United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR
Complainant,
v.
ALABAMA RIVER PULP COMPANY, INC.
Respondent.

OSHRC DOCKET
NO. 95-1533

NOTICE OF DOCKETING OF ADMINISTRATIVE LAW JUDGE'S DECISION

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on March 8, 1996. The decision of the Judge will become a final order of the Commission on April 8, 1996 unless a Commission member directs review of the decision on or before that date. ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW. Any such petition should be received by the Executive Secretary on or before March 28, 1996 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
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Review Commission
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Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
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Office of the Solicitor, U.S. DOL
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200 Constitution Avenue, N.W.
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If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.

Date: March 8, 1996

Ray H. Darling, Jr.
Executive Secretary

DOCKET NO. 95-1533

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SECRETARY OF LABOR, Complainant,	:	
v.	:	OSHRC Docket No. 95-1533
ALABAMA RIVER PULP CO., INC., Respondent.	:	**(EZ)**

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For Respondent

Before: Administrative Law Judge Ken S. Welsch

DECISION AND ORDER

Alabama River Pulp Company (ARP) maintains a place of business on Highway 39, Perdue Hill, Alabama where it produces pulp for sale to manufacturers of paper and paper products. The plant facility is eighteen years old and employs approximately 350 employees. It covers 1,200 acres and was described as the world's largest single line pulp mill. It houses five million square feet under roof (Tr. 207-208, 210). ARP stipulates that it is an employer engaged in a business affecting commerce within the meaning of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651, et seq.), hereafter referred to as the Act.

In April 1995, ARP was conducting its annual outage where all processes and equipment are shut down for maintenance. The annual outage takes approximately five to eight days (Tr. 138). In addition to ARP's maintenance employees, subcontractors are hired to assist. Overall, there are approximately 1,550 workers involved in the maintenance work (Tr. 138). During the outage on

April 25 1995, William Cobb, an employee of a subcontractor, Alabama River Capital Projects, fell at the manlift in the #ESCO digester building and died.

As a result of the accident, compliance safety and health officer David Smith conducted a walkaround inspection of ARP's digester building on April 26 through 27, 1995. Based on his inspection, ARP received a serious citation alleging violations of the ladderway floor opening standard at §1910.23(a)(2) and the manlift standard at §1910.68(b)(8)(i). A penalty of $1,875 was proposed for each violation. Additionally, ARP received an "other" than serious citation for alleged violation of the lockout/tagout standard at §1910.147(d). ARP timely contested the citations and the case was docketed with the Review Commission.

On October 31, 1995, the case was designated for E-Z Trial pursuant to Commission Rule 200-211, 29 C.F.R. §§ 2200.200-211. E-Z trial is a pilot program designed to provide simplified proceedings for resolving contests expeditiously. On December 8, 1995, the E-Z Trial Prehearing Conference Order was entered which set forth the parties' agreed facts and statement of issues.

The E-Z Trial hearing was held on January 16-17, 1996 in Mobile, Alabama. At hearing, ARP withdrew its objection to the validity of the walkaround inspection (Tr. 7). Also, the parties agreed that "serious bodily injury or death could result from someone falling in the manlift area at the #1 ESCO Digester. However, it is stipulated that the death of William Cobb, on April 25, 1995, was not caused by any of the alleged violations in this case" (Joint Exh. 1).

ALLEGED VIOLATIONS

Elements Necessary to Prove a Violation

In general, to prove a violation of a standard, the Secretary of Labor must prove by a preponderance of the evidence that (1) the cited standard applies, (2) there was noncompliance with the terms of the standard, (3) there was employee exposure or access to the hazard created by the noncompliance, and (4) the employer knew or with the exercise of reasonable diligence could have known of the condition. *Kasper Electroplating Corp.*, 16 BNA OSHC 1517, 1521, 1994 CCH OSHD ¶30,303, p. 41,757 (No. 90-2866, 1993); *Seibel Modern Manufacturing & Welding Corp.*, 15 BNA OSHC 1218, 1221, 1991-93 CCH OSHD ¶29,442, p. 39,678 (No. 88-821, 1991).

