United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR, Complainant, v. ALEXANDER G. MCLAREN, and its successors, Respondent.	OSHRC DOCKET NO. 03-0574 03-0758 (Consolidated)

APPEARANCES:

For the Complainant:
Patricia Drummond, Esq., Office of the Solicitor, U.S. Department of Labor, Seattle, Washington

For the Respondent:
Alexander G. McLaren, Tacoma, Washington

Before: Administrative Law Judge: Robert A. Yetman

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651-678; hereafter called the "Act").

On October 1, 2002, the Occupational Safety and Health Administration (OSHA) conducted an inspection of the Alexander G. McLaren (McLaren) worksite at the Shannon Point Cannery, 1904 7th Street, Anacortes, Washington pursuant to a warrant issued by a magistrate of the U. S. District Court (Exh C-1). As a result of that inspection, McLaren was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest McLaren brought this proceeding before the Occupational Safety and Health Review Commission (Commission). On December 3, 2003, a hearing was held in Seattle, Washington. At that hearing McLaren argued that his operation did not fall under OSHA's jurisdiction, renewing his motion for reconsideration of this judge's order of October 15, 2003 granting Complainant's motion to deem admitted its unanswered requests for admissions (Tr. ; Exh. R-1). McLaren further moved to exclude evidence obtained during the execution of the warrant, claiming that the warrant was obtained through misrepresentation (Tr. 21).

Exclusion of the Evidence

On September 16, 2002 OSHA learned from the Washington Industrial Safety and Health Administration (WISHA) that an employee had lodged a complaint, alleging that welding operations at McLaren's worksite were being conducted in the vicinity of toxic and combustible materials with little ventilation and no personal protective equipment (Tr. 136-37; Declaration of Joy Flack, Exh. C-13, p. 2-3). On September 19, 2002, OSHA Compliance Officer (CO) Michael Bonkowski visited the Anacortes worksite (Tr. 39). Bonkowski was accompanied by another OSHA CO and a representative from WISHA (Tr. 40). McLaren refused to allow the inspection, but did allow Bonkowski to speak with the "shipyard competent person" on site, Gary Blakey (Tr. 43-44). Bonkowski learned that McLaren was engaged in converting two Canadian naval vessels into charter pleasure craft (Tr. 38; *see also,* testimony of CO Nicole Flessman, Tr. 155).[1] Blakey confirmed that some welding, cutting and grinding was taking place at the site, and that no testing for hot work on a vessel had been performed on the site (Tr. 44).

Blakey, who claimed to be an independent contractor, told Bonkowski that he had no employees (Tr. 46-47). According to Blakey, the three other workers on the site were employed by McLaren, and directed by either Blakey, who relayed instructions from McLaren, or by McLaren himself (Tr. 44-45, 47). McLaren originally claimed that all the workers were independent contractors, but admitted that at least one of the workers, sixteen-year-old Billy Gross, could not be an independent contractor as he was under age (Tr. 47). After the September 19, 2002 visit, Bonkowski phoned one of the other workers at the Anacortes site, Alex McLean (Tr. 49). McLean believed he was McLaren's employee, as McLaren not only paid him, but had the right to assign him additional projects (Tr. 49).

Bonkowski set forth the foregoing information in an affidavit to a magistrate of the U.S. District Court, Western District of Washington (Tr. 92-93, 134-35; Exh. R-2). Based on Bonkowski and Flack's affidavits, the magistrate issued the warrant for inspection, which was executed on October 1, 2003 (Tr. 52; Exh. C-1). McLaren argues that the affidavits on which the warrant was based improperly suggested that he was an employer engaged in a business, and so were insufficient to establish OSHA's probable jurisdiction over his work place. There was no probable cause, therefore, for the issuance of the warrant.

When reviewing warrants, the magistrate's determination of probable cause is entitled to great deference. *Sterling Plumbing Group, Inc.*, 17 BNA OSHC 1914, 1997 CCH OSHD ¶31,274 (No. 95-580,

[1] Respondent argues that, by statute, any vessel whose keel was not laid in the United States is prohibited from being used for commercial purposes in this country. When asked for a citation to the statute, Mr. McLaren stated that he would provide the citation in his post hearing brief (Tr. 186-87). Although, in his brief, Respondent repeated the point that foreign vessels may not be used for commercial purposes, he failed to provide any support for his position, or to cite the supporting statute or regulation (*See* Respondent post hearing brief, p. 3).

