 year employment history with Oberdorfer Foundries from 1971-1986 (Tr. 1193-94, 1214).

of the evidence that the hazardous condition was recognized by either the Respondent or its industry. The undersigned finds that Mr. Wolf's testimony established his familiarity with the cited system and the installation of stop cords in conjunction with conveyor belts. His testimony established that he recommended stop cords along conveyor systems upon which work was performed by employees. He evaluated the instant system and determined that stop cords were not necessary. The referenced standard, ANSI B20.1, provides that stop cords are only "advised" where potential hazards exist. The undersigned finds that this proviso is discretionary and not mandatory. Mr. Wolf's evaluation of the system concluded that there were no potential hazards along the belt which stop cords would address. CO Rezsnyak acknowledged that there was no work station on the conveyor and that no employee performed work which required him to place material onto or off the conveyor (Tr. 871). In view of the above the undersigned finds that the Secretary has failed to establish that the alleged hazard was one which the employer or industry recognized could have been addressed by the installation of stop cords in accordance with ANSI B20.1 and the violative condition is Vacated.

CITATION 1, ITEM 3

29 C.F.R. § 1910.22(a)(1) All places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition.

- a) **PERMANENT MOLD DEPARTMENT, LOADING PLATFORM FOR #5 AND #6 MELTING FURNACES, ON OR ABOUT 9/25/96: PLATFORM WAS LITTERED WITH DEBRIS, I.E., METAL BANDING, WOOD AND METAL PIECES, EXPOSING EMPLOYEE TO TRIPPING HAZARD AND CONTACT WITH FURNACE STRUCTURE.**

Employer Noncompliance

CO Rezsnyak testified that on loading platforms for Nos. 5 and 6 melting furnaces, he observed debris, including metal banding, wood, and metal pieces. He assumed that the metal banding was used to bundle the ingots. He had no idea where the wood originated (Tr. 889-90). It was his opinion that such debris exposed employees to a tripping hazard and contact with the furnace. (Tr. 372; Ex. C-74, page 1). During the inspection, Oberdorfer abated this condition by placing a container on the platform to put the metal bandings and debris. (Tr. 376, Ex. C-74, page 2)

Employee David Liedka identified the material as related to the operation of the furnace. He identified the long items as aluminum ingot, and the smaller items were remelt, risers, and spills that would be remelted to pour castings again. He did not see anything on the platform that was not related to the operation of the melt furnace. He identified the wooded object as the palette on which remelt risers and spills may come in on. The palette stayed there until the next load goes up (Tr. 1288-89). On cross-examination, Mr. Liedka acknowledged that the black banding was not used in the furnace, and that there were at least 30 minutes or a couple of hours between melts in the furnace - it depended upon the metal needs at a particular time (Tr. 1304).

The undersigned finds that in view of the fact that an employee had just completed loading the furnace and the cited materials were left in the condition observed, the standard is applicable. The record establishes that the materials were left on the platform after the employee had completed his tasks (Tr. 377. 892). Thus, there was debris on the loading platform. The cited condition was violative of the instant standard .

Employee Access to the Violative Condition

CO Rezsnyak testified that employees stand on the platform and load ingots into the furnace. The furnace, which could reach a temperature of 600 degree Fahrenheit, was loaded approximately 15 times per day (Tr. 376-77). CO Rezsnyak indicated that he spoke with the area supervisor, who told him that an employee had just finished charging the furnace (Tr. 377, 892). This condition presented a tripping hazard to the employee while loading the furnace as well as to the next employee who accessed the platform once the furnace was loaded.

Employer Knowledge of the Violation

The record established that the violation was in plain view (Tr. 378).

Penalty

CO Rezsnyak testified that if an accident were to occur, an employee could receive severe second degree burns (Tr. 377-78). He assessed the severity of the possible injury as “medium,” and the probability of such an accident occurring as “greater.” His assessment of probability was based on the tripping hazard caused by the debris, as well as the absence of any protection between the end of the platform and the furnace structure. He recommended that the item be classified as serious, and with an unadjusted penalty of \$3,500.00 (Tr. 378). The undersigned finds that a penalty in the amount of \$2, 975.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 4

29 C.F.R. §1910.23(c) "Protection of open-sided floors, platforms, and runways." (c) (1)Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a toeboard wherever, beneath the open sides,

- a) **FINISHING DEPARTMENT, SIX FOOT BLASTER, ON OR ABOUT 10/4/96: EMPLOYEE ACCESSES TOP OF GRIT BLASTER APPROXIMATELY 7 FEET 3 INCHES ABOVE CONCRETE FLOOR TO CLEAN OUT HOOPER, NO RAILINGS PROVIDED ON OPEN SIDES.**

Employer Noncompliance

CO Rezsnyak testified that he observed this six foot grit blaster in the finishing department. He testified that an employee accessed the top of the grit blaster, approximately 7 feet 3 inches above the floor, in order to clean out a hopper. He observed that there were no railings on the open sides (Tr. 380-81, Ex. C-75, page 1). In order to perform this task, an employee climbed up a ladder where he had to step over a 16 inch high air inlet. CO Rezsnyak opined that an employee could catch his foot on the inlet and fall (Tr. 895). The undersigned finds that the cited area was a working space which was elevated above the surrounding floor, and thus, the instant standard is applicable and noncompliance has been established.

Employee Access to the Violative Condition

CO Rezsnyak testified that employees accessed the top of the grit blaster approximately three time per week (Tr. 383). He did not observe an employee cleaning the screen, but testified that he spoke with the employee who performed this operation (Tr. 896-97). Douglas Pomphrey, facility and environmental manager, testified that he would be "surprised" if this operation occurred once a day, and the task took less than five minutes. (Tr. 1503-04). The undersigned finds that the information which CO Rezsnyak obtained from the employee who performed the task was more accurate with regard to the frequency of this operation.

- b) **MAINTENANCE PLATFORM, HYDRAULIC PUMPS FOR ROCKETS, ON OR ABOUT 9/26/96: WEST SIDE OF PLATFORM, BI RAILINGS PROVIDED. EMPLOYEES ACCESS THIS PLATFORM TO MAINTAIN HYDRAULIC**

PUMPS AND ELECTRICAL MACK VALVES. HEIGHT OF PLATFORM ABOVE CONCRETE FLOOR IS 8 FEET 2 INCHES.

Employer Noncompliance

CO Rezsnyak testified that he observed a maintenance platform without a railing on the west side of the platform. Employees accessed the platform to maintain hydraulic pumps and electrical mach valves (Tr. 383). The platform was 8 feet 32 inches above the floor (Tr. 384, Ex. C-75, page 2). The undersigned finds that the cited area was a working space which was elevated above the surrounding floor, and thus, the instant standard is applicable and noncompliance has been established.

Employee Access to the Violative Condition

CO Rezsnyak testified that he talked to at least one employee, Richard Tucci, who accessed the platform (Tr. 898-99). CO Rezsnyak testified that employee Tucci told him he accessed the area as needed, and that he had been in the area “frequently within the last week” in response to pump malfunctions (Tr. 900).

- c) **FINISHING DEPARTMENT, 9 FOOT GRIT BLASTER, ON OR ABOUT 10/4/96: EMPLOYEE ACCESSES TOP OF GRIT BLASTER APPROXIMATELY 5 FEET ABOVE CONCRETE FLOOR TO CLEAN OUT HOPPER. NO RAILINGS PROVIDED ON OPEN SIDES.**

Employer Noncompliance

CO Rezsnyak testified that he observed a grit blaster in the finishing department that employees accessed to clean out the hopper. The area was approximately five feet above the floor, and had no railings on the open sides (Tr. 385, Ex. C-75, page 3). The undersigned finds that the cited area was a working space which was elevated above the surrounding floor, and thus, the instant standard is applicable and noncompliance has been established.

Employee Access to the Violative Condition

CO Rezsnyak testified that as a result of speaking with employees who performed the task, he learned that employees accessed this area three times weekly (Tr. 385, 901).

- d) **GREEN SAND DEPARTMENT, TOP OF SURGE HOPPER FOR MULLER, ON OR ABOUT 9/27/96: SOUTHSIDE OF**

**SURGE HOPPER PLATFORM, NO RAILINGS PROVIDED.
EMPLOYEE ACCESSES PLATFORM TO DISLODGE SAND
THAT HANGS UPON SIDE OF HOPPER.**

Employer Noncompliance

CO Rezsnyak testified that he observed no railings on the south side of the surge hopper platform. Employees accessed the platform to dislodge sand from the side of the hopper (Tr. 385-86, Ex. C-75, page 4). The undersigned finds that the cited area was a working space which was elevated above the surrounding floor, and thus, the instant standard is applicable and noncompliance has been established.

Employee Access to the Violative Condition

CO Rezsnyak testified that employee Ed Llera told him he accessed the platform three times a day to clean out pugs so that the sand could keep flowing (Tr. 902). At the hearing, Mr. Llera testified that the frequency which the sand was dislodged from the top of the muller depended upon the particular job. At most, they would knock the sand free was once a week on one job, and thereafter once every two or three months (Tr. 1394-95). The Secretary did not present any rebuttal evidence. The undersigned having observed the demeanor of the employee finds that his testimony at the time of the hearing was credible. The undersigned finds that this testimony establishes employee exposure.

- e) **GREEN SAND DEPARTMENT, ELECTRICAL PANELS MOUNTED ON WEST WALL UNDERNEATH 6A FEED BELT, ON OR ABOUT 9/27/96: PLATFORM USED BY EMPLOYEES TO ACCESS ELECTRICAL PANELS RAILINGS WERE MISSING FROM SOUTH SIDE.**

Employer Noncompliance

CO Rezsnyak testified that he observed a platform used to access electrical panels that was missing railings on the south side (Tr. 386-87, C-75, page 5). The platform was approximately 14 feet above the floor (Tr. 387). The undersigned finds that the cited area was a working space which was elevated above the surrounding floor, and thus, the instant standard is applicable and noncompliance has been established.

Employee Access to the Violative Condition

CO Rezsnyak testified that an employee would travel in the area to turn on or off breakers,

or to replace lights or light fixtures in the foundry area (Tr. 387-88). He testified that it had been explained to him that the electrical panels were for the lighting circuits in the foundry, and that “the employee” told him that the electrical panels were accessed when bulbs or fixtures needed to be replaced (Tr. 905). The undersigned finds that this testimony established employee exposure.

Employer Knowledge of the Violation

The record establishes that in each instance the violative conditions were in plain view (Tr. 389).

Penalty

CO Rezsnyak testified that in Instances c and d, an accidental fall could result in fractures, and in Instances a, b, and e, a fall could result in death (Tr. 389). He classified the severity of the possible injury as high, and the probability of such an injury occurring as “greater.” (Tr. 390). He recommended that the item be classified as serious, and that a penalty of \$5,000 be assessed (Tr. 389-90). The undersigned finds that in view of the frequency of exposure, the probability should reflect a “lesser” finding, thus, the gravity based penalty would be assessed at \$2,500.00. The undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 5

29 C.F.R. §1910.27(b)(1)(ii) The distance between rungs, cleats, and steps shall not exceed 12 inches and shall be uniform throughout the length of the ladder.

- a) **CORE ROOM, ON OR ABOUT 9/11/96: THE VERTICAL LADDER TO MAINTENANCE PLATFORM FOR SAND DELIVERY SYSTEM HAD A DISTANCE TO THE FIRST RUNG ABOVE THE FLOOR OF APPROXIMATELY 20 INCHES. LADDER IS USED ONCE PER MONTH BY EMPLOYEES TO LUBRICATE BEARINGS.**

Employer Noncompliance

CO Rezsnyak testified that the distance between the floor and the first rung of the vertical ladder to the maintenance platform for the sand delivery system was approximately 20 inches (Tr. 390, C-76). He testified that the problem was an employee being used to a certain spacing from rung to rung and then unexpectedly finding a longer reach at the bottom of the ladder (Tr. 911, 392-93). Respondent concedes the existence of the violation (Respondent’s Post-Hearing Memorandum,

p. 47).

Employee Access to the Violative Condition

CO Rezsnyak testified that employees climbed the ladder once a month to lubricate bearings on the sand delivery system (Tr. 392)

Employer Knowledge of the Violation

The record establishes that the violation was in plain view (Tr. 393).

Penalty

CO Rezsnyak testified that an employee could be injured descending the ladder, resulting in a strain or sprain (Tr. 392-93). He recommended that the item be classified as serious. He also testified that the possible injury would be of a low severity, and the probability of an accident occurring would be "lesser" (Tr. 394). The undersigned finds that based upon these gravity findings and the minor type of injury expected, that the evidence does not establish a substantial probability that death or serious physical harm could result from this violation. Accordingly, the undersigned finds that the violation is an other than serious violation. In light of the remaining penalty factors enumerated in Section 17(j) of the Act, a penalty in the amount of \$0.00 is appropriate.

CITATION 1, ITEM 6

29 C.F.R. §1910.27(c) "Clearance": (1) "Climbing side." On fixed ladders, the perpendicular distance from the centerline of the rungs to the nearest permanent object on the climbing side of the ladder shall be 36 inches for a pitch of 76 degrees, and 30 inches for a pitch of 90 degrees (fig. D-2 of this section), with minimum clearances for intermediate pitches varying between these two limits in proportion to the slope, except as provided in subparagraphs (3) and (5) of this paragraph.

- a) **GREEN SAND DEPARTMENT, TOP OF MULLER, ON OR ABOUT 9/27/96: VERTICAL LADDER TO HEX SCREEN PLATFORM FROM "O" BELT HEAD PULLEY PLATFORM HAD ONLY EIGHT INCHES OF CLEARANCE FROM LADDER RUNG TO EDGE OF STEEL HOPPER.**

1. Employer Noncompliance

CO Rezsnyak observed a vertical ladder providing access to the hex screen platform with only eight inches of clearance from the bottom ladder rung to the edge of the steel hopper. The hazard was that employees could strike against or step into the hopper as they descended the ladder (Tr. 395, 398; Ex. C-77, page 1). He indicated that employees could have been protected if the

ladder or the hopper were moved (Tr. 406). Employee Ed Llera testified that he did not use the bottom rung on the ladder. In response to questions from Respondent's attorney, he indicated that this was because the first step was too low, and not because the hopper was in his way (Tr. 1417, 1419-20). In response to the Secretary's questions, he testified that employees could use only part of the step because the hopper was in the way of the rest of it. The undersigned finds that cited ladder did not meet the clearance requirements of the instant standard. Thus, the standard is applicable and noncompliance has been established.

