UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, Complainant, v. NORTH ATLANTIC FISH COMPANY, INC. Respondent.	:	OSHRC DOCKET NOS. 98-0848 98-0849

Appearances: Kevin E. Sullivan, Esquire
U.S. Department of Labor
Office of the Solicitor
Boston, Massachusetts
For Complainant

Barrett A. Metzler, CSP
Columbia, Connecticut
For Respondent

BEFORE: MICHAEL H. SCHOENFELD
Administrative Law Judge

DECISION AND ORDER

Background and Procedural History

This case arises under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 (1970) ("the Act"). From November 7, 1997 to March 18, 1998, the Occupational Safety and Health Administration ("OSHA") conducted both a health and a safety inspection of Respondent's work site in Gloucester, Massachusetts. As a result of the inspections, OSHA issued health and safety citations to Respondent on May 6, 1998, alleging willful, repeat, serious and other-than-serious violations appearing in Title 29 of the Code of Federal Regulations ("C.F.R."). Respondent timely contested the citations. Following the filing of complaints and answers, and pursuant to notices of hearing, the cases were heard separately in Gloucester and Boston, Massachusetts. No affected employees asserted party status. Both parties have filed post-hearing briefs.

Jurisdiction

The Secretary alleges, and Respondent admits, that it is an employer engaged in fish processing. It is undisputed that at the time of the inspection, Respondent was engaged in fish processing. Respondent further admits that it is engaged in receiving, handling and otherwise working on and with goods and materials that are moving or have moved across state lines in interstate commerce. I find that Respondent was engaged in a business affecting interstate commerce.

Based on the above finding, I conclude that Respondent is an employer within the meaning of section 3(5) of the Act. Accordingly, the Occupational Safety and Health Review Commission ("the Commission") has jurisdiction over the parties and the subject matter.

Safety Citation 1–Alleged General Duty Clause Violations (No. 98-0849)

Safety Citation 1, Items 1, 2 and 3 allege serious violations of the general duty clause, section 5(a)(1), which requires employers to furnish its employees a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm. To prove a violation of section 5(a)(1), the Secretary must establish 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. *Nat'l Realty & Constr. Co.*, 489 F.2d 1257, 1265-67 (D.C. Cir. 1973); *Connecticut Light & Power Co.*, 13 BNA OSHC 2214, 2217 (No. 85-1118, 1989).

In Item 1, the Secretary alleges that Respondent's employees were exposed to a fire and explosion hazard resulting from the operation of forklifts and mechanical handling equipment near unprotected natural gas lines and meters. The Compliance Officer ("CO") personally observed employees running into gas meters while operating lift trucks. (Tr. 159–61.) A former employee also testified that employees, including himself, hit or bumped into the gas meters regularly when operating the lift trucks. (Tr. 199.) The photographs in evidence clearly show dents, holes and scrapes on the gas meters caused by the operation powered industrial vehicles, including lift trucks. (CX-2-6.) To argue that this condition was not a recognized hazard is indefensible. Further, Respondent could easily have eliminated or materially reduced the hazard by installing guardrails such as the ones installed around the compressor system for the freezer. (Tr. 162-63.) Since the

predictable injuries are severe burns or death, I find this violation to be serious. (Tr. 545-46.) Item 1 is affirmed, and I find the proposed penalty of $4,900.00 to be appropriate.

In Item 2, the Secretary alleges that Respondent's employees were exposed to amputation and severe lacerations from saws automatically restarting upon restoration of power after a power interruption. Some of these cited machines were originally equipped with magnetic motor starts to prevent the machines from restarting after restoration of power. (Tr. 184-86.) Respondent asserts that it deactivated and removed the magnetic motor starts on some machines, and replaced them with manual starts, because the deterioration from cleaning the machines caused them to start on their own. (Tr. 229-30, 440-42, 589-90.) Contrary to Respondent's argument that this was not a recognized hazard, replacing the magnetic motor starts clearly demonstrates that Respondent recognized the hazard of cutting machines and saws restarting automatically upon restoration of power. (Tr. 186, 590.) The installation of the manual starts, however, did not furnish employees with a workplace free of recognized hazards. The machines continued to restart automatically after a power interruption, as the CO noted during the inspection. (Tr. 228-29.) This condition, especially with saws and cutting machines, could have caused severe bodily injuries, including amputation and lacerations. (Tr. 548.) Further, feasible means existed to reduce the hazard.[1] The CO contacted several companies that supplied magnetic motor starts and found that they were readily available. (Tr. 230.) The maintenance man and the plant manager both admitted to the CO that they did not replace the magnetic motor starts because they were too expensive. (Tr. 229-30, 440.) Based upon the foregoing, Item 2 of Citation 1 is affirmed, and the proposed penalty of $3,500.00 is appropriate.[2]

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[1]Respondent suggests that because employees were trained to unplug the machines after power interruption they were not exposed to the hazard and that the hazard was thus eliminated or materially reduced. (Tr. 186.) A former employee's testimony, however, contradicts Respondent's assertion. This employee testified that most of the workers did not unplug machines and that they were never told to unplug the machines. (Tr. 197, 211-12.)

[2]Respondent argues that the Secretary improperly cited it for a general duty violation when a specific standard, 29 C.F.R. § 1910.213, is applicable. Respondent presented no evidence in this regard and made no showing that the woodworking machine standard applies to the cited machinery. Assuming *arguendo* that § 1910.213 does apply, the same facts used to show that Respondent violated the general duty clause would also support a finding that Respondent violated the woodworking standard, and, under either theory, a violation existed. *See also* Safety Citation 1, Item

In Item 3, the Secretary alleges that Respondent's employees were exposed to a fall hazard while working from a platform raised greater than 6 feet by a forklift. The Secretary's evidence as to Item 3a, which Respondent did not rebut, shows that the plant manager exposed an employee to a fall hazard by lifting him at least 6 feet above the ground in a "trash box" without fall protection. (Tr. 233-36, 240; CX-10.) Even after the CO told him the activity was unsafe, the manager continued to lower the employee with the forklift instead of using an extension ladder as the CO requested. (Tr. 235-36, 240.) As to Item 3b, Respondent argues the individuals described therein were not its own employees but subcontractors. Regardless, it is clear from the record that it was common practice for Respondent to lift personnel on the forklift without fall protection, a conclusion supported by the manager's admission to the CO that he was aware of the activity and that it was common. (Tr. 243.) It is undisputed that this fall hazard was recognized and that feasible means existed to eliminate or materially reduce the hazard. (Tr. 237-39; CX-12.) Further, the severity of predictable injuries, such as broken bones or death, supports the serious classification of this violation. (Tr. 236.) Item 3 is affirmed as a serious violation and the proposed penalty of $3,500.00 is appropriate.[3]

Safety Citation 1–Alleged Serious Violations of Specific Standards (No. 98-0849)[4]

Items 4 through 23 of Safety Citation 1 allege serious violations of specific standards. In general, to prove a violation of a standard, the Secretary must demonstrate by a preponderance of the evidence (1) that the cited standard applies, (2) noncompliance with the terms of the standard, (3) employee exposure or access to the hazard created by the noncompliance, and (4) that the employer knew, or with the exercise of reasonable diligence could have known, of the condition. *Astra Pharmaceutical Prod.*, 9 BNA OSHC 2126, 2129 (No. 78-6247, 1981); *Dun-Par Eng'd Form Co.*, 12 BNA OSHC 1949 (No. 79-2553, 1986), *rev'd & remanded on other grounds*, 843 F.2d 1135 (8th Cir. 1988), *decision on remand*, 13 BNA OSHC 2147 (No. 79-2553, 1989).

13a, *infra*, in which the analysis under § 1910.213 applies equally to this violation.

[3]I find that Respondent was properly cited under the general duty clause, instead of 29 C.F.R. § 1910.178(m)(12), because the forklift was not equipped with elevatable controls. Even if 29 C.F.R. § 1910.178(m)(12) applied in this case, I would still find a violation, because Respondent failed to satisfy any of the three requirements of the standard.

[4]*See* Appendix A for text of cited standards.

Citation 1, Item 4a alleges a serious violation of 29 C.F.R. § 1910.36(b)(7) for failing to provide fire alarm facilities that would give adequate warning of fire to employees in the building. Respondent first admitted to the CO that it did not have the kind of alarm system that would warn everyone in the facility of a fire, but then claimed that the Public Address System ("PAS") could be used for such purposes. (Tr. 188, 244-45.) Respondent's PAS fails to satisfy the requirements of this standard because the testimony of the CO and a former employee establishes it would not adequately warn all employees of a fire emergency. (Tr. 203, 218, 244-45, 452-54.) I also reject Respondent's argument that the facility's audible fire alarm (bell and pull box) satisfies the requirements of the standard because the alarm was not designed to alert people in all parts of the facility of a fire, but rather to feed CO2 to the oven in case of an oven fire. (Tr. 591, 595.) There is no dispute that Respondent's employees were exposed to the hazard on a daily basis. In addition, I find that with the exercise of reasonable diligence, Respondent could have known of the condition, especially since on at least one occasion, employees panicked trying to evacuate the plant when smoke and fumes filled the room. (Tr. 206, 244-45.) This hazardous condition could have led to serious injuries or death if employees were trapped in the building because they were not alerted to fire in the facility.