1997). Moreover, probable cause is determined solely on the basis of evidence presented to the issuing magistrate. *Sarasota Concrete Company,* 9 BNA OSHC 1608, 1981 CCH OSHD ¶26,061 (No. 78-5264, 1981), *affd.* 693 F.2d 1061 (11th Cir. 1981). A review of Bronkowski and Flack's affidavits shows that there were sufficient facts presented to warrant both the conclusion that McLean was in the business of refitting ships and that he had employees. No further review of the issue is required, or permitted under Commission precedent.

Respondent may adduce additional facts[2] to attack the probable cause finding only if it can carry its burden of showing that the Secretary's application either contained deliberate falsehoods or showed reckless disregard for the truth regarding allegations essential to the probable cause finding, *see, Tri-State Steel Construction, Inc.* 15 BNA OSHC 1903, 1991-93 OSHD ¶29,852 (1992), *pet. den.* 26 F.3d 173 (D.C. Cir. 1994), or was prompted by an improper motive or bad faith on the part of the Secretary or her informant, *see e.g. SEC v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 123-128 (3rd Cir. 1981). McLaren has made no such showing.

Finally, the record fails to establish that the OSHA inspection as it was conducted on October 1, 2002, exceeded the scope authorized by the warrant.

McLaren's motion to suppress the evidence obtained pursuant to the warrant is DENIED.

Jurisdiction

McLaren claims not to be engaged in business or to have employees. However, pursuant to this judge's Order of October 15, 2003, the Secretary's June 19, 2003 request for admissions were deemed admitted after McLaren failed to respond to them. In support of his motion for reconsideration (Exh. R-1), McLaren claimed to have been too ill to respond, or, conversely, to have been overseas (Tr. 30-32).[3] McLaren, however, also claimed to be an attorney, and so should have been aware of the consequences of ignoring legal documents (Tr. 12-15, 231). Moreover, despite his physical condition, McLaren was able to file a prehearing submission on July 9, 2003, and a motion for continuance on August 29, 2003.

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[2] In any event, the evidence introduced at the hearing would not dictate a different result. McLaren set forth no rational non-business purpose for his conversion of two 24 x 125 foot ice-breakers (Tr. 184, 187, 216, 237-38). The workers at the Anacortes site believed they were employees (Tr. 49, 123). Charney Lane, a welder, told the CO that McLaren not only paid her, but set her hours (Tr. 54, 81, 124). She and Alex McLean refused to sign independent contractor agreements, despite McLaren's insistence on them (Tr. 243-47, 191; Exh. R-5, R-6). McLaren agreed that Billy Gross, who was sixteen, could not be an independent contractor, and must be his employee (Tr. 47, 123).

[3] Mr. McLaren relies upon Exhibit E attached to his motion for reconsideration as support for his claim of medical disability (chronic fatigue) which prevented him from answering discovery in a timely manner. Exhibit E is an almost entirely redacted document entitled "Psychiatry Emergency Services" purporting to be signed by Linda K. McKendry, clinical social worker. There is no other intelligible information on the document.

Respondent's motion to vacate the October 15, 2003 order was denied at the hearing (Tr. 20, 25, 34). For purposes of this action, therefore, Respondent, at all times relevant to this action, is deemed to have maintained a place of business at 1904 7th Street, Anacortes, Washington, where he was engaged in the business of refurbishing, repairing and reconfiguring ships (Exh. C-11, C-12; Admissions Nos. 2, 5). McLaren is also deemed to have admitted he is an employer engaged in a business affecting commerce and is subject to the requirements of the Act (Exh. C-11, Admissions Nos. 1, 3, 6, 7, 18, 19, 20, 21, 22, 23; Exh. C-12, Admissions Nos. 1, 3, 6, 7). Jurisdiction has been established.