Employee Access to the Violative Condition

CO Rezsnyak testified that an employee told him used the ladder two or three times a day (Tr. 406). This employee, Mr. Llera testified that the frequency of the use of the ladder depended upon the job. He experienced a job where the ladder was used once a week, and in another job it was used once every two months (Tr. 1394-95).

- b) CORE ROOM, SOUTH SIDE OF SOUTH OVEN, ON OR ABOUT 9/12/96: VERTICAL LADDER USED AS ACCESS TO TOP OF SOUTH OVEN HAD THE CLEARANCE ON THE CLIMBING SIDE REDUCED TO LESS THAN 30 INCHES BY ANOTHER PLATFORM PROJECTING INTO THE CLEARANCE SPACE.**

Employer Noncompliance

CO Rezsnyak testified that the vertical ladder used to access the top of the south oven had the clearance space reduced to less than 30 inches by another platform projecting into the clearance space (Tr. 395; C-77, page 2). CO Rezsnyak testified that an employee could strike his shoulder or something on the platform as they are climbing the ladder (Tr. 399). During the inspection, the ladder was removed (Tr. 399-400, 915; C-77, page 2, bottom photo). CO Rezsnyak testified he was told that employees could access the hopper from another side, or with a portable ladder (Tr. 915-16).

Employee Access to the Violative Condition

CO Rezsnyak testified that he was told the ladder was used as needed for maintenance purposes - possibly once a month (Tr. 406, 916-17).

Employer Knowledge of the Violation

The record establishes that the violations were in plain view (Tr. 407).

Penalty - Instances a - b

CO Rezsnyak testified that the potential injury in both instances was fractures, and determined that the severity of injury was medium (Tr. 407). He determined that the probability of an accident occurring was greater - instance a, the edge of the hopper was only eight inches from the edge of the ladder; instance b, the clearance was reduced 6 ½ inches by 17 inches due to the projecting platform (Tr. 407-08). In light of expected injury, he classified the violations as serious, and recommended a penalty of \$3,500.00 (Tr. 407). The undersigned finds that a penalty in the amount of \$2, 975.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 7

29 C.F.R. §1910.36(b)(4) In every building or structure exits shall be so arranged and maintained as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building shall be installed except in mental, penal, or corrective institutions where supervisory personnel is continually on duty and effective provisions are made to remove occupants in case of fire or other emergency.

- a) OIL STORAGE ROOM, ON OR ABOUT 9/27/96: EXIT DOOR ON WEST WALL DID NOT OPEN FREELY (WEDGED AGAINST FRAME).**

Employer Noncompliance

CO Rezsnyak testified that the cited exit door was wedged against the frame, and did not open freely (Tr. 409). He determined that the door was an exit based upon an evacuation plan posted on the west wall of the room (Tr. 410). He further clarified that the door was not obstructed in any manner. However, it took several pushing attempts (three) to open it (Tr. 924). Robert Wolf and Don Alexander assisted in this effort to open the door (Tr. 410, 923). Mr. Wolf testified that the door was snug due to age and opened with some difficulty. He testified that he and Mr. Alexander reached over and gave the door a push with their hands (Tr. 1226-27). Linda Becker testified that CO Rezsnyak told her that the door was jammed, and that she pushed the door open with her shoulder (Tr. 1548-49).

The cited standard sets forth the general requirements for means of egress from the areas in which employees work. There is no dispute that the instant exit door was unobstructed. The issue here is whether the effort required to open the door violated the term “free”. The plain meaning of

the word “free” includes not being hampered or restricted in its normal operation; and not confined to a particular position. *Webster’s New Collegiate Dictionary* 453 (1979). The undersigned finds that the exit was not in a condition which hampered or restricted its normal function. The undersigned finds that the act of pushing of the door hampered or restricted the normal act of turning the door knob to open the door, and had a negligible relationship to employee safety. Accordingly, the undersigned finds that there was no direct or immediate relationship to employee safety or health and that it would be inappropriate to impose a penalty or the entry of an abatement order. These findings support a de minimis classification.

Employee Access to the Violative Condition

CO Rezsnyak testified that employees enter the storage room three time a week to obtain materials (Tr. 409).

Employer Knowledge of the Violation

CO Rezsnyak testified that the Respondent could have known of this condition had they checked the exit door to make sure that it opened freely (Tr. 410).

CITATION 1, ITEM 8

29 C.F.R. §1910.37(q)(1) Exits shall be marked by a readily visible sign. Access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants.

- a) **OIL STORAGE ROOM, ON OR ABOUT 9/27/96: WEST WALL, A DOOR DESIGNATED AS AN EXIT BY COMPANY’S EMERGENCY EXIT PLAN WAS NOT MARKED WITH A READILY VISIBLE SIGN.**

Employer Noncompliance

CO Rezsnyak observed that the cited door was not marked with a readily visible exit sign. The door was designated as an exit in Oberdorfer's emergency exit plan (Tr. 411, See also Citation 1, item 7). Respondent argues, based on a March 26, 1985 OSHA interpretation letter Ex. R-8, p.33, that exit signs are not required were the room is square with windows to the outside and no partitions (Respondent’s Post-Hearing Memorandum, p. 50). Linda Becker testified that the dimensions of the room are 40 ft. by 20 ft., and there are windows on two walls. (Tr. 1548).

There is no dispute that the exterior door was not marked with an exit sign. The undersigned finds that OSHA’s standard is clear and unambiguous in its requirement that “exits shall be marked

by a readily visible sign”. The standard does not provide an exception based upon the physical layout of a room.

Employee Access to the Violative Condition

CO Rezsnyak testified that employee accessed the oil storage room three times a week (Tr. 412).

Employer Knowledge of the Violation

The record establishes that the violation was in plain view (Tr. 413).

Penalty

CO Rezsnyak testified that if an accident were to occur, employees could be exposed to smoke inhalation (Tr. 412-13). He assessed the severity of the possible injury as low, and the probability of an injury occurring as lesser (Tr. 413). The undersigned finds that the record does not establish a substantial probability of death or serious harm. The undersigned finds that the violation was other than serious. This classification is appropriate in light of the low gravity findings and the fact that the storage room was approximately 20 feet by 30 feet with no partitions and windows to the east and north sides of the room, and a window on the door which was on the west side of the room (Tr. 1548). In light of the low probability finding, and the remaining penalty factors enumerated in Section 17(j) of the Act, a penalty in the amount of \$0.00 is appropriate.

CITATION 1, ITEM 9

29 C.F.R. § 1910.106(e)(6)(ii) "Grounding." Class I liquids shall not be dispensed into containers unless the nozzle and container are electrically interconnected. Where the metallic floor plate on which the container stands while filling is electrically connected to the fill stem or where the fill stem is bonded to the container during filling operations by means of a bond wire, the provisions of this section shall be deemed to have been complied with.

- a) **FLAMMABLE STORAGE ROOM, ON OR ABOUT 9/16/96:
EMPLOYEES WERE DISPENSING FLAMMABLE LIQUIDS
SUCH AS PARASPRAY, SOLVENT 99 AND NITROSEL
CORE CEMENT INTO PORTABLE CONTAINERS WITH NO
MEANS OF ELECTRICALLY INTERCONNECTING THE
NOZZLE AND THE PORTABLE CONTAINER PROVIDED.**

Employer Noncompliance

CO Rezsnyak testified that he observed 55 gallon containers Class I liquids - Paraspray,

solvent 99, and nitrocel core cement in the flammable storage room. Employees would enter the room and dispense liquid from the 55-gallon containers into portable containers. The nozzle and the portable containers were not electrically bonded (Tr. 415). Each of these drums were in the vertical dispensing position, with a dispensing nozzle attached (Tr. 925). He determined the identity of the materials by speaking with the affected employee and the manager of the department. (Tr. 416)

CO Rezsnyak testified that bonding jumpers could have been connected between the large and the portable containers (Tr. 417). He observed a sign in the room mandating bonding between containers. He stated that Robert Wolf told that him there were bonding wires in the room at one time, but they had since disappeared (Tr. 417-18). The bonding wires had alligator clips at both ends. One clip was attached to the drum, and the employee attached the other clip to the container he was filling (Tr. 928).

Employee Access to the Violative Condition

CO Rezsnyak testified that he observed an employee filling a container and was told that materials were dispensed daily (Tr. 416).

Employer Knowledge of the Violation

CO Rezsnyak testified that the violation was in plain view, and materials were poured there daily. The Respondent had a sign in the area which mandated that bonding be used, and at one time there had been bonding clips in the room (Tr. 417-19).

Penalty

CO Rezsnyak testified that in the absence of bonding, the static discharge from the flowing flammable liquids could cause a fire. Based on the possible injury of severe burns, he assessed the severity of the possible injury as high. He determined that there was a “lesser” probability of such an accident occurring, because there was an ventilation fan in the room, as well as a sprinkler (Tr. 420). He classified the violation as serious, and recommended a penalty of \$2,500.00 (Tr. 419). The undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 10 - OTHER THAN SERIOUS

29 C.F.R. §1910.137(b)(2)(xii) The employer shall certify that equipment has been tested in accordance with the requirements of paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of this section. The certification shall identify the equipment that passed the test and the date it was tested.

- a) **TRANSFORMER SUBSTATION, ON OR ABOUT 10/9/96:
ONE PAIR OF RUBBER INSULATING GLOVES WORN BY
EMPLOYEE WHILE WORKING WITHIN 12 KV
SUBSTATION.**

Employer Noncompliance

CO Rezsnyak testified that he observed a pair of rubber insulating gloves used in the 12,000 volt transformer station. He inquired when the gloves were last tested, and was not provided with any indication that the gloves had been tested within the last six months (Tr. 421, 1175, Ex. C-68).

Employee Access to the Violative Condition

CO Rezsnyak testified that one of the exposed employees, Earl Wicks, told him that he wore the gloves in the condition observed when he went inside the transformer substation with the electrician, Robert Tucci, to assist him (Tr. 422, 929-30).³⁷ Richard Tucci testified that he told CO Rezsnyak that he used his own gloves, which he had certified every year by Niagara Mohawk (Tr. 1370-71).

Employer Knowledge of the Violation

CO Rezsnyak testified that Respondent should have known of the violation in that the gloves were purchased by from a reputable supplier and they had a copy of the OSHA standard on site, and a reasonable employer would know that the gloves must be tested. (Tr. 423)

Penalty

The standard was amended to an other than serious violation. The Secretary recommends an amended penalty of \$0.00 (Secretary's Post-Hearing Memorandum, p. 66-67). In view of the fact that it is essentially a recordkeeping violation, the proposed penalty \$0.00 is appropriate.

CITATION 1, ITEM 11

29 C.F.R. §1910.212(a)(1) Types of guarding. One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are-barrier guards, two-hand tripping devices, electronic safety devices, etc.

- a) **METAL SHOP, ON OR ABOUT 9/20/96: ONE LEBLOND
METAL TURNING LATHE, THE ROTATING CHUCK WAS**

³⁷ Mr. Wickes testified that he is a maintenance technician who is authorized to do some electrical work after the power is turned off (Tr. 1472).

NOT GUARDED TO PREVENT ACCIDENTAL EMPLOYEE CONTACT. EMPLOYEES APPLY CUTTING OIL BY SPRAY OR BRUSH WHILE CHUCK IS ROTATING.

- b) METAL SHOP, ON OR ABOUT 9/20/96: ONE SOUTHBEND METAL TURNING LATHE WITH A 6 INCH DIAMETER CHUCK, ROTATING WAS NOT GUARDED TO PREVENT ACCIDENTAL EMPLOYEE CONTACT. EMPLOYEE APPLY CUTTING OIL BY SPRAY OR BRUSH WHILE CHUCK IS ROTATING.**
- c) MOLD AND DIE DEPARTMENT, ON OR ABOUT 9/20/96: ONE LEBLOND METAL TURNING LATHE WITH AN 8 INCH DIAMETER CHUCK, ROTATING CHUCK WAS NOT GUARDED TO PREVENT ACCIDENTAL EMPLOYEE CONTACT. EMPLOYEES APPLY CUTTING OIL WITH A BRUSH.**
- d) METAL LAB, ON OR ABOUT 10/8/96: ONE EMCO METAL TURNING LATHE WITH A 5 INCH DIAMETER CHUCK, ROTATING CHUCK WAS NOT GUARDED TO PREVENT ACCIDENTAL EMPLOYEE CONTACT.**

Employer Noncompliance

CO Rezsnyak testified that all four lathes cited in Citation 1, Item 11 operated in essentially the same manner, but the size of the chucks varied. CO observed only the lathe cited in instance a in operation - where he observed a turning lathe in the metal shop. The 12- inch diameter rotating chuck was not guarded to prevent accidental employee contact (Tr. 957-58). In instance b, he observed a metal turning lathe with a 6- inch diameter (Tr. 612). In instance c, he observed the turning lathe with an 8-inch diameter chuck. Employees turn metal pieces in the chuck and apply cutting oil by brush (Tr. 613; Ex. C-79, p. 3). In instance d, he observed the metal turning lathe with a 5-inch diameter chuck. In all instances employees applied cutting oil by spray or brush while the chuck was rotating (Tr. 609-11, 613, 614; Ex. C-79).³⁸ He determined that in each instance

³⁸ The compliance officer explained that the chuck was smooth, but projecting devices that lock pieces into the jaws of the chuck presented a hazard (Tr. 945-46). Cutting oil is applied where the cutting tool meets the part to dissipate the heat generated when a piece is machined (Tr. 947,

employees were exposed to the hazard of an inadvertent placement of hands or other parts of the body into jaws of the unguarded area (Tr. 622, 945-46). A guard was installed during the course of the inspection. (Tr. 614-15, Ex. C-79, page 4). The undersigned finds that the compliance officer's observations establish that there were exposed rotating parts.

Employee Access to the Violative Condition

CO Rezsnyak testified that employees may be exposed to the unguarded chuck when they apply cutting oil by spray or brush while the chuck was rotating (Tr. 609, 946). He learned that employee exposure occurred daily on an as needed basis (Tr. 612, 613, 616). When applying the oil by spray, an employees hands would not be closer that one foot from the rotating chuck. (Tr. 947-48). CO Rezsnyak never observed the use of a brush to apply the oil, but testified that the handle of the brush was approximately six inches long, and the total length of the brush was approximately nine inches long (Tr. 950-55). In instance a he estimated that there was a distance of almost one foot between the employee's hand and the chuck as he applied oil with a sprayer brush (Tr. 947-48, 1182). CO Rezsnyak estimated that when using the brush, an employees hand may be from three to eight inches from the rotating chuck. He testified that when using the spray, there would be no reason to get closer than one foot (Tr. 948).