Items 4b, 4c and 4d allege serious violations of 29 C.F.R. §§ 1910.37(q)(1), 1910.37(q)(2) and 1910.37(q)(5), respectively, for failing to provide appropriate signs designating exits, non-exits and directions to exits. The CO testified that during his inspection exits and non-exits were not clearly marked such that he himself did not know which doors led to exits and which did not. (Tr. 248-52; CX-16-18.) Respondent's explanation that no employees ever complained about the exits, and that all employees entered and exited through the front door, is no excuse for failing to comply with the cited standards. All of Respondent's employees were exposed to the hazard on a daily basis, and Respondent could have known of the hazard with the exercise of reasonable diligence. In light of the record, the Secretary has established the alleged violations and that the violations were serious, especially when considered in conjunction with Respondent's failure to provide adequate fire alarm facilities. In such circumstances, employees, especially new and panicked employees, might not have been able to safely exit the facility in the event of an emergency. Based on the record, Items 4a through 4d are affirmed as serious violations, and the proposed penalty of $1,750.00 is appropriate.

In Citation 1, Item 5, the Secretary alleges that Respondent violated 29 C.F.R. § 1910.132(a) by failing to provide a barrier to prevent employees from contact with hot surfaces on the Burns Fry-O-Matic. Although the Fry-O-Matic had a cover, the cover clearly did not prevent employees from contact with the hot surfaces, and Respondent's own maintenance man estimated the heat from the machine to be between 350 and 400 degrees. (Tr. 256.) Since the machine was located in a narrow space, any employee with access to the area was exposed to the hazard. (Tr. 252-54, 257; CX-19-20.) The machine was in plain view and was regularly operated such that Respondent should have discovered the condition. As severe burns could have resulted from contacting the Fry-O-Matic, Item 5 is affirmed as a serious violation. The proposed penalty of $1,400.00 is appropriate.

Items 6a and 6b of Citation 1 allege serious violations of 29 C.F.R. §§ 1910.38(a)(1) and 1910.38(b)(1) for failing to have a written emergency action plan and a fire prevention plan. Clearly, Respondent did not have either plan, particularly in view of the plant manager's testimony at the hearing in this regard. (Tr. 189, 258.) That testimony was as follows:

> Q: Okay. Now who is the one that is – who are the people that are in charge of the evacuation. Is there anyone designated in the event of fire to alert people?
> A: No, there's no reason.
> Q: So if there's a fire it's every man for himself.
> A: If there's a fire and someone sees the fire –
> Q: Then what do they do?
> A: We're not saying that hey you have to do this. Nobody has to do anything.
> Q: At all?
> A: Right.
> Q: Okay. Are the people directed when there is a fire to exit immediately?
> A: Yes. They know to get out. (Tr. 189.)

In addition to the above, the company president had no knowledge of any emergency action plan or fire prevention plan, and a former employee testified that Respondent had no such plans. (Tr. 203, 258.) It is undisputed that employees were exposed to the hazard of fire, and it is clear that Respondent could have known of the violative conditions. Items 6a and 6b are accordingly affirmed.

Items 6c and 6d allege violations of 29 C.F.R. §§ 1910.157(c)(1) and 1910.157(g)(4) for failure to mount and properly locate fire extinguishers and for failure to provide training in the use of fire fighting equipment to individuals expected to use the equipment. The CO's testimony that fire extinguishers were blocked and not properly mounted or readily accessible is supported by the

exhibits in evidence. (Tr. 258-61, 463-66; CX-22-25.) Respondent argues that no employee was designated to use fire fighting equipment during a fire emergency. I find that the evidence points to the contrary. The CO was told that the maintenance man and his assistant, as well as the plant manager and one other employee, were the designated individuals. (Tr. 466-67.) Furthermore, these employees were not instructed on how to use fire extinguishers, but only knew that they were supposed to "just squirt the fire extinguisher there's nothing to it...just pull the pin and shoot... basically just squirt the fire with it." (Tr. 261-62.) Respondent's plant manager also admitted to the CO that no formal training was provided in the use of fire extinguishers. *Id.* Respondent does not dispute employee exposure to the cited hazard, and I find Respondent had knowledge of the hazard– the extinguishers were in plain sight, and the plant manager admitted to the lack of training. Based on the record, Items 6c and 6d are affirmed. I agree with the Secretary's classification of Item 6 as serious, and I find the total proposed penalty of $3,500.00 appropriate.

Item 7 of Citation 1 alleges serious violations of 29 C.F.R. § 1910.101(b), which requires compressed gas cylinders to be securely stored in accordance with the Compressed Gas Association Pamphlet P-1-1965. The Secretary has presented sufficient evidence to establish that Respondent failed to protect and secure compressed gas cylinders by storing them near aisles and overhead doors. (CX-32-34, CX-36.) The CO's testimony that these cylinders were located in areas where forklifts and other vehicles regularly operated further supports a finding of a violation. (Tr. 262-64.) Contrary to Respondent's argument, the cylinders could easily be knocked down, especially considering the lack of trained employees operating powered industrial vehicles.[5] There is no dispute that employees were exposed to the cited hazard. Respondent should have known of the hazardous condition because the cylinders were stored in plain view. The violation was properly classified as serious because serious bodily injuries were possible as a result of an accident. (Tr. 263-64.) Item 7 is therefore affirmed as a serious violation, and I find the proposed penalty of $3,500.00 to be appropriate.

Item 8 alleges a serious violation of 29 C.F.R. § 1910.106(d)(3)(ii), which requires the proper storage of flammable and combustible liquids in storage cabinets. I find that the Secretary has shown

[5]*See* discussion relating to Safety Citation 1, Item 11, *infra*.

by a preponderance of the evidence that Respondent improperly stored flammable and combustible liquids in storage cabinets where joints and seams were not tight and securely closed as required by the standard. (Tr. 252, 267-69, 272, 473-78; CX-39-41, CX-44-45.) It is undisputed that employees were exposed to the hazardous condition, and Respondent could have known of the condition in the exercise of reasonable diligence. I also agree with the serious classification of the violation. (Tr. 550.) Item 8 is affirmed as a serious violation, and the proposed penalty of $1,750.00 is appropriate.

In Item 9, the Secretary alleges that Respondent violated 29 C.F.R. § 1910.146(c)(1), which requires employers to evaluate the workplace for permit-required confined spaces. Respondent argues that employees were not assigned to perform work in the wastewater and cooking oil tanks. Respondent's plant manager also testified that they had evaluated the tanks and determined that no one would enter the tanks. (Tr. 593.) The Secretary has failed to rebut this evidence and establish that employees were exposed to the cited violation.[6] This item is therefore vacated.

Item 10 of Citation 1 alleges a violation of 29 C.F.R. § 1910.176(b), which requires the stable and secure storage of materials. The evidence of record shows that stacked boxes at the facility were not secure and stable as required. (Tr. 278-80; CX-50-52.) The evidence also shows that the racks used to store boxes were damaged and unstable. (Tr. 280, 483-84; CX-47-48.) There is no dispute that employees were exposed to the hazardous condition, and Respondent should have known of the condition because it was in plain view.[7] Based on the evidence of record, I find that the Secretary has satisfied her burden of proving the alleged serious violation. Item 10 of Citation 1 is accordingly affirmed, and I find the proposed penalty of $1,400.00 to be appropriate.

In Item 11 of Citation 1, the Secretary alleges serious violations of 29 C.F.R. §§ 1910.178(l) and 1910.178(m)(5)(i). In regard to Item 11a, the evidence of record shows Respondent permitted untrained employees to operate powered industrial trucks in an unsafe manner. (Tr. 241-42, 281-83.)

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[6]The Secretary attempted to meet her burden by showing that Respondent failed to post appropriate warning signs. (Tr. 277.) The lack of signs does not establish that an evaluation was not conducted. Rather, the absence of signs would appear to show a failure to inform employees of the existence, location and danger of permit spaces as required by 29 C.F.R. § 1910.146(c)(2).

[7]The CO's testimony that he inspected the storage of boxes at the request of an employee who was concerned about boxes that had fallen down supports this finding. (Tr. 278, 482-84.)

A former employee confirmed that he had operated lift trucks without any training, and Respondent presented no documentation on training to rebut the evidence demonstrating the alleged violation. (Tr. 205, 241-42.) In regard to Item 11b, the evidence supports the Secretary's allegation that powered industrial trucks were left unattended without lowering the forks as required. (Tr. 281; CX-52-53.) There is no dispute that employees were exposed to the hazardous conditions. I also find that Respondent could have discovered the conditions with the exercise of reasonable diligence. Furthermore, I agree with the Secretary's classification. (Tr. 551.) Items 11a and 11b are affirmed as serious violations, and the total proposed penalty of $3,500.00 is appropriate for these violations.

In Item 12, the Secretary alleges a serious violation of 29 C.F.R. § 1910.212(a)(3)(ii), which requires the point of operation of machines to be guarded. Based on the CO's testimony and photographs in evidence, I find that there was no guard in place to protect an operator's hands or fingers from the point of operation of the industrial grade electric stapler. (Tr. 284-86; CX-54-57.) I also agree with the CO that the foot pedal used to activate the stapler exacerbated the hazard. (Tr. 285.) It is undisputed that employees were exposed to the hazardous condition, and Respondent should have known of the condition. The Secretary's classification of the violation is proper. (Tr. 284.) I affirm Item 12 as a serious violation, and I find the proposed penalty of $1,400.00 appropriate.