Alleged Violations, Docket No. 03-0758

Serious citation 1, item 1 alleges:

29 CFR 1915.7(c)(5): The employer did not ensure that each designated competent person had the ability to perform all required tests and inspection which are or may be performed by a competent person as set forth in subparts B, C, D, and H of this part:

> a) The shipyard competent person did not have the instruments to be able to perform the tests required for entry into confined and enclosed spaces aboard the vessels.
>
> The cited standard provides:
>
> (c) *Criteria.* The employer shall ensure that each designated competent person has the following skills and knowledge:
>
> * * *
>
> (5) Ability to perform all required tests and inspections which are or may be performed by a competent person as set forth in Subparts B, C, D and H of this part.[4]

Discussion

In order to prove a violation of section 5(a)(2) of the Act, the Secretary must show by a preponderance of the evidence that: 1) the cited standard applies; 2) there was a failure to comply with the cited standard; 3) employees had access to the violative condition; and 4) the cited employer either knew or could have known of the condition with the exercise of reasonable diligence. *See, e.g., Walker Towing Corp.*, 14 BNA OSHC 2072, 2074, 1991-93 CCH OSHD ¶29239, p. 39,157 (No. 87-1359, 1991).

The provisions of Part 1915 apply to all ship repairing, including conversions. *See* 29 C.F.R. §¶1915.2(a), 1915.4(j). It is undisputed that McLaren was engaged in converting the cited icebreakers to pleasure craft. The cited standard clearly applies. However, it is not clear that Respondent failed to comply with the standard. Gary Blakey was identified as the supervisor, and shipyard competent person

[4] Subpart B sets forth the requirements for work in confined and enclosed spaces and areas with dangerous atmospheres. Subpart C includes provisions regarding toxic cleaning solvents. Subpart D pertains to welding, cutting and heating. Subpart H addresses requirements for tools and related equipment.

on the Anacortes site (Tr. 189-90, 211). Blakey did not have the instruments necessary to perform the tests required under Subpart B; no tests were performed (Tr. 57-58, 70, 88, 211-12; Exh. C-11, Admissions Nos. 10, 11). Complainant failed to prove, however, that Blakey did not have the ability, *i.e.*, skills and knowledge to perform the testing. To the contrary, at hearing, Blakey testified that he *did* have the necessary knowledge (Tr. 211-12). Blakey did not believe that such testing was necessary in this case because the *port* tank was not an enclosed space (Tr. 212). On September 12, 2002, McLaren's employees, Billy Gross and Charney Lane, entered the port fuel tank of the vessel that was tied up at the Anacortes pier (Tr. 58-60, 64, 67, 71-72, 203, 211-12, Exh. C-11, Admissions Nos. 12, 13). CO Bonkowski did not enter the tanks, estimating from the interior of the ship that the tanks were about two feet wide, ten feet athwart the ship and 20 feet high (Tr. 69). However, according to Blakey, the top of the port fuel tank had been cut off, leaving an enclosure six to eight feet deep which was open to the air (Tr. 203, 212-13). On this record, Complainant failed to show that the port tank was an enclosed space, which is defined at §1915.4(q) as "any space, other than a confined space, which is enclosed by bulkheads and overhead." The space cited at citation 1, item 2a and 2b was not shown to require testing under Subpart B, **Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment.** Therefore, Respondent's failure to test, or to have testing equipment on site cannot be construed as being attributable to a lack of knowledge or skill. The Secretary failed to show a violation of §1915.7 by a preponderance of the evidence and citation 1, item 1 is vacated.

Serious citation 1, item 2a alleges:

29 CFR 1915. 12(a)(1)(ii): The employer did not ensure that spaces and adjacent spaces that contain or have contained combustible or flammable liquids or gases were visually inspected and tested by a competent person to determine the atmosphere's oxygen content prior to initial entry in to space by an employee:

> a) Employees entered the diesel fuel tank spaces before testing for oxygen content of the atmosphere.

The cited standard provides:

> §1915.12 **Precautions and the order of testing before entering confined and enclosed spaces and other dangerous atmospheres.**
>
> * * *
>
> (a) *Oxygen content.* (1) The employer shall ensure that the following spaces are visually inspected, and tested by a competent person to determine the atmosphere's oxygen content prior to initial entry into the space by an employee. . . . (ii) Spaces and adjacent spaces that contain or have contained combustible or flammable liquids or gases;

Serious citation 1, item 2b alleges:

29 CFR 1915.13(b)(2): Testing was not conducted by a competent person to determine the concentration of flammable, combustible, toxic, corrosive, or irritant vapors within the space prior to the beginning of cleaning or cold work:

a) Testing for explosive, toxic, corrosive or irritant vapors was not done prior to employees entering the tanks to remove residual diesel fuel with a bucket.