Additionally, in order to establish a "serious" violation under §17(k) of the Act, 29 U.S.C. §666(k), the Secretary must prove that there is a substantial probability that death or serious physical harm could result from a hazardous condition. In determining substantial probability, the issue is not whether the accident is likely to occur. Rather, the Secretary must show that an accident is possible and the result of an accident would likely be death or serious physical injury. *Spancrete Northeast Inc.*, 15 BNA OSHC 1020, 1024, 1991 CCH OSHD ¶29,313, p. 39,358 (No. 86-521, 1991); *Consolidated Freightways Corp.*, 15 BNA OSHC 1317, 1324, 1991 CCH OSHD ¶29,498 p. 39,804 (No. 89-2253, 1991).

Once the Secretary has presented sufficient evidence on each element to establish a *prima facie* case, the employer has the burden of either rebutting the Secretary's case or proving one of the affirmative defenses recognized by the Review Commission. In this case, the greater hazard defense is alleged for the § 1910.23(a)(2) violation. In order to establish a greater hazard, ARP must show that (1) the hazards of compliance exceed the hazards of noncompliance, (2) alternative means of protecting employees are unavailable; and (3) a variance is unavailable or inappropriate. *Lauhoff Grain Corp.*, 13 BNA OSHC 1084, 1088, 1986-87 CCH OSHD ¶ 27,814, p. 36,397-98 (No. 81-984, 1987).

In determining an appropriate penalty if a violation is found, §17(j) of the Act, 29 U.S.C. 666(j), directs the Commission to consider the gravity of the violation, the good faith of the employer, the size of the employer, and the employer's history of violations. In determining gravity, consideration is given to the number of employees exposed, the duration of the exposure, the precautions taken against injury, and the degree of probability that any injury would occur. *J. A. Jones Const. Co.*, 15 BNA OSHC 2201, 2214, 1991-93 CCH OSHD ¶ 29,964, p. 41,033 (No. 87-2059, 1993); *Caterpillar, Inc.*, 15 BNA OSHC 2153, 2178, 1993 CCH OSHD ¶ 29,962, p. 41,011 (No. 87-922, 1993).

SERIOUS CITATION NO. 1

I. Item 1 - Alleged Violation of §1910.23(a)(2)

The citation alleges that at the west corner of the chip bin #1 Esco digester "employees welding on the wood chip chute were exposed to a fall hazard when a swing gate or offset was not provided."

FACTS

The #1 Esco digester is a building approximately 150 feet high with eight levels, in which various processes are performed in the production of pulp (Exh. C-7; Tr. 148, 165). It is a self continuous digester operated from a control room in another building (Tr. 175). Generally, one employee (helper) per shift works in the digester building monitoring the equipment and processes (Tr. 175-176). Also, maintenance employees are in the digester building and on the roof inspecting the equipment once or twice a week. On the roof level (eighth floor), there is a raised platform, a metal building, and equipment such as the wood chip conveyor used deliver wood chips into the digester (Tr. 151, 158, 173-74, 193).

The raised platform is approximately 35 to 40 feet above the roof level and is located 25 yards from the metal building (Tr. 193). On the platform, the wood chip chute and chip diverter gate are located (Tr. 197, 248). To access to the platform, employees climb a caged ladder or a stairway (Tr 173). The caged ladder is attached to one side of the platform (Tr. 330, 333). The side rails of the ladder extend 36 inches above the platform's landing (Tr. 259).

Compliance officer Smith testified that the ladderway opening onto the platform was not guarded by an offset of railing or a swing gate. There was nothing to prevent employees from inadvertently walking into the opening (Exh. C-8; Tr. 256). Smith observed two employees of a subcontractor working 3½ to 4 feet from the opening. Also, it was Smith's understanding that ARP's maintenance employees make weekly inspections of the equipment on the platform (Tr. 269).