Items 13a through 13c allege serious violations of 29 C.F.R. §§ 1910.213(b)(3), 1910.213(c)(1) and 1910.213(c)(2), respectively. Item 13a alleges that Respondent failed to make provisions to prevent the Chicago Electric table saw from automatically restarting upon restoration of power. Respondent has failed to rebut the evidence of record that this table saw was not equipped with a magnetic motor start or any other means to prevent it from restarting upon restoration of power. (Tr. 286-87.) There is no dispute that employees were exposed to the hazard, and Respondent's plant manager had knowledge of the hazard. (Tr. 590.) Item 13a is affirmed as a serious violation.

Item 13b alleges that Respondent failed to equip the Chicago Electric table saw with an automatically adjusting hood. Respondent argues that the subject saw is not a circular hand-fed ripsaw and that the cited standard, which applies specifically to circular hand-fed ripsaws, therefore does not apply. Respondent cross-examined the CO in this regard, and, based on the CO's responses,

I conclude that the Secretary has not met her burden of establishing that the cited standard applies to the subject saw. (Tr. 493-94.) The CO identified the Chicago Electric table saw as a "multipurpose" saw. (Tr. 493-94; CX-58-59.) This less than clear description suggests that the subject saw could be used by Respondent for different purposes–fish cutting or ripping or crosscutting wood, or all three. (Tr. 287.) When and if used to cut fish, the woodworking machinery standard, 29 C.F.R. § 1910.213, would not apply. However, if Respondent used the "multipurpose" saw to cut wood, it is reasonable to infer that two different standards could apply depending on which direction the wood piece was being cut. The hand-fed ripsaws standard, § 1910.213(c), would apply if the wood piece was being cut "along the grain," whereas the hand-fed crosscut table saws standard, § 1910.213(d), would apply if the wood piece was being cut "against the grain." While it is reasonable to infer that the "multipurpose" blade with which the saw was equipped could have been used for either type of wood cutting,[8] absent evidence as to how the Respondent used the saw and what guards, if any, were in place at the time of use, the Secretary has failed to establish the applicability of the cited standard. Item 13b is accordingly vacated.

Finally, the Secretary alleges in Item 13c that Respondent failed to equip the Chicago Electric table saw with a spreader to prevent material from squeezing the saw or being thrown back to the operator. However, as in Item 13b, the standard cited in Item 13c applies specifically to circular hand-fed ripsaws. Based on my findings as to Item 13b, the Secretary has not shown that the subject saw is covered by the cited standard. Item 13c is therefore vacated. Having affirmed only Item 13a, and in view of the total proposed penalty for these three instances, I conclude that a penalty of $600.00 is appropriate for Item 13a.

Item 14 alleges serious violations of 29 C.F.R. § 1910.215(a)(4), which requires that work rests be used for offhand grinding machines. The unrebutted evidence supports a finding of a violation. The CO testified that the work rest on the Sears Bench Grinder had more than a 1/8-inch

[8]Although photographs CX-58 and CX-59 were originally taken to show that the grounding pin was removed, these photographs portray a block of wood that had apparently recently been cut across the grain on the saw table near the blade. There is no testimony that this block of wood was cut by the cited saw. If, however, this block of wood was cut using the cited saw (which is possible because the photographs show evidence of wood shavings), the crosscut table saw standard would apply, not the cited ripsaw standard.

gap and that the Weier Grinder did not even have a work rest. (Tr. 289-92; CX-61.) It is undisputed that employees used the grinders and were exposed to the cited hazard, and Respondent should have discovered the violative conditions with the exercise of reasonable diligence. I affirm the violations as serious. (Tr. 552.) I also find the proposed penalty of $1,400.00 to be appropriate.

In Item 15 of Citation 1, the Secretary alleges that Respondent failed to enclose sprocket wheels and chains as required by 29 C.F.R. § 1910.219(f)(3). I affirm this violation based on the evidence of record. (CX-62-64.) Respondent's assertion that the sprocket wheels and chains were enclosed by the machinery under normal work conditions is not only insufficient to satisfy the requirements of the standard, but also contrary to the evidence. The CO observed an employee crawling under the breading machine to retrieve bags from underneath while the machine was still operating, and the employee told the CO he did this every day. (Tr. 294-96, 494-95.) Clearly, employees were exposed to the hazardous condition, and Respondent could have known of the condition with the exercise of reasonable diligence. Since the possible injuries range from severe cuts to amputation, Item 15 is affirmed as a serious violation. I find the proposed penalty of $1,750.00 appropriate.

In Item 16, the Secretary alleges that Respondent violated 29 C.F.R. § 1910.242(b) by using compressed air for cleaning with a nozzle pressure of 95 to100 p.s.i. Respondent does not deny that the compressed air used for cleaning was measured at greater than 30 p.s.i. (Tr. 296.) Rather, Respondent argues that employees did not use compressed air to "clean their bodies" and that there was no exposure under normal work conditions. However, the Commission has stated that "[s]tandards are intended to protect against injury resulting from an instance of inattention or bad judgment as well as from risks arising from the [normal] operation of a machine." *Trinity Indus. Inc.*, 15 BNA OSHC 1579, 1593-94 (Nos. 88-1545 and 88-1547, 1992), *rev'd & remanded on other grounds*, 16 F.3d 1149 (11th Cir. 1994), *decision on remand*, 17 BNA OSHC 1003 (No. 88-1545, 1994). Therefore, I find that employees were exposed to the hazardous condition and that Respondent could have known of the condition in the exercise of reasonable diligence. I affirm this violation as serious because death or serious physical harm could have resulted if an accident had occurred. (Tr. 552-53.) However, because the probability of an accident occurring was relatively low, I find that $700.00 is an appropriate penalty.

Item 17 alleges that Respondent violated 29 C.F.R. § 1910.252(a)(2)(vii) for failing to locate combustibles at least 35 feet from the work site. According to the unrebutted testimony of the CO, the room was not more than 35 by 20 feet. (Tr. 298.) All other evidence points to the conclusion that open containers of oil and other combustible materials, including paint and thinners, were located anywhere from 5 to 15 feet from welding operations. (Tr. 298-00.) Moreover, Respondent did not rebut the CO's testimony that the material safety data sheets for the open containers of oil indicated that the flashpoint for these materials was over 100 degrees, rendering them combustible. (Tr. 499.) Further, even if relocating the containers was impracticable, Respondent should have protected the materials with flameproof covers or otherwise shielded them as required. It is undisputed that employees were exposed to the hazardous condition, and Respondent should have known of the condition. The violation was serious, in that sparks from welding could have caused the materials to catch fire or explode, which could have caused serious injuries or death. Therefore, I affirm this item as a serious violation. The proposed penalty of $1,750.00 is appropriate.

Item 18 of Citation 1 alleges serious violations of 29 C.F.R. § 1910.303(f), which requires each disconnecting means to be legibly marked to indicate its purpose. I affirm this violation based upon the CO's testimony that several disconnecting means, including breakers and switches, did not have labels identifying their purpose. (Tr. 301-02, 500-01.) I find credible the CO's testimony that only longtime employees knew the identification for each disconnecting means. (Tr. 301.) Employees regularly worked with and around machines and equipment without legibly marked disconnects, exposing them to the cited hazard, and Respondent could have known of the hazard in the exercise of reasonable diligence. This violation was properly classified as serious. (Tr. 302, 553.) Consequently, I affirm this violation as serious, and I find the proposed penalty of $1,050.00 to be appropriate.

Item 19 alleges serious violations of 29 C.F.R. §§ 1910.303(g)(2)(i), 1910.305(b)(1) and 1910.305(b)(2). Respondent withdrew its Notice of Contest as to Item 19a, which alleges a failure to guard live electrical wires from accidental contact with cabinets or other enclosures. (R. Brief, p. 31.) Item 19b alleges that Respondent failed to effectively close junction boxes that had "knockouts" missing. The evidence of record clearly shows that openings and fittings were not effectively closed, whether they were knocked out completely or partially. (Tr. 306-09, 503-04; CX-72-73, CX-79.) I

also find that Respondent failed to provide cover plates on junction boxes, exposing employees to live wires, as alleged in Item 19c. (Tr. 309-13; CX-74-81.) It is undisputed employees had access to these hazards, and, because the conditions were located in open areas, Respondent should have discovered them. This violation was properly classified as serious. (Tr. 308-09, 313, 553.) Items 19a, 19b and 19c are therefore affirmed as serious violations. The proposed penalty of $3,500.00 is appropriate.

Item 20 alleges that Respondent failed to enclose or guard electric equipment as required by 29 C.F.R. § 1910.303(g)(2)(ii). The evidence of the record confirms the CO's testimony that numerous conduits were broken and exposed to physical damage. (Tr. 321-23; CX-80, CX-82-84.) The CO's tests revealed that these wires were live. (Tr. 322.) I find that employees were exposed and that Respondent should have known of the hazardous conditions. Because the conduits were broken and the wires were live, serious injuries or death from electrical shock were possible. (Tr. 322.) I affirm this violation as serious, and I find the proposed penalty of $3,500.00 appropriate.