The cited standard provides:

> Testing shall be conducted by a competent person to determine the concentration of flammable, combustible, toxic, corrosive, or irritant vapors within the space prior to the beginning of cleaning or cold work.

Discussion

As noted above, CO Bonkowski learned from employee interviews that on September 12, 2002, McLaren's employee Billy Gross entered the port fuel tank of the vessel that was tied up at the Anacortes pier to bring out buckets of diesel fuel sludge (Tr. 58-60, 64, 67, 71, 203). CO Bonkowski did not enter the tanks (Tr. 69), however, and Blakey's undisputed testimony establishes that the top of the port fuel tank had been cut off (Tr. 203). The port tank was not, therefore, an enclosed space subject to the testing requirements of §§1915.12 and 1915.13. Citation 1, items 2a and 2b are vacated.

Serious citation 1, item 3 alleges:

29 CFR 1915.14(a)(1)(ii): Employees were permitted to engage in hot work or the use of powder actuated fastening tools on tank vessels, within or on the boundaries of fuel tanks, before a certificate was issued setting forth that such work could be done in safety:

> a) Welding and cutting and grinding was done directly on the bulkheads of the diesel fuel tanks and in spaces adjacent to the fuel tanks without obtaining a Marine Chemist's or equivalent certificate that the spaces were safe for hot work.

The cited standard provides:

> (a) *Hot work requiring testing by a Marine Chemist or Coast Guard authorized person.* (1) The employer shall ensure that hot work is not performed in or on any of the following confined and enclosed spaces and other dangerous atmospheres, boundaries of spaces or pipelines until the work area has been tested and certified by a Marine Chemist or a U.S. Coast Guard authorized person as "Safe for Hot Work."
>
> (ii) Within, on, or immediately adjacent to fuel tanks that contain or have last contained fuel; . . .

Discussion

CO Bonkowski's photographs confirmed that Charney Lane was engaged in welding and cutting in the spaces adjacent to the diesel fuel tanks in both the inshore and the offshore vessels (Tr. 72; Exh. C-7, C-8, C-9). Ms. Lane told Bonkowski that the welding took place from May through September of 2002

(Tr. 79-80). It is undisputed that no Marine Chemist's certificate or the equivalent was obtained prior to Ms. Lane's activities (Tr. 219; Exh. C-11, Admissions No. 14). The violation, therefore, is affirmed.

Penalty

In determining the penalty the Commission is required to give due consideration to the size of the employer, the gravity of the violation and the employer's good faith and history of previous violations. The gravity of the offense is the principle factor to be considered. *Nacirema Operating Co.*, 1 BNA OSHC 1001, 1972 CCH OSHD ¶15,032 (No. 4, 1972). The gravity of a violation depends on, 1) the number of employees exposed to the risk of injury, 2) the duration of exposure, 3) the precautions taken against injury, if any, and 4) the degree of probability of occurrence of injury. *Kus-Tum Builders, Inc.* 10 BNA OSHC 1049, 1981 CCH OSHD ¶25,738 (No. 76-2644, 1981).

CO Bonkowski testified that if heated, flammable vapors in a tank may explode (Tr. 68). Bonkowski testified that diesel fuel is not easily ignited and that the probability of a fire was low given the activity in the area of the tanks (Tr. 89). McLaren is a small employer, with only three employees (Tr. 87). McLaren had no safety program, but had no prior history of OSHA violations (Tr. 87-88). No injuries were sustained on the work site (Tr. 252).

Charney Lane was exposed to the cited hazard for the approximately five months that she worked aboard McLaren's vessels. If a fire had ignited, it is likely she would have sustained burns, a serious injury. The proposed penalty of $750.00 is deemed appropriate and will be assessed.