Respondent asserts that whole operating the lathe's controls, the employee has no need to be exposed to the rotating chuck. Oberdorfer tool and design manager, Craig Chesbro testified that the operator stands behind the tool, where the controls are located. As such, the operator is not exposed to the rotating chuck, located approximately two feet away (Tr. 1346-47). He testified that two employees work in the metal shop where the operation involves a turning of an individual part for a mold or a brushing for a part. These two employees are highly skilled journeymen pattern makers (Tr. 1342). He also testified that if an employee were to apply oil with a brush, his or her hands would be three inches from the piece being machined, not the rotating chuck (Tr. 1356). He indicated that the oil spray is automatically air-feed, and is not hand held(Tr. 1356-57).

The undersigned finds that while the skill of the employees and the two foot distance may lessen the probability of the occurrence of an injury, these factors do not negate an inadvertent exposure to unguarded moving parts.

3. Employer Knowledge of the Violation

The record establishes that all the violations in this citation item were in plain view (Tr. 624).

- e) **GREEN SAND DEPT., TOP OF 9/25/96: CONVEYOR SYSTEM HEAD PULLEY OR O BELT, INGOING NIP POINT WAS NOT GUARDED IN ACCORDANCE WITH ANSI B20.1 - 1976, SECTION 6.01.1.1. EMPLOYEE PASSES BY THE HEAD PULLEY WHILE THE BELT IS RUNNING TO CHECK HEX SCREEN WHEN SAND IS NOT COMING DOWN ON REST OF CONVEYOR BELT SYSTEM.**

Employer Noncompliance

CO Rezsnyak testified that he observed an unguarded head pulley belt on the green sand belt conveyor system. He indicated that employees pass by the head pulley belt to check the hex screen (Tr. 616-17, Ex. C-79, page 5). An in-running nip point was created where the conveyor belt went over the head pulley (Tr. 617, 625). CO Rezsnyak recommended that the nip point could have been guarded using a solid guard where the “O” belt comes over the conveyor roller (Tr. 623-24). This condition created a hazard of being caught by the nip point of the belt.

Employee Access to the Violative Condition

CO Rezsnyak testified that when sand plugs up the system, employees walk by the moving belt to check the hex screen. Employees also check a hopper that the belt discharges into. When checking the hopper or the conveyor, CO Rezsnyak testified that employees come within 12 inches of the nip point (Tr. 617). Employee Ed Llera testified that normally the hex screen is cleaned once every two months. He indicated that during one large job, they had to remove backs-ups once a week (Tr. 1393-94). This large job was last run in March of 1996. (Tr. 1394, 1659-61, Ex. R-13).³⁹ He further stated that “[r]ight up until they shut down the green sand...[they would go up and clean the off the hex screen] maybe once every two months.” (Tr. 1395).

Employer Knowledge of the Violation

The record establishes that all the violations in this citation item were in plain view. (Tr.

³⁹ Respondent argues that in light of the fact that the citation states that the violation occurred on September 25, 1996 and March 15, 1996, was the last time the job Mr. Llera described ran, the citation was not timely and was barred (Respondent’s Post-Hearing Memorandum, p. 56). This argument is without merit. Commission precedent has held that the Act does not preclude the Secretary from alleging any violation so long as the citation is issued within six months of when the Secretary discovers the violative condition; and the Secretary has authority to issue a citation for an unsafe condition that OSHA discovers during an inspection made more than six months after its creation or occurrence. *Safeway Store No. 914*, 16 BNA OSHC 1504, 1508 (No. 91-373, 1993) ; *Johnson Controls, Inc.*, 15 BNA OSHC 2132, 2135 (No. 89-2614, 1993).

624).

Penalty - Instances a - d

CO Rezsnyak recommended that the item be classified as serious, based on the possible injury of fractures caused by being pulled into the turning lathes or the belt (Tr. 624-25). He assessed the severity of this injury as “medium,” and the probability of such an accident occurring as “greater”. The undersigned finds that in light of the evidence presented with respect to employee exposure, the probability of the occurrence of an accident was “lesser”. These findings result in a gravity based penalty of \$2,000.00. The undersigned finds that a penalty in the amount of \$1,700.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 12

29 C.F.R.§1910.212(A)(5) Exposure of blades. When the periphery of the blades of a fan is less than seven (7) feet above the floor or working level, the blades shall be guarded. The guard shall have openings no larger than one-half (½) inch.

- a) **CORE ROOM, CORE FINISHING DEPARTMENT, ON OR ABOUT 9/19/96: ONE FAN USED BY EMPLOYEE TO MOVE HOT AIR OUT OF WORK AREA. OPENINGS IN FAN BLADE GUARD MEASURED 1 1/4 INCHES BY 5/8 INCH.**

Employer Noncompliance

CO Rezsnyak observed a fan in the core finishing room used by employees in the area to cool the room. The fan was on the floor and at working level, less than seven feet above the floor. He testified that the openings in the in the fan guard measured 1¼ inches by e of an inch (Tr. 626-27, Ex. C-82). The fan blade was 1½ from the metal guarding. These findings establish a violation of the standard.

Employee Access to the Violative Condition

CO Rezsnyak testified that there was an employee, whom he questioned, who used the fan was exposed to this condition. At times, the employee stood in front of the fan (with his back to the fan) while performing his duties (Tr. 628). When he made his observations, the fan was plugged in (Tr. 628-29). Ex. C-82 depicts the employee standing with his back to the fan. CO Rezsnyak testified that this reduced the probability of an accident occurring (Tr. 970-71). He conceded that only an employee's pinkie would fit through the opening (Tr. 968-69).

Employer Knowledge of the Violation

The record established that the violation was in plain view, and with the exercise of reasonable diligence the Respondent would have known of the cited condition (Tr. 629).

Penalty

CO Rezsnyak testified that employees would be exposed to the potential injury of amputation (Tr. 628). The undersigned finds that in view of the fact that the employee worked with his back to the fan, and the openings limited exposure to at most the pinkie finger, the expected injury would not be amputation. CO Rezsnyak determined that the probability of the occurrence of injury was lesser in view of the fact that the employee worked with his back to the fan and the openings limited to a great degree how much of the body could get in to the fan (Tr. 630. 969). The undersigned finds that these findings support a finding of other than serious, and a penalty of \$0.00.

CITATION 1, ITEM 13

29 C.F.R. §1910.212(b) Anchoring fixed machinery. Machines designed for a fixed location shall be securely anchored to prevent walking or moving.

- a) **METAL PATTERN SHOP, ON OR ABOUT 9/20/96: ONE EDLUND MODEL EB/5 DRILL PRESS SN B2570.**
- b) **WOOD PATTERN SHOP, ON OR ABOUT 9/20/96: ONE DELTA PRESS.**
- c) **MAINTENANCE SHOP, ON OR ABOUT 9/20/96: ONE JET PRESS SN 1040536.**

Employer Noncompliance

CO Rezsnyak testified that when he observed the cited drill presses they were not anchored to the floor. There were holes cast into the bottom plate of the presses, which indicated that they had been so designed to be anchored by the manufacturer (Tr. 631-632, C-83). He testified that the press in instance a was the most unstable because of its height - it was approximately seven feet high and the motor was positioned at the top (Tr. 632,636). The drill press rocked with very little effort when he touched it, indicating to him that this press was especially unstable (Tr. 974). The drill presses were anchored to the floor during the course of the inspection. (Tr. 633, Ex. C-83, page 1). CO Rezsnyak testified that the purpose of anchoring is to prevent a piece of equipment from moving or walking. The hazard created was an employee being struck by the machine if it tipped over. It is not his interpretation of the requirement that every piece of equipment must be anchored. There are pieces at Oberdorfer which were stable - they had such a wide base, and were not to the height

where the center of gravity would be an issue. Stability is a principal factor in determining whether something must be anchored. (Tr. 635-36; 973-74).

Tool and Design Manager Chesbro testified that he had never seen the Edlin drill press or the Delta wood drill press move or vibrate during their operation. He testified that they had large bases which held them vertical (Tr. 1348-49). However, the undersigned finds that this testimony does not negate the cited findings. The undersigned having reviewed the photographic evidence and considered the fact that these drills were manufactured with holes in their bases to accept bolts for anchorage, finds that the cited conditions indicated that the presses presented a tipping or falling over hazard.(See Exh. R-8, p. 38).

Employee Access to the Violative Condition

Employees informed CO Rezsnyak that they used the machines in the condition which he observed them. The record establishes that employees would be exposed to the hazardous condition of the machine tipping over onto them while there were operating the presses (Tr. 635-36).

Employer Knowledge of the Violation

CO Rezsnyak testified that these conditions were in plain view (Tr. 636-37).

Penalty

Based largely on the press cited in Instance a, CO Rezsnyak recommended that the item be classified as serious. He testified that the weight of the drill press could kill an employee. (Tr. 637). He classified the injury as “high severity,” and determined that the probability of such an injury occurring was “lesser.” The undersigned finds that Mr. Chesbro’s testimony corroborated the “lesser” finding. A penalty of \$2,500.00 was proposed (Tr. 638). The undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 14a

29 C.F.R. §1910.213(c)(1), *in pertinent part sets forth* :Each circular hand-fed ripsaw shall be guarded by a hood which shall completely enclose that portion of the saw above the table and that portion of the saw above the material being cut. The hood and mounting shall be arranged so that the hood will automatically adjust itself to the thickness of and remain in contact with the material being cut but it shall not offer any considerable resistance to insertion of material to saw or to passage of the material being sawed.

a) WOOD PATTERN SHOP, ON OR ABOUT 9/20/96: ONE

DELTA TABLESAW SN 112-1312 WITH A 12 INCH DIAMETER SAWBLADE USED BY EMPLOYEES TO RIP VARIOUS LENGTHS AND WIDTHS OF WOOD WAS EQUIPPED WITH A NON-AUTOMATICALLY ADJUSTING GUARD.

CITATION 1, ITEM 14(b)

29 C.F.R. §1910.213(c)(2), *in pertinent part sets forth* : Each hand-fed circular rip saw shall be furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator The spreader shall be attached so that it will remain in true alignment with the saw even when either the saw or table is tilted. The provision of a spreader in connection with grooving, dadoing,⁴⁰ or rabbeting is not required. On the completion of such operations, the spreader shall be immediately replaced.

- a) **WOOD PATTERN SHOP, ON OR ABOUT 9/20/96: ONE DELTA TABLESAW SN 112-1312 WITH A 12 INCH DIAMETER SAWBLADE USED BY EMPLOYEES TO RIP VARIOUS LENGTHS AND WIDTHS OF WOOD.**

CITATION 1, ITEM 14(c)

29 C.F.R. §1910.213(c)(3) Each hand-fed circular rip saw shall be provided with non-kickback fingers or dogs so located as to oppose the thrust or tendency of the saw to pick up the material or to throw it back toward the operator. They shall be designed to provide adequate holding power for all the thicknesses of materials being cut.

- a) **WOOD PATTERN SHOP, ON OR ABOUT 9/20/96: ONE DELTA TABLESAW SN 112-1312 WITH A 12 INCH DIAMETER SAWBLADE USED BY EMPLOYEES TO RIP VARIOUS LENGTHS AND WIDTHS OF WOOD HAD ANTI-KICKBACK DOGS SO LOCATED THAT THEY WOULD NOT FUNCTION AS INTENDED.**

Employer Noncompliance

Instance a: CO Rezsnyak testified that he observed the cited table saw in the wood pattern

⁴⁰ CO Rezsnyak testified that during the process of dadoing, the surface of the blade never comes through the piece of wood.

shop. The saw had a twelve inch diameter saw blade, used by employee to rip wood. The saw was equipped with a fixed guard (Tr. 639; Ex. C-84, page 1). An automatically adjusting hood guard was installed during the course of the inspection (Tr. 641; Ex. C-84, page 2). Such a guard is designed to ride up on top of the wood during the cutting operation (Tr. 642-43). The hazard associated with the cited condition was that the employee could be struck by the material being cut as it came out from underneath or a broken tooth (Tr. 644, 646).

Instance b: CO Rezsnyak testified that the cited saw was not equipped with a spreader (Tr. 647). He testified that a spreader prevents the wood from pinching together after passing through the saw blade. When the wood pinches together, it may bind together on the blade and kick back towards the operator - material such as broken wood could fly back at the operator (Tr. 643-44, 647-48). CO Rezsnyak testified that employees told him they ripped and cross cut wood on the saw. Wood is ripped by cutting with the grain, while cross-cutting involves cutting across the grain (Tr. 975, 1185). Employee David Liedka testified that there was no spreader on the saw, and when the wood is cross cut or dadoed, a spreader is not necessary (Tr. 1292)⁴¹. He further stated that they typically used dry wood, thus reducing the likelihood that the wood would pinch together. Employee Lance Taylor testified that the machine is occasionally used for ripping (Tr. 1354).⁴²

Instance c: CO Rezsnyak testified that the anti-kick back device on the cited saw were not adjusted properly. He obtained a piece of wood that had just been cut on the saw, pushed the wood through the stationary saw, and pulled back on the wood. The kick back device did not touch the wood, indicating that it was not adjusted properly (Tr. 643). The anti- kick back device-fingers or dogs should have been located so as to oppose the thrust or tendency of the saw to pick up the material or to throw it back towards the operator (Tr. 648). Employee David Liedka testified that the anti-kickback device was “moved in a little tight,” but that such a device was present on the machine (Tr. 1290-91).

Respondent relies upon the testimony of Employee Llera that the saw need only be configured for the type of work performed at the time (Tr. 1290-93; Respondent’s Post-Hearing Memorandum, p.59). However, the evidence shows that the cited conditions were present at the

⁴¹ The standard requires that the spreader be immediately replaced upon completion of such operations such as dadoing. §1910.213(c)(2). The spreader had not been replaced at the time of the inspection.

⁴² The conditions in items 14(a) through 14(c) were abated during the inspection. (Tr. 645-46, C-84, page 2)

time of the inspection, and there was no evidence that the employee had just finished performing a task where the spreader was not necessary (Tr. 656). The undersigned finds that the Secretary has proven noncompliance with the cited standards (Tr. 639-40, 643; Ex. C-84).

Employee Access to the Violative Condition

CO Rezsnyak testified that he determined by speaking with the employee who had used the saw, that the saw was used in this condition. The employee told him that he had just finished using the saw and he observed saw dust on the equipment. (Tr. 644-4). He also testified that during operation, employees' hands would be within four or five inches from the saw blade as they would push the wood through (Tr. 644).