In Item 21, the Secretary alleges serious violations of 29 C.F.R. §§ 1910.304(a)(2) and 1910.304(f)(4). Item 21a alleges that a drill press used by an employee had reverse designated polarity. Respondent did not rebut the CO's testimony that he tested the circuit two or three times in the presence of the maintenance man, with two different testers, and found that the circuit had reverse polarity. (Tr. 314-16, 326, 505-07.) Respondent likewise presented nothing to discredit the CO's usage of the testers or their accuracy. It is undisputed that Respondent's maintenance man and other employees were exposed to the condition. Respondent was also aware that its employees continued to use the equipment after the CO warned them of the hazard at the start of the investigation in 1997. (Tr. 314-15, 323-27.) Item 21b alleges Respondent allowed the Chicago Electric saw and the Sears Bench Grinder to be operated with the grounding pins broken off the plugs. Respondent does not deny the violations but challenges the proposed penalty. (R. Brief, p. 34.) However, I agree with the serious classification and the proposed penalty. (Tr. 291, 315, 554.) The violations are affirmed, and the proposed penalty of $3,500.00 is appropriate.

Items 22a and 22b alleges serious violations of 29 C.F.R. §§ 1910.305(g)(1)(iii) and 1910.305(g)(2)(ii) for improper use of extension cords. The testimony of a former employee, a current supervisor and the CO show that Respondent violated 29 C.F.R. § 1910.305(g)(1)(iii) by

using extension cords as a substitute for fixed wiring. (Tr. 202, 222-26, 327-30, 507-09; CX-87-96.) The CO's testimony and other evidence also demonstrate that Respondent did not use extension cords in continuous lengths and without splices. (Tr. 331-32; CX-96-98.) Respondent argues as to this item that the Secretary did not prove the cited cords were not No. 12 hard service flexible cords. Even if they were, however, Respondent still violated the standard, as the splices did not retain the insulation, outer sheath properties and usage characteristics of the cords being spliced. (CX-97.)

Items 22c and 22d allege improper strain relief and failure to inspect equipment and flexible cords as required by 29 C.F.R. §§ 1910.305(g)(2)(iii) and 1910.334(a)(2)(i), respectively. The CO's testimony and the other evidence of record support the finding of a violation as to Item 22c, for Respondent's failure to provide proper strain relief on various pieces of equipment, including a Black & Decker Drill Motor and a Milwaukee Sander. (Tr. 332-36, 509-10; CX-99-105.) As to Item 22d, Respondent admits to the alleged violation of the standard, which requires the inspection of portable cord-and-plug-connected equipment and flexible cord sets. It is undisputed that employees were exposed to the cited hazards. Further, the conditions were easily detectible and Respondent should have discovered them. The violations could have caused serious injuries or death, and they are properly classified as serious. I accordingly affirm Items 22a through 22d as serious violations, and I find the total proposed penalty of $3,500.00 for these items appropriate.

Item 23 of Citation 1 alleges a violation of 29 C.F.R. § 1910.305(j)(1)(i), which requires lamp holders to have no live parts normally exposed to employee contact. A former employee's testimony corroborated the CO's testimony regarding the empty socket next to a light switch, and the employee observed the CO testing the socket to confirm that the socket was live. (Tr. 200-01, 337-40.) Based on the record, it is reasonable to conclude that an employee could have inadvertently inserted a finger in the socket when trying to turn the switch on. (CX-105.) It is undisputed that employees were exposed to the cited hazard, and Respondent could have discovered the condition in the exercise of reasonable diligence. Since the condition could have caused serious injuries or death, this violation was properly classified as serious. Therefore, I affirm the violation as serious, and I find the proposed penalty of $3,500.00 for this item appropriate.

Safety Citation 2–Alleged Willful Violations (No. 98-0849)[9]

The Secretary alleges willful violations of 29 C.F.R. §§ 1910.147(c)(1) and 1910.212(a)(1). To establish that a violation was willful, the Secretary must demonstrate that the violation was committed voluntarily with intentional disregard for the requirements of the Act or with plain indifference to employee safety. *Simplex Time Recorder Co.*, 12 BNA OSHC 1591, 1595 (No. 82-12, 1985); *Asbestos Textile Co.*, 12 BNA OSHC 1062, 1063 (No. 79-3831, 1984).

In Item 1 of Citation 2, the Secretary alleges that Respondent willfully violated 29 C.F.R. § 1910.147(c)(1) by failing to establish an energy control program to ensure machinery or equipment was isolated from the energy source and rendered inoperative, before any employee performed servicing or maintenance on it, where unexpected energizing, start up or release of stored energy could occur and cause injury. When the CO asked Respondent for a lockout/tagout ("LOTO") program, Respondent could not produce it.[10] (Tr.142, 340-41.) Respondent attempted to show that a program was in place by arguing that a former quality control manager was hired to develop and implement the program. (Tr. 175-77, 599-601.) This argument is unpersuasive. First, the quality control manager was hired in February 1997, more than a year after Respondent had certified to OSHA that it had corrected a prior violation of the same standard. (Tr. 617-18.) Second, the quality control manager specifically testified that he was not hired to develop and implement a LOTO program, but, rather, to develop Respondent's food safety/hygiene program so that the company could be certified for a Department of Commerce program. (Tr. 619-21, 627.) Third, Respondent's plant manager admitted that he did not see any results from the alleged efforts to develop a LOTO program. (Tr. 599.) In any case, the testimony of the quality control manager, maintenance man and plant manager confirms that the company did not in fact comply with the requirement to develop and implement a LOTO program.[11] (Tr. 62-65, 176-77, 624-25.) It is evident that employees who used

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[9]*See* Appendix A for text of cited standards.

[10]The company president's pellucid testimony that former employees had taken the program was simply not credible.

[11]Even if a LOTO program was in place, Respondent did not train employees as required. Two former employees, one of whom had been injured on a machine, testified that they had never received any LOTO training, even after the 1997 OSHA inspection. (Tr. 90, 93, 193-94, 198, 206-

the production equipment were exposed to the hazard of injury from the unexpected energizing, start up or release of stored energy. It is also apparent that Respondent had knowledge of the cited condition, especially since the company was previously cited in this regard.

The Secretary properly classified this violation as willful. The company president's certificate of correction for the same violative condition in 1995, and his testimony that the violation "probably [was] not" corrected, clearly demonstrate Respondent's failure to act in the face of a known duty. (Tr. 20-25, 113-14; CX-108.) Further, Respondent's designation of an employee with no safety background and no knowledge of LOTO procedures to develop such a program shows plain indifference to employee safety. (Tr. 349-50.) That Respondent had a cavalier attitude about employee safety is also established by a former employee's testimony that, after the 1997 OSHA inspection, Respondent provided no employee safety training. (Tr. 206-07.) I find that Respondent has shown and continues to show intentional disregard for the requirements of the Act and complete indifference to employee safety. Based on the foregoing, I affirm Citation 2, Item 1 as a willful violation, and I find that the proposed penalty of $38,500.00 is appropriate for this item.

Item 2 of Citation 2 alleges that Respondent willfully violated 29 C.F.R. § 1910.212(a)(1) by failing to guard exposed portions of various saws in the facility. The maintenance man, plant manager and company president all admitted at the hearing that exposed parts of various saws were not guarded. (Tr. 75-82, 120-22, 178-80.) Their testimony, as well as other evidence in the record, clearly shows that the terms of the standard were violated. (Tr. 147, 150-59, 178-80, 359-62; CX-123-125, CX-129.) Contrary to Respondent's argument, I find that employees were exposed to the hazardous condition. (CX-123-125, CX-129.) The CO even photographed an exposed employee operating the same machine that had almost amputated another employee's hand. (Tr. 151-52; CX-123.) I find, therefore, that the Secretary has established the alleged violation.

I also agree with the willful classification of this violation. Respondent was cited for the same violative condition in 1995 and afterwards certified that it had corrected the condition. (Tr. 31-32, 119-20; CX-130.) However, statements of the maintenance man and the plant manager contradict any claim that the condition was abated. The maintenance man told the CO that the guards were

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07.) Clearly, a LOTO program serves no purpose if employees are not trained in it.

never in place during his tenure at the plant, and the plant manager admitted at the hearing he had told the CO that "[guards] weren't being used and we never used [guards]." (Tr. 152-54, 179-80; CX-144.) Even assuming *arguendo* that Respondent had corrected the violation in 1995, it is clear the company took no steps to ensure that the guards remained in place when operators, who did not like the guards, used the saws. (Tr. 121-22, 151, 359-60, 362, 519.) In addition, the plant manager testified at the hearing that the company still had no policy requiring saw operators to keep the guards in place, and the record shows that, after an incident in which an employee almost amputated her hand with one of the cited saws, Respondent did not investigate the accident to ensure that future accidents would not occur.[12] (Tr. 122, 182-83.) Item 2 of Citation 2 is affirmed as a willful violation, and the proposed penalty of $49,000.00 is appropriate for this item.

Safety Citation 3–Alleged Repeated Violations (No. 98-0849)[13]

Items 1 and 2 of Safety Citation 3 allege repeated violations of 29 C.F.R. §§ 1910.212(a)(1) and 1910.219(d)(1). "A violation is repeated under section 17(a) of the Act if, at the time of the alleged repeated violation, there was a Commission final order against the same employer for a substantially similar violation." *Potlatch Corp.*, 7 BNA OSHC 1061 (No. 16183, 1979).