Serious citation 1, item 4 alleges:

29 CFR 1915.158(b)(2): On floating vessels under 200 feet (61m) in length at least one 30 inch (0.76m) U.S. Coast Guard approved ring life buoy with line attached was not located at the gangway.

> a) There was no life ring on the pier or gangway adjacent to the two vessels undergoing repair.
>
> The cited standard provides:
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> On floating vessels under 200 feet (61 m) in length, at least one 30-inch (0.76 m) U.S. Coast Guard approved ring life buoy with line attached shall be located at the gangway.

Discussion

At the time of the inspection, there was no life ring on the pier or gangway accessing the cited vessels (Tr. 82; Exh. C-11, Admissions No. 15). Blakey testified that there were life rings on the vessel, but admitted that they were not where they were supposed to be (Tr. 209-10). The violation is established.

Penalty

Bonkowski testified that because there were no means of immediately rescuing an employee who might fall into the water, he or she might suffer severe hypothermia in the cold waters of Puget Sound (Tr. 82, 89). The chance of an accident occurring was low, as a substantial metal gangway provided access between the vessel and the pier (Tr. 83-84).

All of McLaren's employees were exposed to the cited hazard for the three years work has been ongoing (Tr. 183). As hypothermia can cause serious physical harm, the violation is serious. The proposed penalty of $450.00 is assessed.

Alleged Violations, Docket No. 03-0574

The alleged health violations were grouped for purposes of assessing a penalty.

Serious citation 1a alleges:

29 CFR 1915.1200 (e)(1): Employer did not 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.

> Location: Vessels docked at 1907 7th Street, Anacortes, Washington. Employer did not have a hazard communication program for employees working with hazardous substances including but not limited to paint thinner, diesel fuel, acetone, paint, and primer/sealer.
>
> The cited standard provides:
>
> 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. . . .

Discussion

OSHA CO Nicole Flessner testified that the safety rules Gary Blakey had drafted for the Anacortes work site did not include a hazard communication program (Tr. 157-58; Exh. C-12; Admissions No. 9). Flessner stated that employees had no way of knowing the danger associated with the chemicals they work with, *i.e.*, acetone and paint thinner (Tr. 157-59). Acetone and paint thinner are listed as hazardous chemicals by the American Governmental Conference of Industrial Hygienists (Tr. 178). Employees contacting the types of chemicals at the Anacortes work site could suffer central nervous system depression or dermatitis from skin contact, headaches, nausea and/or respiratory irritation from inhalation (Tr. 158, 161-63). In addition, the chemicals on the work site were flammable and could ignite if in proximity to the sparks or flame generated by welding (Tr. 160).

McLaren admits that he had no Hazard communication program, but argues that the paint, paint thinner, acetone and diesel fuel were exempt consumer products pursuant to 29 C.F.R. §1910.1200(b)(6)(ix).[5] When a standard contains an exception to its general requirement, the burden of proving that the exception applies lies with the party claiming the benefit of the exception. *Falcon Steel Co.*, 16 BNA OSHC 1179, 1991-93 CCH OSHD ¶30,059 (No. 89-2883, 89-3444, 1993). McLaren failed to introduce any evidence establishing that the cited products are used in his work place in the same manner that they are used by other consumers of the products. The standard is applicable, therefore, and the violation is established.

Serious citation 1, item 1b alleges:

29 CFR 1915.1200 (f)(5)(ii): Except as provided in paragraphs (f)(6) and (f)(7) of this section, the employer did not ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

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.

> Location: Vessels docked at 1907 7th Street, Anacortes, Washington. Employer did not place hazard warnings on hazardous substances including but not limited to paint thinner, diesel fuel, acetone, paint, and primer/sealer.
> The cited standard provides:
>
> . . . [T]he employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:
>
> * * *
>
> (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.

Discussion

McLaren did not ensure that each container of hazardous chemicals at the site was labeled, tagged or marked with appropriate warnings (Tr. 159-60; Exh. C-12; Admissions No. 9). The Secretary has established the cited violation.

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[5] §1910.1200(b)(6)(ix) exempts: "[a]ny consumer product or hazardous substance. . . where the employer can show that it is used in the workplace for the purpose intended by the chemical manufacturer or importer of the product, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers when used for the purpose intended."