Employer Knowledge of the Violation

CO Rezsnyak testified that these conditions were in plain view (Tr. 648).

Penalty - Items 14(a) - 14(c)

CO Rezsnyak testified that he recommended that these items be classified as serious, based on the possible resulting injury of severe lacerations. He assessed the severity of the injury as medium, and the probability of such an injury occurring as "lesser." (Tr. 647). The undersigned finds that the testimony of Employees Llera and Taylor support a finding of "lesser" probability of the occurrence of an accident. The proposed penalty was \$2,000.00. The undersigned finds that these items were appropriately grouped because they involve similar hazards and finds that a grouped penalty in the amount of \$1,700.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 15

29 C.F.R. §1910.219(c)(2)(I) All exposed parts of horizontal shafting seven (7) feet or less from floor or working platform, excepting runways used exclusively for oiling, or running adjustments, shall be protected by a stationary casing enclosing shafting completely or by a trough enclosing sides and top or sides and bottom of shafting as location requires.

- a) **METAL SHOP, ON OR ABOUT 9/23/96: EMPLOYEE WHEN OPERATING THE UNIVERSAL HORIZONTAL BORING MACHINE IS EXPOSED TO AN UNGUARDED REVOLVING DOUBLE KEYED SHAFT APPROXIMATELY 3½ INCHES IN DIAMETER. LENGTH OF UNGUARDED REVOLVING SHAFT WAS APPROXIMATELY 36 INCHES 11 INCHES**

BEHIND SPINDLE ADJUSTMENT CONTROL HANDLE.

Employer Noncompliance

CO Rezsnyak testified that in the metal shop he observed an employee operating the universal horizontal boring machine. The employee was exposed to an unguarded revolving double keyed shaft approximately 3 ½ inches in diameter. The length of the unguarded revolving shaft was approximately 36 inches. The shaft was approximately 11 inches behind the spindle adjustment control. C-85 is the unguarded horizontal shaft on the universal horizontal boring machine (Tr. 650, 979, Ex. C- 85).

The instant standard provides that all exposed parts of horizontal shafting seven feet or less from floor or working platform ... shall be protected by a stationary casing enclosing shafting completely or by a trough enclosing sides and top or sides and bottom of shafting as location requires. Review Commission precedent has held that this standard does not require the Secretary to specifically prove that the unguarded shafts on the cited presses pose a hazard to *ConAgra Flour Milling Co.*,¹⁶ BNA OSHC 1137, 1148-49 (No.88-1250, 1993). The hazard is presumed where the standard strictly requires that all exposed horizontal shafting of a given height must be protected. Here, it is undisputed that rotating shaft was less than seven feet from the floor.⁴³

Employee Access to the Violative Condition

While the machine is operating, the employee uses a spindle adjustment control handle to control the depth of the boring device (Tr. 653-54, 987). CO Rezsnyak testified that while operating the adjustment control handle, the employees hands would be approximately 11 inches from the double keyed revolving shaft. This distance could be shortened- to 6 to 7 inches - as the shaft continues to rotate. (Tr. 653-54, 979). CO Rezsnyak testified that the machine was used in this condition, and that he spoke with the operator who used the machine (Tr. 655). He testified that he saw “them boring holes into pieces of metal”. He further testified that he did not see the machine in operation. He saw the machine with a boring bit in it - the operator had just finished up one and “was getting ready to move it to another hole” (Tr. 980, 982). While operating the machine the

⁴³ “It is well settled that the Secretary need not prove the existence of a hazard each time a standard is enforced, unless the standard by its terms is operative only when a hazard has been established. Generally, the promulgation of a standard presupposes the existence of a hazard when its terms are not met.” *American Steel Works*, 9 BNA OSHC 1549, 1551, n. 4 (No. 77-553, 1981)

employee is facing the spindle control knob and looking to the left of the control(Tr. 983, 987).⁴⁴ He stated that the exposure occurred if the employee's hands slipped off the spindle control knob (Tr. 985). He learned that when the employee was using the machine, he would have to have his hand on the control handle as he was adjusting the depth (Tr. 1186-87).

Respondent argues that the operator would never be exposed to the rotating keyed shaft during operation of the boring machine. Tool and Design Manager Chesbro testified that the boring machine is used for facing a work piece off. He also stated that in Ex. C-85 the operator is standing in the wrong direction. During the operation of the machine, the operator would have his back to the exposed shaft - facing the opposition direction (Tr. 1353-54). He indicated that the boring machine is only used for facing and is not used for boring holes. It was his opinion that in operating the machine as he described the operator would never be exposed to the rotation of the keyed shaft and that the shaft would still be turning during that operation (Tr. 981-986).

The undersigned finds that CO Rezsnyak observations as demonstrated by the employee working at the machine established employee exposure. His observations were firsthand. The employee demonstrated the operation and as he adjusted the spindle control handle, to adjust how deep he was boring the material, the rotating coupling on the shafting moved closer to the employee (Tr. 654-55, 981-82, 987). The Secretary has proven by a preponderance of evidence that an employee is in the zone of danger created by the rotating shaft during the course of his work duties. The undersigned finds that such exposure would more likely occur as a result of an operator's inattention or an accident. However, "[s]tandards are intended to protect against injury resulting from an instance of inattention or bad judgment as well as from [the] risks arising from the [normal] operation of a machine." *Trinity Industries Inc.*, 15 BNA OSHC 1579,1593-94 & n.27

Employer Knowledge of the Violation

The record establishes that the cited condition was in plain view (Tr. 657).

Penalty

CO Rezsnyak recommended that the item be classified as serious, based on the possible resultant injury of fractures. He testified that this injury would be of a medium severity - fractures

⁴⁴ CO Rezsnyak testified that the position of the employee as he works is not depicted in his photo (Ex. C-85). He clarified that while working the employee would be almost at a 180 degree turn from what was depicted in his photo. The employee faces the spindle control with his right hand on the control and would be looking to the left of the control. He further testified the machine could also be used for facing. A different bit is used when facing because no hole is being created. However, the shaft would still be turning during that operation (Tr. 980-86).

or severe lacerations, and that the probability of such an injury occurring would be “greater.” The undersigned finds that the record establishes that when facing is done the shaft does not move as much and Mr. Chesbro’s description of the facing work indicate that the probability of the occurrence of injury is “lesser”. These findings result in a gravity based penalty in the amount of \$2,000.00. The undersigned finds that a penalty in the amount of \$1,700.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 16

29 C.F.R. §1910.219(f)(3) Sprockets and chains. All sprocket wheels and chains shall be enclosed unless they are more than seven (7) feet above the floor or platform. Where the drive extends over other machine or working areas, protection against falling shall be provided. This subparagraph does not apply to manually operated sprockets.

- a) **GREEN SAND DEPARTMENT, TOP OF MULLER, ON OR ABOUT 9/27/96: EAST SIDE OF DRIVE CHAIN AND SPROCKET FOR HEAD PULLEY OF “O” BELT WAS NOT ENCLOSED/GUARDED TO PREVENT ACCIDENTAL EMPLOYEE CONTACT.**

Employer Noncompliance

CO Rezsnyak testified that on the top of the Muller, on the east side of the drive chain and sprocket, the head pulley of the “O” belt was unguarded (Tr. 659). He acknowledged that there was a fixed metal guard on the walkway side of the conveyor (Tr. 989; Ex. C-86). It was his opinion that the guard should have been extended over to the other side (Tr. 662).

Employee Access to the Violative Condition

CO Rezsnyak testified that when sand plugs up in the conveyor system, employees are in the area two or three times a day to check the check the hopper (Tr. 661). He testified that an employee told him that while on the walkway behind the guard, he leaned over and checked the sand hopper for plugs and sand level (Tr. 989-90, 1187). He believed that an employee would come withing a foot or two of the revolving chain and sprocket (Tr. 661). The nip point was in the area of the employee’s feet (Tr. 1001). He testified that the walkway around the hopper was in a “U” shape.. At the end of the hopper, where the walkway turned right, there was a toeboard which was three or four inches. In viewing Ex. C-86, there was a conveyor belt between the walkway and chain and

sprocket.⁴⁵ He also testified that as one viewed Ex. C-86, it was 24 feet from the walkway on the right side to the nip point. He acknowledged that employees on the other side of the guard - where the guard was between the employee and the chain and sprocket - would be in closest proximity to the chain and sprocket (Tr. 991-94). CO Rezsnyak testified that the employee told him he looked into the hopper from the walkway. He acknowledged that an employee would have to get their hand behind the sprocket and under the chain, or fall while looking into the hopper, in order to contact the nip point (Tr. 999-1000).

The undersigned finds that the Secretary's evidence with regard to employee is speculative. The photographic evidence shows that there were several impediments to easy access to the cited area. There was a guard on the side of the walkway where the employees were in closest proximity to the nip point. There was a toe board at the end of the walkway, and on the other side, the presence of the belt (30 inches in width) between the walkway and the chain and sprocket provided sufficient distance from the nip point. The Secretary has not shown that the employees are in the zone of danger of the nip point and the likelihood of inadvertent contact is far too remote to support a finding of employee exposure. Thus, in light of the fact that the record does not support employee exposure, this violation is Vacated.

CITATION 1, ITEM 17

29 C.F.R. §1910.219(D)(2) Couplings. Shaft couplings shall be so constructed as to present no hazard from bolts, nuts, setscrews, or revolving surfaces. Bolts, nuts, and setscrews will, however, be permitted where they are covered with safety sleeves or where they are used parallel with the shafting and are countersunk or else do not extend beyond the flange of the coupling.

- a) **MAINTENANCE PLATFORM, HYDRAULIC PUMPS FOR ROCKETS, ON OR ABOUT 9/26/96: ONE 3 ½ INCH DIAMETER COUPLING (HIGH SPEED) NOT GUARDED TO PREVENT ACCIDENTAL EMPLOYEE CONTACT. EMPLOYEE PASSES BY REVOLVING COUPLING TO ACCESS DISCONNECTS FOR SHUTTING DOWN PUMPS.**
- b) **GREEN SAND DEPARTMENT, TOP OF MULLER, ON OR ABOUT 9/27/96: ONE UNGUARDED SHAFT COUPLING (HIGH SPEED) FOR DRIVE MOTOR OF "O" BELT.**

⁴⁵ CO Rezsnyak testified that the conveyor belt was 30 inches wide (Tr. 991).

**EMPLOYEE PASSES BY REVOLVING SHAFT COUPLING
WHEN SAND PLUGS UP IN HOPPER.**

Employer Noncompliance

Instance a - CO Rezsnyak testified that he observed a 3 ½ inch high-speed coupling that was not guarded to prevent accidental employee contact. He indicated that employees pass by the coupling to access pump electrical disconnects (Tr. 663). The coupling was on a one foot high platform located approximately six inches from the area traversed by the employee. (Tr. 665-66, Ex. C-87, page one). The coupling was used to couple together the motor and the pump shafts. (Tr. 1505-06). The Secretary argues that the bolts shaft had two bolts protruding from it which were not covered by a safety sleeve (Secretary's Post - Hearing Memorandum, p. 74).

Instance b - CO Rezsnyak testified that he observed an unguarded high-speed shaft coupling for the drive motor of the "O" belt. (Tr. 668, Ex. C-87, page 3). This was right above the "O" belt conveyor, approximately two to three feet off the walkway which was in front of this motor. As an employee traversed the walkway (Tr. 670-73).

The issue presented by these conditions is whether the coupling in question presented a hazard due to its revolving surfaces. The undersigned finds that the cited couplings were inaccessible to employees traveling pass them by virtue of there location as evidenced by the photographic evidence. The undersigned finds that the configuration of the couplings in both instances put the couplings locations beyond the expected reach of an employee, making it difficult if not impossible to be caught by the revolving shafts. The Compliance Officer testified that he determined that a hazard was present in instance b, upon the presence of a revolving surface (Tr. 1008). The undersigned finds that the fact that a coupling is unprotected does not automatically result in a violation of the standard. Accordingly, the instant violation is Vacated.

CITATION 1, ITEMS 19, AND 23- INSTANCES A THROUGH H

29 C.F.R. §1910.304(f)(3)(iv) AC systems of 50 volts to 1000 volts shall be grounded under any of the following conditions, unless exempted by paragraph (f)(1)(v) of this section:⁴⁶

- (A) If the system can be so grounded that the maximum voltage to ground on the ungrounded conductors does not exceed 150 volts;

⁴⁶ Respondent's system was not "used exclusively to supply industrial electric furnaces", was not separately", and did not supply circuits in health care facilities, the exemptions do not apply. Respondent does not dispute the fact that its system did not met the conditions which would have qualified it for an exemption under §1910.304(f)(1)(v) (Tr. 1198).

(B) If the system is nominally rated 480Y/277 volt, 3-phase, 4-wire in which the neutral is used as a circuit conductor;

(C) If the system is nominally rated 240/120 volt, 3-phase, 4-wire in which the midpoint of one phase is used as a circuit conductor; or

(D) If a service conductor is uninsulated.