Item 1 alleges a repeated violation of 29 C.F.R. § 1910.212(a)(1), which requires employers to guard ingoing nip points. The Secretary has established that the standard was violated by both testimony and documentary evidence, including a report of an employee injured by a conveyor belt and the maintenance man's statement to the CO that such injuries had occurred. (Tr. 363-67, 520; CX-131-134, CX-136.) The Secretary has also established that Respondent violated the same standard in 1995 and that it certified in 1995 that it had corrected that violation. (Tr. 32-34, 363-67; CX-135.) Finally, the Secretary has established that the previous and present violations are substantially similar, in that both violations involve the same condition–loose clothing being caught on rollers–created by the conveyor belts. (Tr. 362-65, 521, 558-59; CX-135.) I therefore affirm Item 1 of Citation 3 as a repeated violation, and I find the proposed penalty of $4,900.00 appropriate.

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[12]Respondent also argues that because the guards installed by the manufacturer were on the saws, a willful violation cannot be supported. I disagree, particularly since OSHA told Respondent in 1995 that the parts of the guards that were on the saws did not meet the standard.

[13]*See* Appendix A for text of cited standards.

Item 2 alleges a repeated violation of 29 C.F.R. § 1910.219(d)(1), which requires employers to guard certain pulleys. The Secretary has demonstrated that the terms of the standard were violated, based on the CO's personal observation of the violative conditions and the photographs in evidence. (Tr. 368-70; CX-137-139.) The Secretary has also demonstrated that Respondent violated the same standard in 1995 and that both the prior and present violations involve the same hazard. (Tr. 35-36, 368-70; CX-137-140.) Contrary to Respondent's argument, the Secretary does not need to prove that the same machinery was involved. Rather, she need only show that the violations were substantially similar. In both instances, unguarded belts and pulleys presented the same hazard–that of fingers or clothing being caught–and whether the same or different machinery was involved is irrelevant. The Secretary has met her burden of proof in regard to this item, and Item 2 of Citation 3 is affirmed as a repeated violation. I find that the proposed penalty of $2,800.00 is appropriate.

Safety Citation 4–Alleged "Other" Violations (No. 98-0849)[14]

Item 1 of Citation 4 alleges an other-than-serious violation of 29 C.F.R. § 1904.2(a), which requires employers to maintain an OSHA 200 log or equivalent of recordable occupational injuries and illnesses. Respondent admits it did not keep an OSHA 200 log or equivalent, but it asserts that the information was provided shortly thereafter.[15] (R. Brief, p. 60.) Item 4 of Citation 4 is affirmed as an "other" violation, and I find the proposed penalty of $700.00 to be appropriate.

Item 2 of Citation 4 alleges an other-than-serious violation of 29 C.F.R. § 1910.23(a)(8), which requires employers to guard floor holes. The CO's testimony, that he and another employee tripped in a floor hole that was used as a drain, was unrebutted. (Tr. 373-74; CX-141.) This item is therefore affirmed as an "other" violation. No penalty was proposed, and none is assessed.

Item 3 of Citation 4 alleges an other-than-serious violation of 29 C.F.R. § 1910.303(g)(1)(ii), which prohibits the use of working spaces for storage. The CO's testimony, that working spaces in front of panel boxes were blocked by pallets, both in the rear of the plant and in the fish workshop,

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[14]*See* Appendix A for text of cited standards.

[15]Respondent offered several explanations for its failure to have the required OSHA 200 log. (Tr. 128-29, 142-43, 437-38, 596-98.) However, none of these excuses Respondent's failure to have the OSHA log or equivalent at the time of the inspection.

was unrebutted. (Tr. 365.) Item 3 of Citation 4 is consequently affirmed as an "other" violation. No penalty was proposed, and none is assessed.

Health Citation 1–Alleged Serious Violations (No. 98-0848)[16]

Items 1 through 4 of Health Citation 1 allege serious violations of specific standards. Item 1 alleges a serious violation of 29 C.F.R. § 1910.120(q)(1), which requires the employer to develop an emergency response plan. When the CO and the Industrial Hygienist ("IH") asked for copies of written programs, Respondent could not produce any, including a written emergency response plan. (Tr. 142, 341, 677.) The record clearly shows that Respondent had no plan, written or otherwise, for responding to emergencies involving hazardous substance releases. The IH's interviews with the plant manager and several employees revealed that no one was clear on the company's policy of when or if employees were to evacuate in case of an emergency. (Tr. 666-67, 755-56.) Respondent does not dispute that employees were exposed to the cited hazard, and Respondent could have known of the hazardous condition with the exercise of reasonable diligence. This item is affirmed as a serious violation, and the proposed penalty of $1,750.00 is appropriate.

Item 2 alleges serious violations of 29 C.F.R. §§ 1910.132(d)(1) and 1910.133(a)(1). The evidence of record supports a finding that Respondent failed to assess the workplace for hazards and to select appropriate personal protective equipment ("PPE") for exposed employees as required by § 1910.132(d)(1). For example, employees working with highly corrosive chemicals wore gloves that were appropriate for food hygiene, not corrosive chemicals. (Tr. 683.) The IH testified that two maintenance employees admitted to him that they did not wear PPE when handling chemicals and that one maintenance man stated that PPE was not available. (Tr. 686). The evidence of record also supports a finding that Respondent failed to provide employees handling chemicals with appropriate eye and face protection as required by § 1910.133(a)(1). The IH testified that he did not see safety glasses, chemical splash goggles or face shields. (Tr. 683.) Maintenance personnel who handled highly corrosive chemicals also admitted to the IH that these items were not available. (Tr. 684, 698.) It is undisputed that employees were exposed to the cited hazards, and Respondent could have

[16]*See* Appendix B for text of cited standards.

discovered the hazardous conditions with the exercise of reasonable diligence. This item is affirmed as a serious violation, and I find that the proposed penalty of $1,750.00 is appropriate.

In Item 3, the Secretary alleges serious violations of 29 C.F.R. §§ 1910.134(d)(2)(i), 1910.134(e)(5) and 1910.134(f)(2)(ii). The Secretary presented no evidence as to which requirements of the Shipping Container Specification Regulations of the Department of Transportation Respondent failed to comply with when testing and maintaining the self-contained breathing apparatus ("SCBA") respirators at the site. (Tr. 688-89.) Nor has the Secretary demonstrated why the inspection conducted by the local fire department was inadequate to satisfy the Department of Transportation regulations. *Id.* The Secretary has therefore failed to satisfy her burden of proving a violation of § 1910.134(d)(2)(i), as alleged in Item 3a, and Item 3a is vacated.

As to Items 3b and 3c, the Secretary has shown that Respondent failed to train employees in the proper use, maintenance and limitations of the SCBA respirators, and that Respondent failed to inspect the SCBA respirators monthly, as required by §§ 1910.134(e)(5) and 1910.134(f)(2)(ii), respectively. I do not find credible Respondent's argument that no employee was designated to use the SCBA respirators. The plant manager admitted to the IH that he and a foreman were designated users of the respirators and that he had used them at least twice, once during an ammonia leak. (Tr. 667-73, 740-41, 755-56.) Moreover, the plant manager's demonstration to the IH clearly showed that he did not know how to properly use the SCBA respirators. (Tr. 672-75.) In addition, even though the plant manager was not competent to do so, the designated foreman told the IH that the plant manager had trained him in use of the respirators three years before. (Tr. 672.) Respondent could not provide any training records for any employees who were expected to use the respirators, and the company did not rebut the IH's testimony that Respondent did not inspect the respirators monthly as required. (Tr. 671, 690.) It is undisputed that employees were exposed to the cited hazards, and Respondent's plant manager was aware of the hazardous conditions. The cited conditions could cause serious injuries or death, and the serious classification is proper. Items 3b and 3c are therefore affirmed as serious violations, and a penalty of $3,000.00 for these items is appropriate.

Item 4 alleges a serious violation of 29 C.F.R. § 1910.151(c), which requires suitable eyewash facilities where employees may be exposed to injurious corrosive materials. The IH testified that there were no suitable eyewash facilities readily accessible in areas where employees handled

corrosive chemicals, and Respondent's plant manager was aware that this was the case. (Tr. 694-95). Respondent offered no contrary evidence. Furthermore, it is undisputed that employees were exposed to the cited hazard. This item is affirmed as a serious violation, because potential injuries would be serious, and I find that the proposed penalty of $1,750.00 is appropriate.

Health Citation 2–Alleged Willful Violations (No. 98-0848)[17]

Item 1 of Health Citation 2 alleges violations of 29 C.F.R. §§ 1910.95(c)(1), 1910.95(d)(1), 1910.95(g)(1), 1910.95(i)(2)(i), 1910.95(i)(3) and 1910.95(k)(1), for exposing employees to excessive noise levels. At the start of the OSHA inspection, both the CO and the IH noticed excessive noise in the plant and took sound level readings. (Tr. 144-45, 409-10, 637-38, 648.) The readings the IH took with a sound level meter and dosimeter all showed that the noise that employees were exposed to in the production area exceeded an 8-hour time-weighted average of 85 decibels. (Tr. 646-56, 710-13.) Respondent does not dispute the accuracy of these readings or employee exposure but argues that it did not have knowledge of the cited standards. (R. Brief, p. 54-56.) Contrary to Respondent's argument, "[t]he 'knowledge' of which [the Act] speaks is knowledge of the condition constituting the violation." *Shaw Constr., Inc.*, 6 BNA OSHC 1341, 1342-43 (No. 3324, 1978). Respondent also "is presumed to have knowledge of the standard itself by virtue of the standard's publication in the Federal Register." *Id.* Respondent next points to OSHA's failure to issue a citation for noise after the 1995 inspection as evidence of its lack of knowledge. (R. Brief, p. 54.) Respondent, however, cannot rely on OSHA's earlier failure to issue a citation to support an assertion of a lack of knowledge of the hazardous condition. *Columbian Art Works, Inc.*, 10 BNA OSHC 1132, 1133 (No. 78-29, 1981). Even if Respondent was not cited for excessive noise in 1995, the CO at that time informed the company that the "noise was excessive." (Tr. 37, 53.) Furthermore, Respondent's own insurance company alerted it that some areas of the plant had high noise exposure and that a hearing conservation program needed to be implemented. (Tr. 662-64, 711, 730.) Finally, the company president told the IH that the high noise level was the "nature of the beast" and he admitted to the IH that he was aware the noise levels were above 85 decibels. (Tr. 661-63.)