Thomas Lindsey, fiber line manager, acknowledged that prior to the OSHA inspection, there was no guard in front of the opening to the ladder cage (Tr. 174). If a person was not paying attention, it was possible for him to accidently fall through the opening (Tr. 555). Lindsey also

agreed that maintenance employees work periodically on the equipment on the platform and do routine inspections once or twice a week. The inspection take approximately five minutes (Tr. 196). After the OSHA inspection, Lindsey testified that a swing gate was installed at the ladderway opening (Tr. 191).

Since installing the swing gate, a maintenance mechanic testified that in his opinion, it was safer to use the ladder without the gate. He now has to use one hand to open the gate while standing on the ladder (Tr. 502). With only one hand on the ladder's railing, his balance on the ladder was affected (Tr. 502). Also, since the gate automatically closes, he expressed concern about the employees behind him on the ladder (Tr. 506). It was safer holding onto the ladder's side rails with both hands. The mechanic testified that in his eighteen years with ARP, he regularly climbed the ladder and was not aware of any accidents before the gate was installed (Tr. 500-501). Also, Lindsey testified about similar complaints from other employees (Tr. 191). Further, he was not aware of any accident involving the ladder (Tr. 190). ARP attached the swing gate to the side railing of the ladder (Exhs. R-1, R-1a). When asked whether the gate could be moved away from the ladder, Lindsey speculated that such an installation would depend on the location of supports and might involve re-engineering the platform (Exh. C-9; Tr. 219, 222). However, he agreed that this would alleviate the employees' complaints (Tr.217). He did not know if other gate configurations were considered or attempted by ARP (Tr. 223).

DISCUSSION

Section 1910.23(a)(2) provides that:

> Every ladderway floor opening or platform shall be guarded by a standard railing with standard toeboard on all exposed sides (except at entrance to opening), with the passage through the railing either provided with a swinging gate or so offset that a person cannot walk directly into the opening.

It is uncontroverted that at the time of the inspection, the ladderway opening onto the platform was not protected by a swinging gate or railing offset to prevent employees from walking directly into the opening. Also, there is no dispute that ARP was aware of the condition and that employees work on the platform near the ladderway opening. Thus, noncompliance with the terms of §1910.23(a)(2), employees' exposure, and employer's knowledge is established. The two issues

raised by ARP are whether the standard is applicable and whether the installation of the swinging gate created a greater hazard to employees (Tr. 552, 555).

Section 1910.23(a)(2) applies to a "ladderway floor opening" which is not specifically defined. However, ARP points to §1910.21(a)(2) which defines a "floor opening" as "an opening measuring 12 inches or more in its least dimension, *in any floor, platform,* pavement, or yard through which persons may fall" (emphasis added). While not disputing that this is a platform, ARP argues that the cited ladderway opening is not "in" the platform. The ladder is attached to the side of the platform. Based on the court's reading of the standard, ARP's interpretation of the word "in" is to narrow. The court finds that in considering the language and purpose of the standard and the physical conditions to which the standard applies, the cited ladderway floor opening is "in" the platform. As a preposition, "in" is used as a function word to indicate location or position in space or in some materially bound object. *Webster's Third New International Dictionary,* pg. 1139 (unabridged, 1971). The caged ladder is attached to the platform and over seventeen years has become a permanent part of the platform. Therefore, the ladderway opening is "in" the platform. "In" applies to any part of the platform including the caged ladderway which provides access to the platform. Thus, §1910.23(a)(2) is applicable to the cited ladderway opening.

Based on employees' complaints, ARP also asserts a greater hazard defense. Although the complaints involving the swing gate are significant, they fail to establish a greater hazard in this case. The complaints generally concern the spring in the gate and the gate's location to the ladder. ARP failed to show that these concerns could not have been satisfied. The mechanic described the gate as swinging "back awfully hard" with a great deal of force (Tr. 501, 507). However, he did not know if the spring could be adjusted (Tr. 507). Also, using one hand to open the gate is not shown as necessary. Smith described seeing employees at other plants using their bodies to swing open the gate (Tr. 261). The mechanic has never tried using his body (Tr. 506).