ITEM 19

- a) **MAINTENANCE SHOP, ON OR ABOUT 9/24/96: ONE LINCOLN THREE PHASE 440 VOLT ELECTRIC ARC WELDING MACHINE PATH TO GROUND WAS NOT PERMANENT AND CONTINUOUS IN THAT THE GROUND WIRE WAS NOT CONNECTED AT MACHINE END.**

ITEM 23

- a) **WOOD PATTERN SHOP: ON OR ABOUT 9/20/96: ONE WADKIN DISK SANDER SN JV594, THREE PHASE, 440 BOLTS, GROUND WIRE WAS NOT CONNECTED AT MACHINE END.**
- b) **METAL LAB, ON OR ABOUT 10/18/96: ONE TINUS OLSEN TENSILE TEST MACHINE, THREE PHASE, 440 VOLTS, GROUND WIRE WAS NOT CONNECTED AT MACHINE END.**
- c) **HEAT TREAT DEPARTMENT, CELL #1 FINISHING LINE, ON OR ABOUT 10/4/ 96: ONE ROCKWELL MODEL 20 DRILL PRESS SN 1778238 USING THREE PHASE 440 VOLTAGE WAS WIRED WITH A THREE WIRE CORD FROM PLUG END TO MACHINE.**
- d) **MOLD REPAIR DEPARTMENT, ON OR ABOUT 9/23/96: ONE RACINE POWERED HACKSAW, THREE PHASE, 440 BOLTS, WAS WIRED WITH A THREE CORE CORD FROM PLUG END TO MACHINE.**
- e) **PERMANENT MOLD AREA, ON OR ABOUT 9/25/96: ONE STOP/START CONTROL BOX FOR THREE INCH**

**HAMMOND BELT SANDER (THREE PHASE 440 VOLTS)
WAS WIRED WITH A THREE WIRE CORD.**

- f) RAILCAR DISCHARGE POINT, ON OR ABOUT 9/11/96: ONE FARGUHAR ELECTRICALLY OPERATED CONVEYOR (THREE PHASE 440 VOLTS), GROUNDED WIRE WAS NOT CONNECTED IN PLUG END.**
- g) MAINTENANCE SHOP, ON OR ABOUT 9/24/96: TWO LIFEGUARD BATTERY CHARGERS (THREE PHASE 440 VOLTS), FLEXIBLE CORDS POWERING BATTERY CHARGERS FROM DISCONNECTS WERE ONLY THREE WIRE.**
- h) NEAR LADLE REPAIR AREA, ON OR ABOUT 9/24/96: HYDRAULIC PUMP MOTOR FOR EAST TILT CAST MACHINE (440 VOLTS), GROUND WIRE WAS NOT CONNECTED AT MOTOR JUNCTION BOX.**

Employer Noncompliance

Citation 1, Items 19 and 23, instances a through h, were amended and grouped as violations of the instant standard, by motion dated December 9, 1997, and at the hearing (Tr. 675-80). The citations had originally cited various failures to ground: Item 19 for respondent's failure to ground a 440-volt electric arc welding machine (Tr. 690-92; Ex. C-88), Item 23, instances a through h, for failure to have a path to ground on equipment or circuits operating at 440 volts (Tr. 733, 736-40; Exs. C-94 & 95). Because Respondent's entire system was unguarded, these items were amended and grouped on the basis that the larger violation was for failing to ground the system (Secretary's Post-Hearing Memorandum, p. 76). The cited standard requires that, unless otherwise exempted by the standard, an AC electrical system operating at 50 volts to 1000 volts be grounded, if *inter alia*, such system could be so grounded so that the maximum voltage to ground on the ungrounded conductors did not exceed 150 volts. 29 C. F.R. §1910.304(F)(1)(iv)(A).

Mr. Douglass Pomphrey, Facility and Environmental Manager for Respondent, whose duties include the modernization of the electrical system, testified that at the time of the inspection there was an ungrounded Delta electrical system in place (3-phase). This system had been installed in the 1920's. It was his testimony that the four conditions for grounding AC systems of 50 to 1000

volts set forth in §1910.304(f)(1)(iv) were not applicable to Respondent's system. Specifically, with regard to paragraph (A), he testified that the Delta system was not intended and designed to be so grounded (Tr. 1512, 1514).⁴⁷ He stated that a Delta system could be "corner ground[ed]", however, that could not be done on this system (Tr. 1514). He testified that as long as an employee was aware that he was working on an ungrounded Delta system, there was no hazard involved (Tr. 1516). Robert Wolf, the retired Plant Engineer for Respondent testified that, subparagraph (iv) did not apply to the Delta system, and that "a 460 volts system, even grounded cannot achieve less than 150 volts with going through a transformer or something, it just [would not] work." (Tr. 1201). He further testified that to his knowledge, he was not aware of whether the system could be grounded so that the maximum voltage to the ground did not exceed 150 volts. He was also unaware of any attempt to bring the system within 150 volt (Tr. 1217).

The Secretary's electrical expert, Phillip Peist, a former safety engineer with OSHA, testified that the subparagraph (iv) does not describe a Delta system, it addresses a 120 volt system. He stated that subparagraph(f)(1)(iv)(A)'s requirement for AC systems of 50 to 1000 volts takes care of just about all systems except for the Delta system (Tr. 1245, 1252). However, he stated that there was no exception to the standard, an employer would have to determine how to ground the Delta system by dropping a ground through one of the legs in order to attempt to get the 150 volts; otherwise, an employer would have to change the system or switch the equipment through isolated transformers or do a lot of work on the equipment in other ways (Tr. 1246). Furthermore, he was aware of a couple of "odd direct systems" which he had seen. In one situation, involving an old industrial building, with the Delta system, he had been informed that they had grounded one of the legs to get to 150 volts (Tr. 1252).

Grounding is a means of protecting employees from electric shock. Section 304 of Subpart "s" covers, *inter alia*, requirements for the protection of electric conductors from both overcurrent and physical harms. The grounding requirements for electric systems, circuits, and equipment are contained in paragraph (f), which addresses two kinds of grounds. The cited standard concerns one of the mandatory kinds of grounds, systems grounds.⁴⁸ The cited standard provides that the

⁴⁷ He also testified that paragraph's (B) and (C) were inapplicable because they did not have a 4-wire system, and paragraph (D) was inapplicable because they did not have an ungrounded service conductor. He stated that they were currently installing a Delta to Y system which would utilize a 4 - wire electrical system - 480Y/277 electrical system (Tr. 1512-13).

⁴⁸ An additional ground, called "equipment ground" must be furnished by providing another path from the tool or machine through which the current can flow to the ground. This additional

following enumerated systems “shall be grounded”. This directive is mandatory, and on its face, provides no exception for the Delta system. The undersigned finds that the Secretary’s expert provided un rebutted support of this finding.⁴⁹ Accordingly, the undersigned Respondent’s ungrounded electrical system was violative of the cited standard.

Employee Access to the Violative Condition

The record indicates that the cited system was used in the condition observed. This condition exposed employees who worked with this system to hazards of fatal electrical injuries from the buildup of voltages and fires caused by equipment damaged by overcurrent.

Employer Knowledge of the Violation

Respondent’s former plant manager and current environmental manager testified that they were aware that the Delta system was not grounded. Additionally, this condition should have been observed during normal maintenance procedures.

Penalty

The citation was classified as serious, based on the possibility that death could result from the hazardous condition. The gravity of this violation reflects that a high severity of possible injury - electrocution, and the probability of such an accident occurring as “greater.” (Tr. 762). The undersigned finds that a penalty in the amount of \$4,250.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 21

29 C.F.R. §1910.303(b)(1) Examination. Electrical equipment shall be free from recognized hazards that are likely to cause death or serious physical harm to employees. Safety of equipment shall be determined using the following considerations:⁵⁰

ground safeguards the electric equipment operator in the event that a malfunction causes the metal frame of the tool to become accidentally energized.

⁴⁹ The undersigned also finds that his electrical background was more superior than any other witness who testified at trial.

⁵⁰The conditions provided for in the standard include:

(I) Suitability for installation and use in conformity with the provisions of this subpart. Suitability of equipment for an identified purpose may be evidenced by listing or labeling for that identified purpose.

(ii) Mechanical strength and durability, including, for parts designed to enclose and protect other equipment, the adequacy of the protection thus provided.

(iii) Electrical insulation.

(iv) Heating effects under conditions of use.

(v) Arcing effects.

- a) METAL PATTERN SHOP, ON OR ABOUT 9/20/96: BRIDGEPORT MILLING MACHINES #1 AND #4 HAD DOUBLE DUPLEX RECEPTACLE OUTLETS MOUNTED ON THEM FOR POWERING TABLES, DIGITAL READ OUTS, AND WORKING LIGHTS, ETC. THE QUALITY OF THE GROUND PATH WHEN TESTED WITH ECOS MODEL EC002 ELECTRICAL TESTER EXCEEDED 50 OHMS. ACCEPTABLE QUALITY OF A GROUND PATH IS 1.9 OHMS OR LESS.
- b) INSPECTION DEPARTMENT, TARGETING STATION, ON OR ABOUT 10/8/96: DOUBLE DUPLEX RECEPTACLE OUTLETS MOUNTED ON EAST WALL. WHEN TESTED USING AN ECOS MODEL EC002 ELECTRICAL TESTER, THE QUALITY OF THE PATH TO GROUND EXCEEDED 50 OHMS. ACCEPTABLE QUALITY OF A GROUND PATH IS 1.9 OHMS OR LESS.
- c) GREEN SAND DEPARTMENT, CONVEYOR CONTROL PANEL AREA, ON OR ABOUT 9/29/96: ONE DOUBLE DUPLEX RECEPTACLE OUTLET ADJACENT TO CONVEYOR CONTROL PANEL, QUALITY OF THE PATH TO GROUND EXCEEDED 50 OHMS. ACCEPTABLE QUALITY OF A GROUND PATH IS 1.9 OHMS OR LESS.

Employer Noncompliance

In Instances a through c, CO Rezsnyak measured the path to ground, and determined that the ground path impedance was insufficient (Tr. 695, 704-06). Philip Peist testified that the higher the resistance through the grounding path, the longer it will take for the overcurrent device trip. As such, someone in contact with that circuit would be exposed to the electric current for a longer period of time (Tr. 1247-48). He also testified that current flow is measured in amps, while resistance is measured in ohms (Tr. 1232-33). He explained that you want to carry as much current

(vi) Classification by type, size, voltage, current capacity, specific use.

(vii) Other factors which contribute to the practical safeguarding of employees using or likely to come in contact with the equipment.

through the grounding conductor as fast as possible to get the overcurrent device to trip out. Typical units would be 1 or 2 ohms, maybe .1 ohms - you would never want to see 50, 60 or 100 ohms (Tr. 1242).

CO Rezsnyak testified that at the facility, he dealt with either 15 or 20 amp circuits. He determined this by asking the maintenance technicians (Tr. 1031-32). In order to determine the proper level of path to ground resistance, CO Rezsnyak consulted the ECOS operating instructions (Tr. 698-99, Ex. C-92). Those instructions note that with 15 amp circuits, an acceptable quality of path to ground is 1.97 ohms. If the circuit is 20 amps, 1.57 is acceptable (Ex. C-92, p. 5). The manual stated that, with equipment of the voltage at issue her, ohms must not exceed 1.97 in order to ensure an adequate path to ground if there are current leaks, and to ensure that the leaks will trip a breaker or fuse within a sufficient time to protect the employee from exposure, based upon the maximum exposure the human body can withstand without going into cardiac fibrillations (Ex. C-92 at ¶1.4 to ¶1.41).

CO Rezsnyak testified that in instance a, he tested the double duplex outlets mounted on the Bridgeport Milling machines No. 1 and No. 4 for the quality of path to ground.⁵¹ He first tested the equipment using the ETCON circuit tester to determine if the circuit was properly wired. All three lights on the tester were illuminated. CO Rezsnyak testified that there is no code to interpret this reading, but that in his experience, such a reading indicated that the quality of path to ground was of poor or insufficient impedance, and should be checked further (Tr. 695-96, 1032). He then used the ECOS tester, which measures ground loop impedance. The test indicated that the impedance of the circuit was 50 ohms or greater. (Tr. 697-98).⁵² In instance b, CO Rezsnyak testified that he tested the double duplex outlets mounted on the east wall of the targeting station. Using the ECOS tester, he determined that quality of path to ground exceeded 50 ohms (Tr. 704-05). In instance c, CO Rezsnyak testified that a double duplex receptacle outlet adjacent to a conveyor belt in the green sand department had a quality of path to ground that exceeded 50 ohms. He determined this using the ECOS tester. (Tr. 705)

Respondent challenges CO Rezsnyak's test results on the basis that he was not equipped with appropriate written instructions regarding the use of the ETCON tester and failed to follow the

⁵¹ A double duplex receptacle outlet contains two duplex receptacle outlets. Each duplex receptacle outlet contains two receptacles (Tr. 705-07).

⁵² CO Rezsnyak testified that the conditions in instances a and b were corrected during the inspection, and the ECOS tester indicated an impedance of .2 ohms. (Tr. 718)

required steps in using the ECOS testing instrument (Respondent's Post-Hearing Memorandum, p. 68). CO Rezsnyak testified that his use of the ETCOON tester was based upon his experience. He further testified that he has inspected electrical items in 98 to 99% of his inspections which the record indicates spanned over 17 years and 1,015 inspections (Tr. 157, 1011). The undersigned finds that his past electrical experience qualified him to make conclusions with respect to the lighting configuration to the ETCOON tester, i.e., that there was a problem and he should perform additional tests. Furthermore, the ohm measurements which his ECOS tester revealed have not been rebutted by Respondent, and those readings were reduced sufficiently during the inspection for abatement purposes in instances a and b. Accordingly, the undersigned finds his testing valid, and the Secretary has proven the violation by a preponderance of the evidence.

Employee Access to the Violative Condition

CO Rezsnyak testified that employees were using the machines with respect to instance a (Tr. 717). In instances b and , he testified that the outlets were not in use, but that there were employees in the room using other receptacle outlets (Tr. 717-17). The cited outlets were available for use (Tr. 711). These employees were exposed to the hazard of electrocution.

Employer Knowledge of the Violation

CO Rezsnyak testified that company maintenance employees who electricians could have "easily" discovered these conditions using their volt/ohm meters. Although the pugs operated as designed, such a condition could have been discovered during any routine maintenance or "prudent review" of the plant (Tr. 712, 1034).

Penalty

CO Rezsnyak testified that based on the hazard of electrocution in Instances a through c, and on the hazard of being sprayed by hydraulic fluid in Instance d, he recommended that the item be classified as serious (Tr. 718-19). He determined that the potential injury was severe, and that the probability of an accident occurring was "lesser" (Tr. 719-20). He recommended a penalty of \$2,500 (Tr. 719). The undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 22

29 C.F.R. §1910.303(c) Splices. Conductors shall be spliced or joined with splicing devices suitable for the use or by brazing, welding, or soldering with a fusible metal or alloy. Soldered splices shall first be so spliced or joined as to be mechanically and electrically secure without solder

and then soldered. All splices and joints and the free ends of conductors shall be covered with an insulation equivalent to that of the conductors or with an insulating device suitable for the purpose.

- a) **WOOD PATTERN SHOP, ON OR ABOUT 9/20/96: WADKIN DISK (SANDER) AND ONE CONDUCTOR OF THE THREE PHASE, 440 VOLT WIRING HAD A SECTION OF THE ENERGIZED CONDUCTOR EXPOSED (UNINSULATED) EXTENDING BELOW THE BOTTOM OF A SUITABLE INSULATING DEVICE (WIRE NUT).**

Employer Noncompliance

CO Rezsnyak testified that he observed in the wood pattern shop that a Wadkin disk sander had one conductor of the three-phase 440 volt wiring that had a section of the energized conductor exposed (Tr. 720-21, Ex. C-94). He indicated that the exposed section of wire extended below the wire nut, which he termed a suitable splice connector (Tr. 722). He stated that the free end of the conductor had not been covered with a suitable insulation equivalent to that conductor. He suggested that this condition could have been abated by putting electrical tape equivalent to the insulating qualities of the conductor or taking off the wire nut and cutting the conductor shorter so that the wire nut would cover the whole uninsulated section of the conductor.