[17]*See* Appendix B for text of cited standards.

The Secretary has met her burden of proving the alleged violations. First, Respondent did not implement a hearing conservation program including monitoring and audiometric testing of employees exposed to excessive noise levels. (Tr. 411, 664, 711-13.) Second, Respondent did not require exposed employees to wear hearing protectors or provide them with a variety of suitable hearing protectors. (Tr. 145, 194, 410-11, 625, 653, 662-63, 712.) Third, Respondent failed to institute a training program for all exposed employees. (Tr. 664, 712-13.)

I agree with the Secretary's classification of these violations as willful. Despite warnings from two separate sources in 1995 that noise levels were excessive, Respondent deliberately ignored the warnings, failed to comply with the standards' requirements, and knowingly exposed employees to hazardous noise levels. I find that these violations were committed with intentional disregard for the requirements of the Act and with plain indifference to employee safety. Therefore, I affirm Item 1 of Citation 2 as a willful violation, and I find the proposed penalty of $38,500.00 appropriate.

Item 2 of Health Citation 2 alleges willful violations of 29 C.F.R. §§ 1910.1200(e)(1), 1910.1200(f)(5)(i), 1910.1200(f)(5)(ii), 1910.1200(g)(8) and 1910.1200(h). The Secretary alleges, and Respondent admits, that it did not develop, implement and maintain a written hazard communication ("HAZCOM") program.[18] (R. Brief, p. 56-57.) The Secretary has also demonstrated that Respondent failed to label, tag and mark hazardous chemicals with identification and appropriate warnings.[19] (Tr. 704-07.) In addition, the Secretary has shown that Respondent did not have material safety data sheets for some chemicals used, including anhydrous ammonia, battery acid, propane, oxygen and Genetron 22. (Tr. 708.) Finally, the Secretary has established that Respondent failed to effectively train its employees on hazardous chemicals in the workplace. (Tr. 709-10.) I find the training that the former quality control manager provided to be inadequate. His training dealt with food hygiene and not employee safety. (Tr. 632.) Further, the training provided

[18]Respondent maintains that this violation should be reclassified as other-than-serious. I disagree, and, as set out *infra*, and find it willful.

[19]Respondent's argument that the exemptions to the standard apply is rejected. The company did not use an alternative method to identify, tag and mark hazardous chemicals, and the containers used were not portable ones into which hazardous chemicals were transferred from labeled containers for the immediate use of the employees who transferred the chemicals. (Tr. 704-07, 736-37.) *See also* 29 C.F.R. 1910.1200(f)(6) and (7).

by Alpha Chemicals was inadequate because it only covered chemicals sold to Respondent by Alpha Chemicals. (Tr. 709-10.) It is clear that employees were exposed to the hazardous conditions and that Respondent had actual knowledge of the conditions. The Secretary has met her burden of proving all of the violations set out in Item 2.

The Secretary's willful classification of these violations is appropriate. Respondent was cited for these same violations in 1995, and, following that inspection, it certified that it had corrected the violations. (Tr. 699-00.) In addition, Respondent's worker compensation insurer alerted it that it needed to "develop a fully written [HAZCOM] program." (Tr. 701.) The company president admitted to the IH that he was aware of the regulation because he purchased and read an OSHA compliance manual from J.J. Keller and Associates. (Tr. 703.) Yet, Respondent knowingly disregarded the standards and exposed its employees to hazardous chemicals, and the company president's assertion that the former quality control manager took the HAZCOM program with him when he left is patently unbelievable. (Tr. 700, 702.) As in Item 1, I conclude that these violations were committed with intentional disregard for the requirements of the Act and with plain indifference to employee safety. Item 2 is accordingly affirmed as willful, and I find that the proposed penalty of $38,500.00 is appropriate for these violations.

Health Citation 3–Alleged "Other" Violations (No. 98-0848)[20]

Health Citation 3, Item 1 alleges an other-than-serious violation of 29 C.F.R. § 1910.95(l)(i), which requires the employer to post and make available to affected employees a copy of the occupational noise exposure standard. Respondent does not dispute that it did not comply with the cited standard. (R. Brief, p. 59.) This item is affirmed, and no penalty is assessed.

Citation 3, Item 2 alleges an other-than-serious violation of 29 C.F.R. § 1910.141(g)(2), which prohibits the consumption of food or beverages in a toilet room. The CO and the IH both observed employees go to the bathroom to have their lunch, snacks and drinks. (Tr. 248, 714.) A former employee also testified that there was a table with benches in the bathroom so that employees could eat and drink during lunch and breaks. (Tr. 205.) Respondent does not dispute the alleged violation. This item is affirmed as an other-than-serious violation, and no penalty is assessed.

[20]*See* Appendix B for text of cited standards.

Findings of Fact

All findings of fact necessary for a determination of all relevant issues have been made above. Fed. R. Civ. P. 52(a). All proposed findings of fact and conclusions of law inconsistent with this decision are hereby denied.

Conclusions of Law

1. Respondent was, at all times pertinent hereto, an employer within the meaning of section 3(5) of the Act.

2. The Commission has jurisdiction over the parties and the subject matter.

3. Respondent was in serious violation of section 5(a)(1) of the Act for exposing employees to fire and explosion hazards, as alleged in Safety Citation 1, Item 1, and a civil penalty of $4,900.00 is appropriate for this violation.

4. Respondent was in serious violation of section 5(a)(1) of the Act for exposing employees to amputation and laceration hazards, as alleged in Safety Citation 1, Item 2, and a civil penalty of $3,500.00 is appropriate for this violation.

5. Respondent was in serious violation of section 5(a)(1) of the Act for exposing employees to fall hazards, as alleged in Safety Citation 1, Item 3, and a civil penalty of $3,500.00 is appropriate for this violation.

6. Respondent was in serious violation of 29 C.F.R. §§ 1910.36(b)(7), 1910.37(q)(1), 1910.37(q)(2) and 1910.37(q)(5), as alleged in Safety Citation 1, Item 4, and a civil penalty of $1,750.00 is appropriate for these violations.

7. Respondent was in serious violation of 29 C.F.R. § 1910.132(a), as alleged in Safety Citation 1, Item 5, and a civil penalty of $1,400.00 is appropriate for this violation.

8. Respondent was in serious violation of 29 C.F.R. §§ 1910.38(a)(1), 1910.38(b)(1), 1910.157(c)(1) and 1910.157(g)(4), as alleged in Safety Citation 1, Item 6, and a civil penalty of $3,500.00 is appropriate for these violations.

9. Respondent was in serious violation of 29 C.F.R. § 1910.101(b), as alleged in Safety Citation 1, Item 7, and a civil penalty of $3,500.00 is appropriate for this violation.

10. Respondent was in serious violation of 29 C.F.R. § 1910.106(d)(3)(ii), as alleged in Safety Citation 1, Item 8, and a civil penalty of $1,750.00 is appropriate for this violation.

11. Respondent was not in violation of 29 C.F.R. § 1910.146(c)(1), as alleged in Safety Citation 1, Item 9.

12. Respondent was in serious violation of 29 C.F.R. § 1910.176(b), as alleged in Safety Citation 1, Item 10, and a civil penalty of $1,400.00 is appropriate for this violation.

13. Respondent was in serious violation of 29 C.F.R. §§ 1910.178(l) and 1910.178(m)(5)(i), as alleged in Safety Citation 1, Item 11, and a civil penalty of $3,500.00 is appropriate for these violations.

14. Respondent was in serious violation of 29 C.F.R. § 1910.212(a)(3)(ii), as alleged in Safety Citation 1, Item 12, and a civil penalty of $1,400.00 is appropriate for this violation.

15. Respondent was in serious violation of 29 C.F.R. § 1910.213(b)(3), as alleged in Safety Citation 1, Item 13a, and a civil penalty of $600.00 is appropriate for this violation.

16. Respondent was not in violation of 29 C.F.R. §§ 1910.213(c)(1) and 1910.213(c)(2), as alleged in Safety Citation 1, Items 13b and 13c.

17. Respondent was in serious violation of 29 C.F.R. § 1910.215(a)(4), as alleged in Safety Citation 1, Item 14, and a civil penalty of $1,400.00 is appropriate for this violation.

18. Respondent was in serious violation of 29 C.F.R. § 1910.219(f)(3), as alleged in Safety Citation 1, Item 15, and a civil penalty of $1,750.00 is appropriate for this violation.

19. Respondent was in serious violation of 29 C.F.R. § 1910.242(b), as alleged in Safety Citation 1, Item 16, and a civil penalty of $700.00 is appropriate for this violation.

20. Respondent was in serious violation of 29 C.F.R. § 1910.252(a)(2)(vii), as alleged in Safety Citation 1, Item 17, and a civil penalty of $1,750.00 is appropriate for this violation.