Serious citation 1, item 1c alleges:

29 CFR 1915. 1200(g)(1): Employer did not have a material safety data sheet in the workplace for each hazardous chemical which they use.

> Location: Vessels docked at 1907 7th Street, Anacortes, Washington. Employer did not have a material safety data sheet for employees working with hazardous substances including but not limited to paint thinner, diesel fuel, acetone, paint, and primer/sealer.
>
> The cited standard provides:
>
> Employers shall have a material safety data sheet in the workplace for each hazardous chemical they use.

Discussion

CO Flessner testified that no Material Safety Data Sheets were provided for the hazardous chemical groups on the Anacortes site (Tr. 162; Exh. C-12; Admissions No. 11). Employees had no access to information on flammability and carcinogenicity, or to medical precautions to be taken in case of exposure (Tr. 163). The citation has been established.

Serious citation 1, Item 1d alleges:

29 CFR 1915. 1200(h)(1): Employer did not 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.

> Location: Vessels docked at 1907 7th Street, Anacortes, Washington. Employer did not provide training for employees working with hazardous substances including but not limited to paint thinner, diesel fuel, acetone, paint and primer/sealer.
>
> The cited standard provides:
>
> 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. . . .

Discussion

Though Gary Blakey took it upon himself to instruct the employees in some general safety issues McLaren provided no hazard communication training for his employees (Tr. 165, 226-27). The Secretary has proven this violation.

Penalty

As noted above, any of McClaren's employees could have come into contact with the chemicals at the Anacortes work site. In the absence of adequate hazard warnings and medical information, those

employees could suffer central nervous system depression or dermatitis from skin contact, headaches, nausea and/or respiratory irritation from inhalation (Tr. 158, 161-63). Specifically, Billy Gross was exposed to diesel fuel, an irritant which can cause dermatitis (Tr. 160). In addition, the chemicals on the work site were flammable and could ignite if in proximity to the sparks or flame generated by welding, resulting in burns (Tr. 160). The violations are serious in nature.

Taking into account the relevant factors, the proposed combined penalty of $600.00 is appropriate and will be assessed.

Findings of Fact

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

Conclusions of Law

1. McLaren is engaged in a business affecting commerce and has employees within the meaning of Section 3(5) of the Act.
2. McLaren, at all times material to this proceeding, was subject to the requirements of the Act and the standards promulgated thereunder. The Commission has jurisdiction of the parties and of the subject matter of this proceeding.
3. The United States Magistrate was presented with sufficient probable cause for issuing the inspection warrant for Respondent's worksite.
4. At the time and place alleged, McLaren was not in violation of 29 CFR §1915.7(c)(5).
5. At the time and place alleged, McLaren was not in violation of 29 CFR §1915.12(a)(1)(ii) or §1915.13(b)(2).
6. At the time and place alleged, McLaren was in violation of 29 CFR §1915.14(a)(1)(ii), and said violation was serious within the meaning of the Act.
7. At the time and place alleged, McLaren was in violation of 29 CFR §1915.158(b)(2), and said violation was serious within the meaning of the Act.
8. At the time and place alleged, McLaren was in violation of 29 CFR §1915.1200(e)(1), (f)(5)(ii), (g)(1) and (h)(1) and said violations were serious within the meaning of the Act.

ORDER

1. Citation 1, item 1, alleging violation of 29 CFR §1915.7(c)(5) is VACATED.

2. Citation 1, items 2a and 2b, alleging violations of 29 CFR §§1915.12(a)(1)(ii) and 1915.13(b)(2) are VACATED.

3. Serious Citation 1, item 3, alleging violation of 29 CFR §1915.14(a)(1)(ii) is AFFIRMED, and a penalty of $750.00 is ASSESSED.

4. Serious Citation 1, item 4, alleging violation of 29 CFR §1915.158(b)(2) is AFFIRMED, and a penalty of $450.00 is ASSESSED.

5. Serious Citation 1, item 5, alleging violation of 29 CFR §1915.1200(e)(1), (f)(5)(ii), (g)(1) and (h)(1) is AFFIRMED, and a penalty of $600.00 is ASSESSED.

/s/
Robert A. Yetman
Judge, OSHRC

Dated: April 16, 2004