Employee Access to the Violative Condition

CO Rezsnyak testified that employees were using the machine the cited condition (Tr. 723, 729-30). The exposed conductor was inside the cabinet of the machine. (Tr. 1445, Ex. C-94).

Employer Knowledge of the Violation

Respondent argues that because there was no problem with the machine there would have been no reason to have discovered this violation. CO Rezsnyak testified that Oberdorfer could have discovered the condition if they had checked the equipment. The exposed wire was visible as soon as the cover was removed. (Tr. 731). He discovered the violation because as part of his inspection, he was testing cord and plug connected equipment to make sure that the ground from cord to machine was permanent and continuous. They unplugged the cord and did a continuity check from the plug end to the frame of the disk sander. There was no continuity, so the cover was removed to determine the problem. They observed that the ground wire was not connected. The Respondent is responsible for ensuring that all components of electrical equipment be well maintained. Thus, had the Respondent exercised reasonable diligence in its maintenance program this condition would

have been observed.

- b) **ZYGLO DIG OUT DEPARTMENT, ZYGLO DIG OUT STATION, ON OR ABOUT 10/8/96: WIRING TO POWER VENTILATION FAN WAS SPLICED BY MEANS OF WRAPPING THE CONDUCTORS OF THE FAN MOTOR TOGETHER WITH THE FLEXIBLE CORD BY HAND NO SUITABLE SPLICING DEVICES OR SOLDERING WITH A FUSIBLE METAL WAS USED.**

Employer Noncompliance

CO Rezsnyak testified that he observed that the wiring to a ventilation fan was not suitably spliced or soldered. The wires were spliced together by taking the conductor wires and rolling them together. There was no wire nut or soldering of that connection to insure that it would not come apart or loosen up - they were wrapped together by hand and covered with electrical tape instead of a suitable splicing device (Tr. 721, 729, 1043-44).

The cited standard requires that conductors be spliced or joined *with suitable splicing devices*.(emphasis added). The cited wiring had been spliced by wrapping the wires together and covering them with electrical tape. This did not ensure that they could not be pulled apart or loosen up. Thus, the wiring had not been spliced or joined with a *suitable splicing device*, nor were they brazed, welded, or soldered. Therefore, a violation of the standard has been established.

Employer Access to the Violative Condition

CO Rezsnyak testified that the unit was located directly outside the Zyglo dig out station, near a door that leads from the plant. (Tr. 729) The fan was mounted on the outside wall of the station, which was part of the walkway that led to a door. Employees would go past a wall where the fan was located to access of the door, or other parts of the plant. This condition created a hazard where employees were exposed to electrocution upon contact.

Employer Knowledge of the Violation

The record establishes that the cited condition was in plain view (Tr. 731). Furthermore, had the Respondent exercised reasonable diligence this condition would have been observed.

Penalty- Instances a - b

CO Rezsnyak testified that he recommended that the violation be classified as serious, based on the possibility of death should an accident occur. The undersigned finds the violation should be

classified as non-serious because the record does not establish that it was likely that employees would suffer serious injury or death as a result of these conditions. In instance a, the condition was inside of the machine behind an access plate - this plate protected employees from contact with the exposed wire. Additionally, the compliance officer acknowledged that it was a lesser probability that the exposed section would contact the frame of the sander and energize the sander. In instance b, the electrical tape offered some resistance to the wires being pulled apart, and there was no evidence of how long the condition had been present. There was also no evidence that the electrical tape covering the wires was not of an insulation rating equivalent to that of the conductors.

In view of these findings, the undersigned find the instant violation an other than serious violation and assesses a penalty of \$0.00.

CITATION 1, ITEM 23

29 C.F.R. §1910.304(f)(4) Grounding path. The path to ground from circuits, equipment, and enclosures shall be permanent and continuous.

The Respondent argues that the cited standard is inapplicable because none of the equipment identified were required to be grounded. The Respondent argues that the instances all involve equipment connected by cord and plug and the applicable standard is §1910.304(f)(5)(v). Furthermore none of the equipment were the types of cords identified in subparagraphs (A), (B) and (C) of §1910.305(f)(5)(v), and thus, none of the cited equipment were ever required to be grounded - none was located in a hazardous, none were greater than 150 volts (they were 120 volts), and none were the type of equipment identified in the standard (Respondent's Post - Hearing Memorandum, pp. 81-82). The undersigned finds that Respondent's argument is without merit. The Secretary has accurately stated that the record reveals that the equipment was required to be grounded under §1910.305(f)(5)(c)(3), (5), (7) and (8), respectively.⁵³ The cited standard presupposes that the

⁵³ Instances I and K were near a water test area and were covered by subsection (7)(Ex. C-70 at 64); instance m was used in an area where there was water and employees stood on steel grating, thus, covered by subsections (5) and (70)(Ex. C-96 at 5); instances j (Tr. 745, Ex. C-96 at 2, and instance u (Tr. 759; Ex. C-70 at 63) were hand-held and thus covered by subsection (3); instances l (Tr. 747; Ex. C-96 at 3, n (Tr. 751-52), p (Ex. C-96 at 8), q (Ex. C-8 at 9), and t)Ex. |C-8 at 10) were cord and plug connected and the operator stood on the ground or concrete floor of respondent's facility when using each and thus were covered by subsection (5); similarly, instances k (Ex. C-96 at 3)(hand-held switch), l (Ex. C-96 at 4) (portable timer); m (Tr. 749-51); o (Ex. C-96 at 7)(portable timer); m (Tr. 749-51)(portable switch on cord on bypass button); and s (Ex. 96 at 11)(extension cord with duplex receptacle outlet at end), each involved hand-held equipment covered by subsection (3). (Secretary's Post-Hearing Reply Memorandum, p. 6 n. 3.)

equipment is grounded (as was the case here) and requires that the path to ground be permanent and continuous. Instances I through u allege that the path to ground in all of the cited equipment was not permanent and continuous. Accordingly, the undersigned finds the cited standard applicable.

The undersigned finds that a prima facie case has been established in each of the following instances, per the findings set forth.

- I) INSPECTION DEPARTMENT, 166 WATER TEST, ON OR ABOUT 10/8/96: ONE 120 VOLT LIGHT FIXTURE ABOVE OPERATORS PLATFORM GROUND. WIRE WAS NOT CONNECTED INSIDE JUNCTION BOX.**

Employer Noncompliance

CO Rezsnyak testified that he observed a 120 volt fixture above the operators platform where the ground wire was not connected inside the junction box (Tr. 742). The light fixture was movable, and was connected to its power source via a plug and cord (Tr. 1048-49). He determined this by checking the continuity. A company electrician took apart the junction box between the plug and the light and found that the wire was not connected inside the junction box (Tr. 742, Ex. C-96).

Employee Access to the Violative Condition

CO Rezsnyak testified that he determined the employee pictured in Ex. C-96 (first photo) was exposed to the condition. The light fixture was used at his work station. He testified that the employee worked within inches of the light fixture, and that the employee was at that location for his entire shift (Tr. 745).

Employer Knowledge of the Violation

CO Rezsnyak testified that Oberdorfer electricians could have determined the lack of grounding by using a continuity tester. He also testified that in instances I through u, all the missing ground pins, two-wire circuits, and broken ground wires were in plain view. In other instances, Oberdorfer electricians could have detected the condition using a volt/ohm meter (Tr. 762).

- j) SOLUTION HEAT TREAT DEPARTMENT, ON OR ABOUT 10/2/96: ONE REEL TYPE TROUBLE LIGHT (120 VOLTS) PATH TO GROUND FROM METAL GUARD TO PLUG END WAS NOT PERMANENT AND CONTINUOUS.**

Employer Noncompliance

CO Rezsnyak testified that he observed a 120 volt “real type trouble light” without a

permanent and continuous path to ground. He determined this using the continuity tester (Tr. 742-44, Tr. C-96, page 2).

Employee Access to the Violative Condition

CO Rezsnyak testified that the manager of the department told him that the light was used by employees to check the water level in a sump pump area. He testified that the light was used on a daily basis, “as needed.” (Tr. 745).

Employer Knowledge of the Violation

See discussion on employer knowledge in instance I, supra.

- k) SOLUTION HEAT TREATMENT DEPARTMENT, ON OR ABOUT 10/2/96: ONE REMOTE SWITCH MOUNTED IN METAL ENCLOSURE. GROUND WIRE WAS NOT CONNECTED AT THE SWITCH ENCLOSURE END.**

Employer Noncompliance

CO Rezsnyak testified that he observed a remote switch mounted in a metal enclosure in the solution heat treatment department. Using the continuity tester, he determined that the switch was not grounded. The maintenance technicians discovered that the ground wire was not connected at the switch closure end (Tr. 745-46, 1050, C-96, page 3).

Employee Access to the Violative Condition

CO Rezsnyak testified that employees hold the switch when they are operating the hoist for a metal basket. He testified that the employee used the switch “as needed daily.” (Tr. 746, 747).

Employer Knowledge of the Violation

CO Rezsnyak testified that Oberdorfer electricians could have determined the condition by test testing the equipment (Tr. 1050-51). See also discussion on employer knowledge in instance I, supra.

- l) PERMANENT MOLD AREA, ON OR ABOUT 9/25/96: ONE SINGLE CONTROL TIMER (120 VOLTS) GROUND PIN WAS BROKEN IN PLUG END.**

Employer Noncompliance

CO Rezsnyak testified that he observed a 120 volt surge control timer with a visibly disfigured ground pin. (Tr. 747, Ex. C-96, page 4). He ran a continuity test, and determined that there was not a permanent and continuous path to ground. (Tr. 747, 749)

Employee Access to the Violative Condition

CO Rezsnyak testified that employees used the timers in the area. Although he did not see the timer in use, an employee told him that he used the timer 50 times a week (Tr. 748, 1052).

Employer Knowledge of the Violation

CO Rezsnyak testified that Oberdorfer could have determined this condition using a volt/ohm meter or a continuity tester (Tr. 1052). See also discussion on employer knowledge in instance I, supra.

- m) BUCKET ELEVATOR (HOPPER PLATFORM) FOR ROCKET AREA ON OR ABOUT 9/25/96: ONE 120 VOLT ELECTRIC LIGHT USED BY EMPLOYEES TO CHECK LEVELS OF MATERIAL IN HOPPER WAS WIRED WITH A TWO WIRE CORD.**

Employer Noncompliance

CO Rezsnyak testified that he observed a 120 volt light used to check levels in the hopper. Through a visual inspection, he determined that the cord was wired with two wires - there was no ground wire in the cord (Tr. 749, Ex. C-96, page 5).

Employee Access to the Violative Condition

When CO Rezsnyak observed the light, it was in use by an employee. Employees used the light to check the material in the hopper once per shift (Tr. 750-51).

Employer Knowledge of the Violation

CO Rezsnyak testified that the condition was “highly visible.”(Tr. 749. 1053). See also discussion on employer knowledge in instance I, supra.

- n) FINISHING DEPARTMENT, CYLINDER HEAD LINE #3 FINISHING, ON OR ABOUT 10/4/96: CYLINDER HEAD PRESS GROUND PIN WAS MISSING FROM PLUG END.**

Employer Noncompliance

CO Rezsnyak testified that the plug on a cylinder head press was missing a ground pin on the plug end. Thus indicating that there was not a permanent and continuous path to ground (Tr. 751, Ex. C-96, page 6).

Employee Access to the Violative Condition

CO Rezsnyak testified that the employee who used the cylinder head press told him that it

was used eight hours a day, five days a week (Tr. 751-52)

Employer Knowledge of the Violation

CO Rezsnyak testified that the condition was “highly visible” when the cord was unplugged (Tr. 751, 1054). See also discussion on employer knowledge in instance I, supra.

- o) PERMANENT MOLD DEPARTMENT, CARLYLE MOLD MACHINE, ON OR ABOUT 9/26/96: ONE PACER/TIMER GROUND PIN MISSING FROM PLUG END.**

Employer Noncompliance

CO Rezsnyak testified that he determined through visual inspection that a pacer/timer in the permanent mold department was missing a ground pin (Tr. 752-53, Ex. C-96, page 7).

Employee Access to the Violative Condition

CO Rezsnyak testified that the exposed employee told him that he uses the timer approximately ten minutes a day during an eight hour shift (Tr. 752).

Employer Knowledge of the Violation

CO Rezsnyak testified that when the plug was removed, the condition was “highly visible” when unplugged (Tr. 1054-55). See also discussion on employer knowledge in instance I, supra.

- p) CORE ROOM FINISHING, GATE CORE CUT OFF AREA, ON OR ABOUT 9/16/96: ONE TARGET MASONRY SAW WITH CARBIDE CUT-OFF BLADE, GROUND PIN WAS MISSING FROM PLUG END.**

Employer Noncompliance

CO Rezsnyak testified that he determined through visual inspection that the ground pin was missing from the plug of a target masonry saw (Tr. 753-54, Ex. C-96, page 8).

Employee Access to the Violative Condition

CO Rezsnyak testified that an employee used the saw two hours per week (Tr. 754).

Employer Knowledge of the Violation

CO Rezsnyak indicated that the condition was in plain view when unplugged (Tr. 1055). See also discussion on employer knowledge in instance I, supra.

- q) CORE ROOM, SHELCO CORE AREA, STATION #9, ON OR ABOUT 9/12/96: ONE DAYTON FLOOR MOUNTED FAN GROUND PIN WAS MISSING PLUG.**

Employer Noncompliance

CO Rezsnyak testified that he determined through visual inspection that the ground pin was missing from a Dayton floor mounted fan (Tr. 754).

Employee Access to the Violative Condition

CO Rezsnyak testified that an employee told him the fan was used “as needed” during the day (Tr. 754-55).

Employer Knowledge of the Violation

CO Rezsnyak indicated that the condition was in plain view (Tr. 1055). See also discussion on employer knowledge in instance , supra.

- r) **GREEN SAND DEPARTMENT, “G” BELT, ON OR ABOUT 9/27/96: BY PASS BUTTON USED BY EMPLOYEES TO RUN DRY SAND OUT OF SYSTEM HAD THE GROUND WIRE CUT OFF AT ONE END OF FLEXIBLE POWER CORD.**

Employer Noncompliance

CO Rezsnyak testified that he observed a bypass button with the ground wire cut off at the end of the flexible power cord (Tr. 755, Ex. C-96, page 10). He determined the condition visually, then performed a continuity test to determine that the exposed wire was in fact the ground wire (Tr. 755-56).