21. Respondent was in serious violation of 29 C.F.R. § 1910.303(f), as alleged in Safety Citation 1, Item 18, and a civil penalty of $1,050.00 is appropriate for this violation.

22. Respondent was in serious violation of 29 C.F.R. §§ 1910.303(g)(2)(i), 1910.305(b)(1) and 1910.305(b)(2), as alleged in Safety Citation 1, Item 19, and a civil penalty of $3,500.00 is appropriate for these violations.

23. Respondent was in serious violation of 29 C.F.R. § 1910.303(g)(2)(ii), as alleged in Safety Citation 1, Item 20, and a civil penalty of $3,500.00 is appropriate for this violation.

24. Respondent was in serious violation of 29 C.F.R. §§ 1910.304(a)(2) and 1910.304(f)(4), as alleged in Safety Citation 1, Item 21, and a civil penalty of $3,500.00 is appropriate for these violations.

25. Respondent was in serious violation of 29 C.F.R. §§ 1910.305(g)(1)(iii), 1910.305(g)(2)(ii), 1910.305(g)(2)(iii) and 1910.334(a)(2)(i), as alleged in Safety Citation 1, Item 22, and a civil penalty of $3,500.00 is appropriate for these violations.

26. Respondent was in serious violation of 29 C.F.R. § 1910.305(j)(1)(i), as alleged in Safety Citation 1, Item 23, and a civil penalty of $3,500.00 is appropriate for this violation.

27. Respondent was in willful violation of 29 C.F.R. § 1910.147(c)(1), as alleged in Safety Citation 2, Item 1, and a civil penalty of $38,500.00 is appropriate for this violation.

28. Respondent was in willful violation of 29 C.F.R. § 1910.212(a)(1), as alleged in Safety Citation 2, Item 2, and a civil penalty of $49,000.00 is appropriate for this violation.

29. Respondent was in repeat violation of 29 C.F.R. § 1910.212(a)(1), as alleged in Safety Citation 3, Item 1, and a civil penalty of $4,900.00 is appropriate for this violation.

30. Respondent was in repeat violation of 29 C.F.R. § 1910.219(d)(1), as alleged in Safety Citation 3, Item 2, and a civil penalty of $2,800.00 is appropriate for this violation.

31. Respondent was in other-than-serious violation of 29 C.F.R. § 1904.2(a), as alleged in Safety Citation 4, Item 1, and a civil penalty of $700.00 is appropriate for this violation.

32. Respondent was in other-than-serious violation of 29 C.F.R. § 1910.23(a)(8), as alleged in Safety Citation 4, Item 2, and no civil penalty is appropriate for this violation.

33. Respondent was in other-than-serious violation of 29 C.F.R. § 1910.303(g)(1)(ii), as alleged in Safety Citation 4, Item 3, and no civil penalty is appropriate for this violation.

34. Respondent was in serious violation of 29 C.F.R. § 1910.120(q)(1), as alleged in Health Citation 1, Item 1, and a civil penalty of $1,750.00 is appropriate for this violation.

35. Respondent was in serious violation of 29 C.F.R. §§ 1910.132(d)(1) and 1910.133(a)(1), as alleged in Health Citation 1, Item 2, and a civil penalty of $1,750.00 is appropriate for these violations.

36. Respondent was not in violation of 29 C.F.R. § 1910.134(d)(2)(i), as alleged in Health Citation 1, Item 3a.

37. Respondent was in serious violation of 29 C.F.R. §§ 1910.134(e)(5) and 1910.134(f)(2)(ii), as alleged in Health Citation 1, Items 3b and 3c, and a civil penalty of $3,000.00 is appropriate for these violations.

38. Respondent was in serious violation of 29 C.F.R. § 1910.151(c), as alleged in Health Citation 1, Item 4, and a civil penalty of $1,750.00 is appropriate for this violation.

39. Respondent was in willful violation of 29 C.F.R. §§ 1910.95(c)(1), 1910.95(d)(1), 1910.95(g)(1), 1910.95(i)(2)(i), 1910.95(i)(3) and 1910.95(k)(1), as alleged in Health Citation 2, Item 1, and a civil penalty of $38,500.00 is appropriate for these violations.

40. Respondent was in willful violation of 29 C.F.R. §§ 1910.1200(e)(1), 1910.1200(f)(5)(i), 1910.1200(f)(5)(ii), 1910.1200(g)(8) and 1910.1200(h), as alleged in Health Citation 2, Item 2, and a civil penalty of $38,500.00 is appropriate for these violations.

41. Respondent was in other-than-serious violation of 29 C.F.R. § 1910.95(l)(1), as alleged in Health Citation 3, Item 1, and no civil penalty is appropriate for this violation.

42. Respondent was in other-than-serious violation of 29 C.F.R. § 1910.141(g)(2), as alleged in Health Citation 3, Item 2, and no civil penalty is appropriate for this violation.

ORDER

1. Safety Citation 1, Items 1 through 8 are AFFIRMED.

2. Safety Citation 1, Item 9 is VACATED.

3. Safety Citation 1, Items 10 through 13a are AFFIRMED.

4. Safety Citation 1, Items 13b and 13c are VACATED.

5. Safety Citation 1, Items 14 through 23 are AFFIRMED.

6. Safety Citation 2, Items 1 and 2 are AFFIRMED.

7. Safety Citation 3, Items 1 and 2 are AFFIRMED.

8. Safety Citation 4, Items 1 through 3 are AFFIRMED.

9. Health Citation 1, Items 1 and 2 are AFFIRMED.

10. Health Citation 1, Item 3a is VACATED.

11. Health Citation 1, Items 3b and 3c are AFFIRMED.

12. Health Citation 1, Item 4 is AFFIRMED.

13. Health Citation 2, Items 1 and 2 are AFFIRMED.

14. Health Citation 3, Items 1 and 2 are AFFIRMED.

15. A total civil penalty of $150,750.00 is assessed for OSHRC Docket No. 98-0849.

16. A total civil penalty of $85,250.00 is assessed for OSHRC Docket No. 98-0848.

17. A combined total civil penalty of $236,000.00 is assessed.

/s/

Michael H. Schoenfeld
Judge, OSHRC

Dated: June 8, 2001
Washington, D.C.

Appendix A

29 C.F.R. § 1910.36(b)(7): In every building or structure of such size, arrangement, or occupancy that a fire may not itself provide adequate warning to occupants, fire alarm facilities shall be provided where necessary to warn occupants of the existence of fire so that they may escape, or to facilitate the orderly conduct of fire exit drills.

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.

29 C.F.R. § 1910.37(q)(2): Any door, passage, or stairway which is neither an exit nor a way of exit access, and which is so located or arranged as to be likely to be mistaken for an exit, shall be identified by a sign reading "Not an Exit" or similar designation, or shall be identified by a sign indicating its actual character, such as "To Basement," "Storeroom," "Linen Closet," or the like.

29 C.F.R. § 1910.37(q)(5): A sign reading "Exit", or similar designation, with an arrow indicating the directions, shall be placed in every location where the direction of travel to reach the nearest exist is not immediately apparent.

29 C.F.R. § 1910.132(a): 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.

29 C.F.R. § 1910.38(a)(1): This paragraph (a) applies to all emergency action plans required by a particular OSHA standard. The emergency action plan shall be in writing (except as provided in the last sentence of paragraph (a)(5)(iii) of this section) and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

29 C.F.R. § 1910.38(b)(1): This paragraph (b) applies to all fire prevention plans required by a particular OSHA standard. The fire prevention plan shall be in writing, except as provided in the last sentence of paragraph (b)(4)(ii) of this section.

29 C.F.R. § 1910.157(c)(1): The employer shall provide portable fire extinguishers and shall mount, locate and identify them so that they are readily accessible to employees without subjecting the employees to possible injury.

29 C.F.R. § 1910.157(g)(4): The employer shall provide the training required in paragraph (g)(3) of this section upon initial assignment to the designated group of employees and at least annually thereafter.

29 C.F.R. § 1910.101(b): The in-plant handling, storage, and utilization of all compressed gases in cylinders, portable tanks, rail tankcars, or motor vehicle cargo tanks shall be in accordance with Compressed Gas Association Pamphlet P-1-1965, which is incorporated by reference as specified in § 1910.6.

29 C.F.R. § 1910.106(d)(3)(ii): Storage cabinets shall be designed and constructed to limit the internal temperature to not more than 325°F. when subjected to a 10-minute fire test using the standard time-temperature curve as set forth in Standard Methods of Fire Tests of Building Construction and Materials, NFPA 251-1969, which is incorporated by reference as specified in § 1910.6. All joints and seams shall remain tight and the door shall remain securely closed during the fire test. Cabinets shall be labeled in conspicuous lettering, "Flammable–Keep Fire Away."

29 C.F.R. § 1910.146(c)(1): The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces. Note: Proper application of the decision flow chart in appendix A to § 1910.146 would facilitate compliance with this requirement.

29 C.F.R. § 1910.176(b): Storage of material shall not create a hazard. Bags, containers, bundles, etc., stored in tiers shall be stacked, blocked, interlocked and limited in height so that they are stable and secure against sliding or collapse.

29 C.F.R. § 1910.178(l): Only trained and authorized operators shall be permitted to operate a powered industrial truck. Methods shall be devised to train operators in the safe operation of powered industrial trucks.