However, and more significantly, even if the swing gate as installed is a problem to employees, ARP failed to show that the gate could not be installed farther from the opening. This would allow employees to stand on the platform before opening the gate (Exh. C-9). Such alternative methods were not considered or attempted (Tr. 223). Lindsay's testimony about possibly requiring re-engineering of the platform is speculative. He offered no evidence in support.

Additionally, the standard permits offsetting the railing to prevent an employee from walking directly into the opening. There is no evidence that offset railing could not have been installed. Finally, ARP failed to show that a variance was requested or inappropriate. Therefore, a greater hazard defense is not established by the record.

In determining whether the violation is serious, the record shows that there was a possible fall hazard of 35 feet. Such a fall clearly could cause death or serious physical injury. Also, Lindsey, as plant manager, admitted that an employee not paying attention could fall through the opening (Tr. 174). Thus, the record supports a serious classification.

In considering an appropriate penalty, the record shows that ARP has not received any citations since 1982. Also, according to Smith, ARP maintained good safety programs and the employees appeared well trained in safety. He found ARP generally cooperative during the inspection (Tr. 265, 319). Also, a swing gate was immediately installed. In addition, ARP has spent $65,000 installing over sixty swing gates at other locations[1] since the inspection (Exh. R-18; Tr. 403, 556). Therefore, credit is given for history and good faith. No credit is given for size in that ARP employs over 350 employees. As for gravity, the record reflects that employee exposure is once or twice a week for a short duration and during maintenance work on the equipment. There are generally one or two maintenance employees exposed. Smith considered exposure as seldom and, thus, the probability of an accident was low.

Accordingly, a serious violation of §1910.23(a)(2) is affirmed. A penalty of $500 is assessed.

II. Item 2 - Alleged Violation of §1910.68(b)(8)(i)

The citation alleges that the "top level of manlift building for #1 Esco digester" did not have a maze or self closing gate guarding the entrance and exit at the floor landing affording access to the manlift. As noted by ARP's attorney, the manlift violation is the most important violation to ARP (Tr. 558).

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[1] Smith observed several other unprotected ladderway openings during his inspection, but he could not document employee exposure (Tr. 273).

FACTS

The layout of the metal building on the top level (roof) of the digester building is not in apparent dispute. It is an enclosed metal building containing the manlift and a stairway. Other than the motor and gear box that drives the manlift, there are no other machines, equipment or work processes inside the building (Tr. 150). Between the manlift and stairway there is a railing, 13 feet 3 inches long, which runs from the one wall to within 67 inches of the opposite wall. The manlift opening, which is approximately five feet long and two feet wide, is protected on three sides by the railing and two of the building's walls. The only access to the manlift once inside the building is the area in front of the manlift which is 67 inches wide from where the railing ends and 87 inches long between the railing and the wall (Exh. R-5). At the time of the inspection, there was no staggered railing or handrail with self closing gate in the area in front of the manlift opening. The floor is grating. On the wall across from the manlift opening, there is an electric outlet and switch, some pipes, and two fire extinguishers (Exhs. C-3, R-7, 7a). There is nothing else of significance in the building. At the corner of the building across from the stairway, there is a door to the roof area where equipment, machinery and the platform discussed in Item 1 above are located. ARP acknowledges that the equipment and machinery on the roof require periodic maintenance, particularly during the annual outage and inspection once or twice a week (Tr. 150-151, 179, 196). Employees use the manlift or stairway to get to the roof.