Employee Access to the Violative Condition

CO Rezsnyak testified that an employee used the button at the beginning of the day to remove dry sand from the system (Tr. 755-56).

Employer Knowledge of the Violation

CO Rezsnyak first determined the condition through visual inspection, which he confirmed with a continuity check (Tr. 755-56). See also discussion on employer knowledge in instance I, supra.

- s) **HEAT TREAT DEPARTMENT, PRECIPITATOR OVEN, ON OR ABOUT 10/2/96: ONE SINGLE DUPLEX RECEPTACLE OUTLET BOX AT THE END OF A FLEXIBLE CORD AND USED TO POWER A FLOOR MOUNTED FAN HAD THE GROUND PIN MISSING FROM THE PLUG END.**

Employer Noncompliance

CO Rezsnyak testified that through visual inspection, he determined that the ground pin was missing from the end of a flexible cord used to power a floor mounted fan (Tr. 756, Ex. C-96, page 11).

Employee Access to the Violative Condition

CO Rezsnyak testified that employees told him that the fan was used in the area as needed to remove hot air or move the air around in the area (Tr.756-57).

Employer Knowledge of the Violation

CO Rezsnyak indicated that the condition was in plain view (Tr. 1056). See also discussion on employer knowledge in instance I, supra.

- t) **ZYGLO DIG OUT DEPARTMENT, ZYGLO DIG OUT STATION, ON OR ABOUT 10/8/96: ONE 120 VOLT VENTILATION FAN WAS WIRED WITH A TWO WIRE CORD.**

Employer Noncompliance

CO Rezsnyak testified that he observed a 120 volt ventilation fan wire with a two-wire cord, without a ground wire (Tr. 757, Ex. C-96, page 12). The fan was activated via a switch inside the dig out station. He stated that the path to ground was not continuous (Tr. 1057).

Employee Access to the Violative Condition

CO Rezsnyak testified that an employee told him the fan was used daily, as needed to freshen the air (Tr. 758-59).

Employer Knowledge of the Violation

See discussion on employer knowledge in instance I, supra.

- u) **GREEN SAND DEPARTMENT, TOP OF SURGE HOPPER, ON OR ABOUT 9/27/96: ONE TROUBLE LIGHT USED BY EMPLOYEE TO ILLUMINATE HOPPER. PATH TO GROUND WAS NOT PERMANENT AND CONTINUOUS.**

Employer Noncompliance

CO Rezsnyak determined that a trouble light in the green sand department did not have a permanent and continuous path to ground (Tr. 759). A trouble light is a light with a metal guard over the bulb (Tr. 1057).

Employee Access to the Violative Condition

CO Rezsnyak testified that the employees used the light to illuminate the hopper to determine if sand was flowing properly (Tr. 759-60).

Employer Knowledge of the Violation

See discussion on employer knowledge in instance I, supra.

Penalty - Instances I - u

CO Rezsnyak testified that if an accident were to occur, an employee could be electrocuted (Tr. 761-62). He classified the severity of this injury as high, and the probability of such an accident occurring as “lesser.” He recommended that a penalty of \$5,000.00 be assessed. The undersigned finds that a penalty in the amount of \$4,250.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 24

29 C.F.R. §1910.30(f)(7)(iii) “Grounding of equipment”. All non-current-carrying metal parts of portable equipment and fixed equipment including their associated fences, housings, enclosures, and supporting structures shall be grounded. However, equipment which is guarded by location and isolated from ground need not be grounded. Additionally, pole-mounted distribution apparatus at a height exceeding 8 feet above ground or grade level need not be grounded.

- a) **TRANSFORMER SUBSTATION, ON OR ABOUT 10/9/96:
HINGED GATE WAS NOT BONDED TO GROUNDED FENCE
ENCLOSURE OF 12 KV TRANSFORMER SUBSTATION.**

Employer Noncompliance

CO Rezsnyak testified he observed a transformer substation, the hinge gate was not bonded to the grounded fence enclosure or the 12 kilovolt transformer substation. He used his continuity tester. He put one alligator clip on the vertical up right of the gate, and the other on the vertical post of the fence where the gate was connected (Tr. 765, 1060-61). He determined that an employee could be energized if there were a short from the transformers that arced over and energized the fence or gate. If the fence was grounded, and the arcing hit the gate, if someone were to touch the gate he would create a path to the fence (Tr. 767-68). A bonding strap was installed as a compliance measure during the inspection (Tr. Tr. 766, Ex. C-97). CO Rezsnyak testified that there was galvanizing material on the surface of the fence. He stated that he scraped off some of this

material before he performed his test (Tr. 1065).⁵⁴

Richard Tucci testified that he built the fence in 1989. He grounded the fence at six points, as per the “code book.” (Tr. 1371-72). He further testified that he tested the fence both with and without the bonding strap sometime after CO Rezsnyak made his determination, and determined that the fence was, in fact, grounded. He conceded that if the gate had been moved following CO Rezsnyak’s test, the outcome of the continuity test could be changed. He did not, however, believe that this may have effected his test (Tr. 1378).

The undersigned finds that Mr. Tucci’s test, performed after the OSHA inspection, does not undermine the findings CO Rezsnyak’s testing. CO Rezsnyak acknowledged that metal to metal connections indicate grounded connections - path for current. However, his testing indicated otherwise (Tr. 1063-65). The undersigned finds that the Secretary has established noncompliance by a preponderance of evidence.

Employee Access to the Violative Condition

CO Rezsnyak determined that employees worked inside the substation as needed(Tr. 767). The hazard was electrocution.

Employer Knowledge of the Violation

CO Rezsnyak testified that the Respondent could have determined that the violation existed. Its electricians have volt/ohm meters and could have done continuity checks (Tr. 768).

Penalty

CO Rezsnyak testified that the fence could become energized if a short from the transformers arced over and energized the fence or the gate (Tr. 757-68). Based on the hazard of electrocution, he recommended that the item be classified as serious. He classified the severity of the injury as high, and the probability of an accident occurring as lesser based on the location of the transformers from the fence.. He proposed a penalty of \$2,500.00 (Tr. 768). The undersigned finds that a penalty in the amount of \$2,125.00 would be appropriate in light of her findings set forth in Citation 1, Item

⁵⁴ Philip Peist testified that there may be several reasons that the continuity test indicated that the gate was not grounded. He suggested that corrosion on the fence could have created a different potential between the gate and the hinges. (Tr. 1253-54) Thus, isolating the gate from the metal contact of the hinges. (Tr. 1254, 1271) Corrosion or paint on the hinges could create a different potential. If the gate had risen on its hinges so that the closed portion was not on the ground, a different potential may also be created (Tr. 1271-72). However, Robert Tucci testified that there had never been any rust or corrosion on the hinges between the gate and the fence (Tr. 1379). He also verified that there were only two hinges between the gate and fence.

1.

CITATION 1, ITEM 25

1910.303(g)(1)(I) Working clearances. Except as required or permitted elsewhere in this subpart, the dimension of the working space in the direction of access to live parts operating at 600 volts or less and likely to require examination, adjustment, servicing, or maintenance while alive may not be less than indicated in Table S-1.⁵⁵ In addition to the dimensions shown in Table S-1, work space may not be less than 30 inches wide in front of the electric equipment. Distances shall be measured from the live parts if they are exposed, or from the enclosure front or opening if the live parts are enclosed. Concrete, brick, or tile walls are considered to be grounded. Working space is not required in back of assemblies such as dead-front switchboards or motor control centers where there are no renewable or adjustable parts such as fuses or switches on the back and where all connections are accessible from locations other than the back.

- a) **FINISHING DEPARTMENT, CELL #1, FINISHING LINE, ON OR ABOUT 10/4/96: ONE FLEXIBLE CORD POWERING A FLUORESCENT LIGHT FIXTURE HAD BEEN PHYSICALLY DAMAGED SO THAT THE HOT CONDUCTOR WAS NOW EXPOSED TO ACCIDENTAL EMPLOYEE CONTACT.**

⁵⁵ TABLE S-1 - WORKING CLEARANCES

Nominal voltage	Minimum clear distance to ground for condition (2)(ft)		
	(a)	(b)	(c)
0-150	¹ 3	¹ 3	3
151-600	¹ 3	3 1/2	4

Footnote(1) Minimum clear distances may be 2 feet 6 inches for installations built prior to April 16, 1981.

Footnote(2) Conditions (a), (b), and (c), are as follows:

- (a) Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by suitable wood or other insulating material. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts. (b) Exposed live parts on one side and grounded parts on the other side.(c) Exposed live parts on both sides of the work space [not guarded as provided in Condition (a)] with the operator between.

CO Rezsynak testified that the damaged section of cord was five feet, nine inches above the concrete floor and eighteen inches from the plug. The work station was two feet from the cord which was plugged in (Tr. 771-72). In her Post-Hearing Memorandum, the Secretary acknowledges that the evidence did not establish a violation of the cited standard, and moves to amend the cited standard from the standard that was originally cited and tried before the undersigned (Secretary's Post-Hearing Memorandum, p. 86).⁵⁶ The Secretary sets forth that there are no new facts being asserted and that the facts adduced at hearing demonstrate a violation of §1910.303(g)(1)(I) which requires at least three feet clearance from live parts of 600 volts or less to work stations. Respondent argues that it would be severely prejudiced by such an amendment, and if said amendment were allowed, Respondent was not provided an opportunity to present available affirmative defenses under the standard. Furthermore, Respondent argues that it cannot be said that Respondent expressly or implicitly consent to this amendment. (Respondent's Reply Memorandum, p. 9).

FRCP 15(b) permits amendments to pleadings when the issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated as if they had been raised in the pleadings. . In assessing whether the pleadings should conform to the proof, the pivotal question is whether prejudice would result. A party cannot normally show that it suffered prejudice simply because of a change in its opponent's legal theory. Instead a party's failure to plead an issue it later presented must have disadvantaged its opponent in presenting its case. *New York State Electric & Gas v. Secretary of Labor*, 88 F 3d. 98 (2d Cir., 1995) [17 BNA OSHC 1650]. Review Commission precedent has established that it is appropriate under Rule 15(b) to amend a citation when the parties squarely recognize they are trying an unpleaded issue, and where they merely add an alternative legal theory but do not alter the essential factual allegations contained in the citation. *A. L. Baumgartner Construction Inc.*, 16 BNA OSHC 1995, 1997 (No. 92-1022, 1994); *Peavey Co.*, 16 BNA OSHC 2022 (No. 89-2836, 1994)(and cases cited therein).

The undersigned finds that such an amendment causes no prejudice to the Respondent. The record reveals that the plug was plugged into what the compliance officer believed to be a standard 120 volt receptacle outlet (Tr. 1067, 1073). There is no evidence in the record that any outlet was rated above 600 volts. Respondent's witnesses have testified that the electrical system at the worksite was a 440 Delta system or 120 volt system. Additionally, the Respondent cross-examined

⁵⁶ 29 C.F.R. §1910.305 (a)(4)(v) Protection from physical damage. Conductors within 7 feet from the floor are considered exposed to physical damage. Where open conductors cross ceiling joints and wall studs and are exposed to physical damage, they shall be protected.

the compliance officer about the voltage of this plug (Tr. 1068). No evidence was presented to rebut his findings. The location of the cited cord is not disputed. Thus, Respondent's argument that it has been deprived of the opportunity of demonstrating that the outlet was above 600 volts is not prejudicial. Respondent also argues that it was not afforded the opportunity to present evidence that this condition met the "[e]xcept as required or permitted in this subpart" proviso of the standard.. However, the Respondent offers no facts which support such an argument, and the undersigned's review of the record reveals that this condition met no exception to the working clearance requirements. Accordingly, the undersigned grants the Secretary's motion, and finds that the standard is applicable and noncompliance has been established.

Employee Exposure

CO Rezszynek testified that the cord was plugged in and used in the cited condition (TR. 771-72).

Employer Knowledge

The condition of the cord was in plain view (Tr. 772).

Penalty

CO Rezszynek recommended that the item be classified as serious based on the resultant injury of electric shock, causing electric burns in the second degree. The severity of injury was medium and the probability was lesser in light of the location of the cord and the area which was damaged. He recommended a penalty of \$ 2,000.00. (Tr. 772-73). he undersigned finds that a penalty in the amount of \$1,700.00 would be appropriate in light of her findings set forth in Citation 1, Item 1.

CITATION 1, ITEM 26a

29 C.F.R. §1910.305(j)(1)(I) Fixtures, lampholders, lamps, rosettes, and receptacles may have no live parts normally exposed to employee contact. However, rosettes and cleat-type lampholders and receptacles located at least 8 feet above the floor may have exposed parts.

- a) **GREEN SAND DEPARTMENT, TOP OF SURGE HOPPER FOR MULLER, ON OR ABOUT 9/27/96: ONE 120 VOLT LIGHT FIXTURE LOCATED APPROXIMATELY THREE FEET ABOVE WALKWAY/PLATFORM, NO BULB IN LIGHT SOCKET.**

Employer Noncompliance

CO Rezsnyak testified that he observed a 120 volt light fixture located three feet above the walkway. There was no bulb in the socket (Tr. 774-75, Ex. C-100, page 1). The fixture was removed by Oberdorfer during the course of the inspection.

Employee Access to the Violative Condition

CO Rezsnyak testified that the exposed employee goes into the area two or three times a day to check the hopper. The employee walked past the hazardous condition. CO Rezsnyak testified that if an employee had a screwdriver in his pocket, he could contact the light (Tr. 778-79). Earl Wicks testified that in order to be exposed to an electrical shock, the employee would have to make contact inside the bulb socket (Tr. 1478).

- b) CORE ROOM, SMALL TOWER OVEN AREA, ON OR ABOUT 9/12/96: ONE ENERGIZED LIGHT FIXTURE LOCATED APPROXIMATELY 77 INCHES ABOVE WALKWAY, NO BULB IN LIGHT SOCKET.**

Employer Noncompliance

CO Rezsnyak testified that he observed an energized light fixture approximately 77 inches above the walkway (Tr. 775-76, Ex. C-100, page 2). Oberdorfer installed a bulb in the socket as a compliance measure (Tr. 776).

Employee Access to the Violative Condition

The socket was located six feet five inches above the walkway. CO Rezsnyak testified that an employee would come within inches of the fixture when using a nearby disconnect. He could contact the socket by accidentally placing a finger or a piece of material in the socket. He conceded that an employee would not normally be exposed (Tr. 779-80, 1077).