29 C.F.R. § 1910.178(m)(5)(i): When a powered industrial truck is left unattended, load engaging means shall be fully lowered, controls shall be neutralized, power shall be shut off, and brakes set. Wheels shall be blocked if the truck is parked on an incline.

29 C.F.R. § 1910.212(a)(3)(ii): The point of operation of machines whose operation exposes an employee to injury, shall be guarded. The guarding device shall be in conformity with any appropriate standards therefor, or, in absence of applicable specific standards, shall be so designed and constructed as to prevent the operator from having any part of his body in the danger zone during the operating cycle.

29 C.F.R. § 1910.213(b)(3): On applications where injury to operator might result if motors were to restart after power failures, provision shall be made to prevent machines from automatically restarting upon restoration of power.

29 C.F.R. § 1910.213(c)(1): 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.

The hood shall be made of adequate strength to resist blows and strains incidental to reasonable operation, adjusting, and handling, and shall be so designed as to protect the operator from flying splinters and broken saw teeth. It shall be made of material that is soft enough so that it will be unlikely to cause tooth breakage. The hood shall be so mounted as to insure that its operation will be positive, reliable, and in true alignment with the saw; and the mounting shall be adequate in strength to resist any reasonable side thrust or other force tending to throw it out of line.

29 C.F.R. § 1910.213(c)(2): Each hand-fed circular ripsaw shall be furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator. The spreader shall be made of hard tempered steel, or its equivalent, and shall be thinner than the saw kerf. It shall be of sufficient width to provide adequate stiffness or rigidity to resist any reasonable side thrust or blow tending to bend or throw it out of position. 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, or rabbeting is not required. On the completion of such operations, the spreader shall be immediately replaced.

29 C.F.R. § 1910.215(a)(4): On offhand grinding machines, work rests shall be used to support the work. They shall be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests shall be kept adjusted closely to the wheel with a maximum opening of one-eighth inch to prevent the work from being jammed between the wheel and the rest, which may cause wheel breakage. The work rest shall be securely clamped after each adjustment. The adjustment shall not be made with the wheel in motion.

29 C.F.R. § 1910.219(f)(3): 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.

29 C.F.R. § 1910.242(b): Compressed air shall not be used for cleaning purposes except where reduced to less than 30 p.s.i. and then only with effective chip guarding and personal protective equipment.

29 C.F.R. § 1910.252(a)(2)(vii): Where practicable, all combustibles shall be relocated at least 35 feet (10.7 m) from the work site. Where relocation is impracticable, combustibles shall be protected with flameproofed covers or otherwise shielded with methal or asbestos guards or curtains.

29 C.F.R. § 1910.303(f): 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.

29 C.F.R. § 1910.303(g)(2)(i): 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.

29 C.F.R. § 1910.305(b)(1): Conductors entering boxes, cabinets, or fittings shall also be protected from abrasion, and openings through which conductors enter shall be effectively closed. Unused openings in cabinets, boxes, and fittings shall be effectively closed.

29 C.F.R. § 1910.305(b)(2): All pull boxes, junction boxes, and fittings shall be provided with covers approved for the purpose. If metal covers are used they shall be grounded. In completed installations each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear.

29 C.F.R. § 1910.303(g)(2)(ii): In locations where electric equipment would be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.

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

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

29 C.F.R. § 1910.305(g)(1)(iii): Unless specifically permitted in paragraph (g)(1)(i) of this section, flexible cords and cables may not be used:

(A) As a substitute for the fixed wiring of a structure;

(B) Where run through holes in walls, ceilings, or floors;

(C) Where run through doorways, windows, or similar openings;

(D) Where attached to building surfaces; or

(E) Where concealed behind building walls, ceilings, or floors.

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.

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.

29 C.F.R. § 1910.334(a)(2)(i): Portable cord- and plug-connected equipment and flexible cord sets (extension cords) shall be visually inspected before use on any shift for external defects (such as loose parts, deformed and missing pins, or damage to outer jacket or insulation) and for evidence of possible internal damage (such as pinched or crushed outer jacket). Cord- and plug-connected equipment and flexible cord sets (extension cords) which remain connected once they are put in place and are not exposed to damage need not be visually inspected until they are relocated.

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.

29 C.F.R. § 1910.147(c)(1): The employer shall establish a program consisting of energy control procedures, employee training and periodic inspections to ensure that before any employee performs any servicing or maintenance on a machine or equipment where the unexpected energizing, start up or release of stored energy could occur and cause injury, the machine or equipment shall be isolated from the energy source, and rendered inoperative.

29 C.F.R. § 1910.212(a)(1): 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.

29 C.F.R. § 1910.219(d)(1): Pulleys, any parts of which are seven (7) feet or less from the floor or working platform, shall be guarded in accordance with the standards specified in paragraphs (m) and (o) of this section. Pulleys serving as balance wheels (e.g., punch presses) on which the point of contact between belt and pulley is more than six feet six inches (6 ft. 6 in.) from the floor or platform may be guarded with a disk covering the spokes.

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.

29 C.F.R. § 1910.23(a)(8): Every floor hole into which persons can accidentally walk shall be guarded by either:

(i) A standard railing with standard toeboard on all exposed sides, or

(ii) A floor hole cover of standard strength and construction. While the cover is not in place, the floor hole shall be constantly attended by someone or shall be protected by removable standard railing.

29 C.F.R. § 1910.303(g)(1)(ii): Working space required by this subpart may not be used for storage. When normally enclosed live parts are exposed for inspection or servicing, the working space, if in a passageway or general open space, shall be suitably guarded.

Appendix B

29 C.F.R. § 1910.120(q)(1): An emergency response plan shall be developed and implemented to handle anticipated emergencies prior to the commencement of emergency response operations. The plan shall be in writing and available for inspection and copying by employees, their representatives and OSHA personnel. Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with § 1910.38(a) of this part.

29 C.F.R. § 1910.132(d)(1): The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, the employer shall:

(i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from hazards identified in the hazard assessment;

(ii) Communicate selection decisions to each affected employee; and

(iii) Select PPE that properly fits each affected employee.

Note: Non-mandatory Appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

29 C.F.R. § 1910.133(a)(1): The employer shall ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

29 C.F.R. § 1910.134(d)(2)(i): Cylinders shall be tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR part 178).

29 C.F.R. § 1910.134(e)(5): For safe use of any respirator, it is essential that the user be properly instructed in its selection, use, and maintenance. Both supervisors and workers shall be so instructed by competent persons. Training shall provide the men an opportunity to handle the respirator, have it fitted properly, test its face-piece-to-face seal, wear it in normal air for long familiarity period, and, finally, to wear it in a test atmosphere.

29 C.F.R. § 1910.134(f)(2)(ii): Self-contained breathing apparatus shall be inspected monthly. Air and oxygen cylinders shall be fully charged according to the manufacturer's instructions. It shall be determined that the regulator and warning devices function properly.

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.

29 C.F.R. § 1910.95(c)(1): The employer shall administer a continuing, effective hearing conservation program, as described in paragraphs (c) through (o) of this section, whenever employee noise exposures equal or exceed an 8-hour time-weighted average sound level (TWA) of 85 decibels measured on the A scale (slow response) or, equivalently, a dose of fifty percent. For purposes of the hearing conservation program, employee noise exposures shall be computed in accordance with appendix A and Table G-16a, and without regard to any attenuation provided by the use of personal protective equipment.

29 C.F.R. § 1910.95(d)(1): When information indicates that any employee's exposure may equal or exceed an 8-hour time-weighted average of 85 decibels, the employer shall develop and implement a monitoring program.

29 C.F.R. § 1910.95(g)(1): The employer shall establish and maintain an audiometric testing program as provided in this paragraph by making audiometric testing available to all employees whose exposure equal or exceed an 8-hour time-weighted average of 85 decibels.

29 C.F.R. § 1910.95(i)(2): Employers shall ensure that hearing protectors are worn: (i) By an employee who is required by (b)(1) of this section to wear personal protective equipment[.]

29 C.F.R. § 1910.95(i)(3): Employees shall be given the opportunity to select their hearing protectors from a variety of suitable hearing protectors provided by the employer.

29 C.F.R. § 1910.95(k)(1): The employer shall institute a training program for all employees who are exposed to nosie at or above an 8-hour time-weighted average of 85 decibels, and shall ensure employee participation in such program.

29 C.F.R. § 1910.1200(e)(1): Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

(i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and,

(ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas.

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.

29 C.F.R. § 1910.1200(g)(8): The employer shall maintain in the workplace copies of the required material safety data sheets for each hazardous chemical, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s). (Electronic access, microfiche, and other alternatives to maintaining paper copies of the material safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options.)

29 C.F.R. § 1910.1200(h): *Employee information and training.* (1) Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and material safety data sheets.

(2) *Information.* Employees shall be informed of:

(i) The requirements of this section;

(ii) Any operations in their work area where hazardous chemicals are present; and,

(iii) The location and availability of the written hazard communication program, including the required list(s) of hazardous chemicals, and material safety data sheets required by this section.

(3) *Training.* Employee training shall include at least:

(i) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);

(ii) The physical and health hazards of the chemicals in the work area;

(iii) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and,

(iv) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

29 C.F.R. § 1910.95(l)(1): The employer shall make available to affected employees or their representatives copies of this standard and shall also post a copy in the workplace.

29 C.F.R. § 1910.141(g)(2): No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.