Smith testified that at the time of his inspection of the building, he observed extension cords plugged into the electric outlet on the wall across from the manlift opening. The cords were wrapped around the pipes closer to manlift and ran through the door to the roof. Employees were using the extension cords to work on equipment on the roof (Exh. C-3, Tr. 239, 359). He testified that the purpose of the standard is to prevent an employee from inadvertently walking into the opening (Tr. 346).

Greg Hauber, manager for Perma Tron Elevator, Inc., testified as an expert[2] that he has inspected ARP's manlifts[3] for compliance with ANSI manlift standards for over seven years (Exh. R-6; Tr. 411, 413). In his professional opinion, he considered the metal building as a manlift enclosure providing no direct access to the manlift opening (Tr. 415). Based on his inspection, he testified that employees were only in the building to use the stairway or manlift. The placement of the door to the roof and the railing between the stairway and manlift provided employees no direct access to the manlift opening. Therefore, he opined that ARP was in compliance with the standard (Tr. 420). He testified that during his inspections of the manlift, he never saw employees working in the building or using the electrical outlet to run extension cords outside to the roof. He only observed the outlet being used for work on the manlift (Tr. 439-440).

After the OSHA inspection, ARP installed a railing and self-closing gate in front of the manlift (Exh. R-7; Tr. 343).

DISCUSSION

Section 1910.68(b)(8)(i) provides that:

> The entrances and exits at all floor landings affording access to the manlift shall be guarded by a maze (staggered railing) or a handrail equipped with self-closing gates.

It is unconverted that at the time of the OSHA inspection, there was no self-closing gate inside the building in front of the manlift opening and that after eighteen years ARP was aware of the condition. Also, ARP does not dispute that § 1910.68(b)(8)(i) is the applicable standard. Therefore, the issues in contention are whether ARP's manlift building satisfied the requirements of §1910.68(b)(8)(i) and whether employees were exposed to a hazard.

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2 Perma Tron Elevator, Inc.'s business is exclusively manlifts (Tr. 411). Smith considered Hauber an expert in manlifts and contacted him during his inspection (Tr. 272, 305).

[3] ARP has five manlifts at its facility (Tr. 66).

ARP argues that at other levels in the ESCO digester building there are equipment and work processes being performed.[4] The top level is unique in that the manlift at the top level is completely enclosed in a metal building. Employees working on the equipment on the roof are prevented direct access to the manlift by the enclosed metal building. Inside the building, there are no work processes being performed and there is a railing separating the stairway and manlift. Employees coming into the building from the roof have to diagonally cross in front of the stairway to reach the manlift. Employees coming up the stairway have to make a 180-degree turn around the railing to access the manlift. Finally, ARP argues that employees riding the manlift or working on the manlift are not the employees intended to be protected by the standard. Therefore, ARP maintains that its manlift enclosure satisfies the requirements of §1910.68(b)(8)(i).

Based on the record, the court concludes that §1910.68(b)(8)(i) does require ARP to provide guarding in front of the manlift opening either by a maze (staggered railing) or handrail with self-closing gate. The building houses more than the manlift. It contains a stairway regularly used by employees. Also, as evident by the use of the extension cords plugged into the electric outlet across from the manlift, employees enter the building for purposes other than riding the manlift. Further, the building is inspected once or twice a week. As noted by Hauber, ARP's manlift expert, the purpose of having protection by a handrail or maze is to avoid someone from inadvertently walking into the manlift opening. He did not consider it a frivolous requirement, a person could be seriously injured or killed (Tr. 432-433). Hauber's opinion that the building protected employees was based on there being no reason for employees to be inside the building other than riding the manlift or using the stairway (Tr. 434, 438). However, he acknowledged that if the electric outlet inside the building was being used, a maze or handrail may be necessary depending on the frequency of use (Tr. 439). The record does establish that employees use the electric outlet, as well as inspect the inside of the building. Therefore, the building itself does not provide sufficient protection to employees as contemplated by the standard.

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[4] ARP had self-closing gates and handrails in front of the manlift openings at all other levels in the digester building (Tr. 154).