- c) CORE ROOM, STAGING AREA, ON OR ABOUT 9/16/96: LIGHT FIXTURE ON CHILL GRINDER BULB MISSING FROM LIGHT SOCKET.**

Employer Noncompliance

CO Rezsnyak testified that he observed an empty light socket three and one-half feet above the floor (Tr. 776, Ex. C-100, page 3).

Employee Access to the Violative Condition

CO Rezsnyak testified that employee used the grinder approximately one hour every five days (Tr. 780). He conceded that in order to be exposed, an employee would have to place a

finger or other conductive material into the socket (Tr. 1078-79).

- d) **PERMANENT MOLD DEPARTMENT, CONTROL ROOM FOR CYLINDER HEAD LINE, ON OR ABOUT 9/25/96: ONE LIGHT FIXTURE ON CHILL GRINDER BULB MISSING FROM LIGHT SOCKET.**

Employer Noncompliance

CO Rezsnyak testified that he observed a light fixture with no bulb approximately five feet six inches from the floor (Tr. 776-77, Ex. C-100, page 4).

Employee Access to the Violative Condition

CO Rezsnyak testified that an employee is in the control room daily, and could contact the fixture as he shut the door (Tr. 1079). Employee Earl Wicks testified that in order to contact the socket, an employee would have to pull back the door and stick his finger in the socket (Tr. 1468).

- e) **PERMANENT MOLD DEPARTMENT, WEST WALL BEHIND #5 AND #6 MELTING FURNACES, ON OR ABOUT 9/25/96: ONE FLORESCENT LIGHT FIXTURE HAD A BROKEN BULB CONNECTION EXPOSING AN ENERGIZED PART (COOPER STRIP) TO EMPLOYEE CONTACT. LIGHT FIXTURE WAS APPROXIMATELY SIX FEET ABOVE FLOOR.**

Employer Noncompliance

CO Rezsnyak testified that he observed a florescent light fixture with a broken bulb exposing an energized copper strip to employee contact (Tr. 777, 1079-80, Ex. C-109, page 5).

Employee Access to the Violative Condition

CO Rezsnyak testified that the fixture was approximately six feet off the ground. Employee Earl Wicks testified that the fixture was approximately eight feet off the ground (Tr. 1468-69). He testified that an employee would needed a ladder to contact the fixture (Tr. 1469-70). CO Rezsnyak testified that he was told that employees carry metal objects through the area that could contact the metal strip (Tr. 781).

Employer Knowledge

CO Rezsnyak testified that all of the conditions in Item 26a were in plain view (Tr. 781).

CITATION 1, ITEM 26b

29 C.F.R. §1910.305(J)(1)(I) Handlamps of the portable type supplied through flexible cords shall be equipped with a handle of molded composition or other material approved for the purpose, and a substantial guard shall be attached to the lampholder or the handle.

- a) **GREEN SAND DEPARTMENT, TOP OF MULLER, HEAD
PULLEY PLATFORM OF “O” BELT, ON OR ABOUT 9/27/96:
PORTABLE HANDLAMPS USED BY EMPLOYEE TO VIEW
LEVEL OF SAND IN HOPPER.**

Employer Noncompliance

CO Rezsnyak testified that the portable hand lamp used by employee to check the level of sand was not equipped with a substantial guard attached to the lamp holder or handle (Tr. 782-83). A guard was installed during the inspection. (Tr. 783-85, Ex. C-101).

Employee Access to the Violative Condition

CO Rezsnyak testified that employees hold the lamp in their hands to view the hopper. He stated that the “affected” employee told him he uses the lamp two or three times a day (Tr. 785). (The record indicates that this was not a daily occurrence.) He acknowledged that he did not see the employee use the lamp, but the employee shown him the cited lamp in response to his inquiry concerning what he used to view in the hopper (Tr. 1081-82).

Employer Knowledge of the Violation

CO Rezsnyak testified that the violation was in plain view. (Tr. 786)

The undersigned finds that the Secretary has failed to establish that employees were exposed to or could reasonably be predicted to have access to the cited hazards. The compliance officer’s testimony with regard to employee exposure was speculative and pure conjecture. Additionally, in light of the location of the exposed parts - recessed into the sockets - the possibility of employee contact was so remote as to be inconsequential.⁵⁷ The employee who testified had first-hand knowledge of the conditions and his testimony demonstrated that contact could only be established by an employee intentionally inserting his finger into the light bulb sockets or the carrying of tools in some odd manner so that they could be uniquely manipulated to make contact with the exposed part. These circumstances would not constitute any normal operating procedures (e.g., Tr. 1076-77, 1467-72). In item 26b, the record establishes that the light was used not used as frequently as the

⁵⁷ The record also indicates that compliance officer testified that the probability of an accident occurring as “lesser” in light of the location of the sockets (Tr. 782).

compliance officer originally believed, and there is no evidence that if the bulb broke, employees would be in an area where they would travel pass it so as to be exposed. Furthermore, as indicated in the record, were the light bulb to break, an employee would be holding the portable light by the flexible rubber cord which afforded protection from immediate and direct exposure to the energized filaments of the bulb (Tr. 1082). In view of these findings these items are Vacated.

CITATION 2, ITEM 1

29 C.F.R. §1910.219(c)(3) Guarding vertical and inclined shafting. Vertical and inclined shafting seven (7) feet or less from floor or working platform, excepting maintenance runways, shall be enclosed with a stationary casing in accordance with requirements of paragraphs (m) and (o) of this section.

- a) **METAL PATTERN SHOP, ON OR ABOUT 9/20/96: ONE EDLUND DRILL PRESS MODEL EB15 SN 2570 HAD AN EXPOSED REVOLVING SHAFT LOCATED AT TEAR OF DRILL PRESS, SHAFT CONNECTED DRIVE MOTOR TO BELT PULLEY.**

Employer Noncompliance

CO Rezsnyak testified that he observed an Edlin drill press with an exposed revolving shaft near the rear of the drill press. The shaft connected the drive motor to the belt pulley (Tr. 787, Ex. C-102). The shaft was located approximately six feet off the floor and the drill press was six inches from the painted walkway area (Tr. 788). The drill itself was surrounded by a table, which spanned at least one foot on either side of the center of the machine (Tr. 1117-18). The Respondent installed a guard on the shaft during the course of the inspection (Tr. 789, Ex. C-102, bottom photo).

Employee Access to the Violative Condition

CO Rezsnyak testified that employees passed by the condition during the day. Employees informed him that the drill press was used in the condition he observed (Tr. 789).

Employer Knowledge of the Violation

CO Rezsnyak testified that the violation was in plain view (Tr. 793).

Penalty

CO Rezsnyak testified that any possible injury from the shaft would be lacerations, an other than serious hazard (Tr. 793, 1120-21). He did not consider the probability of an accident occurring to be great. As such, no monetary penalty was assessed (Tr. 793).

CITATION 2, ITEM 2

29 C.F.R. §1910.219(c)(4) “Projecting shaft ends” -- Projecting shaft ends shall present a smooth edge and end and shall not project more than one-half the diameter of the shaft unless guarded by nonrotating caps or safety sleeves.

- a) **HEAT TREAT DEPARTMENT, CELL #2 FINISHING LINE, ON OR ABOUT 10/4/96: ACME VERTICAL SHAFT CUTOFF SAW HAD A PROJECTING SHAFT END WHICH WAS NOT COVERED TO PREVENT ACCIDENTAL EMPLOYEE CONTACT.**

Employer Noncompliance

CO Rezsnyak testified that he observed an unguarded projecting squared shaft on the Acme vertical shaft cut saw (Tr. 794, Ex. C-103). The shaft was one-half inch thick, and projected two and one-half inches from edge of the machine (Tr. 795). The condition was abated during the inspection (Tr. 796, Ex. C-103, bottom photo).

Employee Access to the Violative Condition

CO Rezsnyak testified that the employee stands approximately twelve inches from the revolving shaft when operating the saw, and the shaft is located approximately 52 inches above the operator’s platform. The employee operates the saw eight hours a day (Tr. 795).

Employer Knowledge of the Violation

CO Rezsnyak testified that the condition was in plain view. (Tr. 796)

Penalty

CO Rezsnyak testified that an employee could receive lacerations from the rotating shaft. However, the shaft moved slowly, and thus, the probability of the occurrence of an injury was lesser (Tr. 796). He classified the violation as other than serious, and hence no penalty was assessed (Tr. 796-97).

CITATION 2, ITEM 3

29 C.F.R. §1910.305(g)(2)(ii) Flexible cords shall be used only in continuous lengths without splice or tap. Hard service flexible cords No. 12 or larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

- a) **CORE ROOM, STATION #37, ON OR ABOUT 9/11/96: ONE FLEXIBLE CORD POWERING AN OVERHEAD LIGHT HAD**

**A SPLICE IN THE CORD APPROXIMATELY 64 INCHES
ABOVE THE OPERATOR’S PLATFORM.**

Employer Noncompliance

CO Rezsnyak testified that he observed a spliced flexible cord powering an overhead light (Tr. 797). Respondent argues that the Secretary has failed to show what type of flexible cord was cited. The Secretary has represented that “as apparent from the photograph in Ex. C-104, the wire was smaller, 14 or 16 gauge”, and thus, the exception for cords No 12 or larger used to power more than 120-volt fixtures was inapplicable (Secretary’s Post-Hearing Memorandum, p. 92). The undersigned finds that the record contains no evidence presented by the Respondent that the cited cord came within the exception of the standard.⁵⁸ The undersigned that the photographic evidence and the testimony of the compliance officer establish by a preponderance of evidence that the cited standard is applicable and was violated.

Employee Access to the Violative Condition

CO Rezsnyak testified that employee were exposed to the condition, in that workstation number 37 was located near the cord - the splice was approximately 64 inches above the operator’s platform (Tr. 798).

Employer Knowledge of the Violation

CO Rezsnyak testified that the violation was in plain view. (Tr. 799)

Penalty

CO Rezsnyak testified that the possible resultant injury was minimal. As such, the violation was classified as other than serious and no penalty was proposed (Tr. 799).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All findings of fact and conclusions of law relevant and necessary to a determination of the contested issues have been found specially and appear in the decision above. See Rule 52(a) of the Federal Rules of Civil Procedure.

Order

Docket No. 97-469

1. Citation 1, Item 1 is Affirmed as a serious violation with a penalty of \$2,125.00.

⁵⁸ See *Armstrong Steel Erect., Inc.*, 17 BNA OSHC 1385, 1389 (No. 92-262, 1995)(a party seeking the benefit of an exception to a legal requirement has the burden of proof to show that it qualifies for that exception)

2. Citation 1, Item 2 is Affirmed as a serious violation with a penalty of \$2,125.00.
3. Citation 1, Item 3 is Vacated.
4. Citation 1, Item 4 is Affirmed as a serious violation with a penalty of \$2,125.00.
5. Citation 1, Item 5 is Affirmed as a serious violation with a penalty of \$2,125.00.
6. Citation 1, Item 6 is Affirmed as a serious violation with a penalty of \$1,275.00 (instance b, the Baldor grinder No. F579 is vacated).
7. Citation 1, Item 7 is Vacated.
8. Citation 1, Item 8 is Affirmed as a serious violation with a penalty of \$4,250.00.
9. Citation 1, Item 9 is Affirmed as a serious violation with a penalty of \$2,125.00.
10. Citation 1, Item 10 is Affirmed as a serious violation with a penalty of \$2,125.00.
11. Citation 1, Item 11 is Affirmed as a serious violation with a penalty of \$2,125.00.
12. Citation 1, Items 12a and 12b are Affirmed as serious violations with a penalty of \$1,275.00.
13. Citation 2, Item 1 is Vacated.
14. Citation 3, Item 1 is Affirmed as an other than serious violation with a penalty of \$1,000.00.
15. Citation 3, Item 3 is Affirmed as an other than serious violation with a penalty of \$0.00.

Docket No. 97-470

1. Citation 1, Item 1 is Affirmed as a serious violation with a penalty of \$4,250.00.
2. Citation 1, Item 2 is Vacated.
3. Citation 1, Item 3 is Affirmed as a serious violation with a penalty of \$2,975.00.
4. Citation 1, Item 4 is Affirmed as a serious violation with a penalty of \$2,125.00.
5. Citation 1, Item 5 is Affirmed as an other than serious violation with a penalty of \$0.00.
6. Citation 1, Item 6 is Affirmed as a serious violation with a penalty of \$2,975.00.
7. Citation 1, Item 7 is Affirmed as a de minimis violation with no penalty.
8. Citation 1, Item 8 is Affirmed as an other than serious violation with a penalty of \$0.00.
9. Citation 1, Item 9 is Affirmed as a serious violation with a penalty of \$2,125.00.
10. Citation 1, Item 10 is Affirmed as an other than serious violation with a penalty of \$0.00.
11. Citation 1, Item 11 is Affirmed as a serious violation with a penalty of \$1,700.00.
12. Citation 1, Item 12 is Affirmed as an other than serious violation with a penalty of \$0.00.
13. Citation 1, Item 13 is Affirmed as a serious violation with a penalty of \$2,125.00.
14. Citation 14. Citation 1, Items 14a, 14b and 14c are Affirmed as serious violations with a

penalty of \$1,700.00.

15. Citation 1, Item 15 is Affirmed as a serious violation with a penalty of \$1,700.00.
16. Citation 1, Item 16 is Vacated.
17. Citation 1, Item 17 is Vacated.
18. Citation 1, Item s 19 and 23, instances a through h are Affirmed as serious violations with a penalty of \$4,250.00.
19. Citation 1, Item 21 is Affirmed as a serious violation with a penalty of \$2,125.00
20. Citation 1, Item 22 is Affirmed as an other than serious violation with a penalty of \$0.00.
21. Citation 1, Item 23, instances I through u are Affirmed as a serious violation with a penalty of \$4,250.00.
22. Citation 1, Item 24 is Affirmed as a serious violation with a penalty of \$2,125.00.
23. Citation 1, Item 25 is Affirmed as a serious violation with a penalty of \$1,700.00.
23. Citation 1, Items 26a and 26b are Vacated.
24. Citation 2, Item 1 is Affirmed as an other than serious violation with a penalty of \$0.00.
25. Citation 2, Item 2 is Affirmed as an other than serious violation with a penalty of \$0.00.
26. Citation 2, Item 3 is Affirmed as an other than serious violation with a penalty of \$0.00.

/s/
Covette Rooney
Judge, OSHRC

Dated: August 6, 1998
Washington., D.C.