Thus, the issue becomes whether the employees once inside the building are protected by a "maze" which prevents direct access to the manlift. As defined at §1910.68(b)(8)(iv), "maze or staggered openings shall offer no direct passage between enclosure and outer floor space." Therefore, once inside, the employees are to be denied direct access to the manlift opening. The purpose of the standard is to prevent an inattentive employee from falling into the manlift opening. This could include an employee intending to use the manlift. The only railing inside the building is the railing separating the manlift and the stairway. However, this railing has an opening of 67 inches through which employees travel to use the electric outlet and the manlift. It does not deny employees direct access to the manlift opening. As admitted by ARP, an employee at the door of the building can travel directly to the manlift opening without interference from the railing (Tr. 574). Also, there is no protection for an inattentive employee using the electric outlet directly across from the manlift. The outlet is less than 8 feet from the manlift. However, as noted by Smith, employees wrapped the extension cord around pipes closer to the manlift (Exh. C-3; Tr. 358). ARP presented no evidence that the use of the outlet was isolated or in violation of its work rules. Further, the weekly inspection of the building involve more than the manlift. It includes the illumination in the building and signs (Exh. C-5). Thus, based on employee activities inside the building and their exposure to the manlift opening, the record establishes noncompliance with §1910.68(b)(8)(i).

The violation is properly classified as serious. The parties stipulated that a fall into the manlift opening could result in death or serious physical injury (Joint Exh -1). The fall is at least 30 feet to the next level. The condition of the manlift without a self-closing gate existed for eighteen years. Although based on inspections of the manlift by Perma Tron, ARP may have believed that a maze or gate was not necessary, knowledge of the condition existed. There does not have to be a showing that ARP knew that it violated a standard. *U. S. Steel Corp.*, 12 BNA OSHC 1692, 1699, 1986-87 CCH OSHD ¶27,517, p. 36,671 (No. 79-1998, 1986).

For penalty consideration, as previously discussed, credit is given for good faith based on having good safety programs, a full-time safety director, and the immediate abatement of the violation. Also, credit is given for history in that ARP has not received a citation since 1982. No credit is given for size. In considering the gravity of the violation, severity is high in that death is the most likely result from a fall of at least 30 feet. However, the probability of an accident is

considered low based on the infrequent and short duration of employee exposure. Any employee exposure is limited to times inside the metal building.

Accordingly, a serious violation of §1910.68(b)(8)(i) is affirmed. A penalty of $500 is assessed.

OTHER THAN SERIOUS CITATION NO. 2

I. Item 1 - Alleged Violation of § 1910.147(d)

The citation alleges that "the Job Safety Analysis referenced in the employer's Lock-out procedure did not include the magnitude of energy." ARP stipulates "that its written lockout/tagout procedure in place at the time of the inspection did not contain the written magnitude of energy" (Tr. 9).

FACTS

Compliance Officer Smith testified that ARP's lockout program identified the sources of energy but not the magnitude (Exhs. R-4a, 4b, 4c). He testified that ARP was cited because employees need to know the magnitude of energy. Different voltages require different equipment, including personal protective equipment to perform a proper lockout (Tr. 275, 379, 397). Smith did not identify any other deficiencies in ARP's written lockout/tagout program.

Kenneth Ramion, an electrician with ARP for eighteen years, testified that ARP uses electricity, air pressure and hydraulic power to run its machinery and equipment (Tr. 491, 493). Such equipment and machinery include pumps, motors, escalators, saws, pneumatic belts and K-Mere digesters (Tr. 493). He described ARP as having "thousands" such pieces of equipment (Tr. 489). Ramion testified that although all employees are involved in ARP's lockout procedures, only employees of the electrical and instrumentation department (E&I) actually perform the lockout (Tr. 470, 490-491). Ramion who is involved in electrical training stated that the employees of E&I are trained to make sure there is no magnitude of energy within the source before performing any work (Tr. 452). He noted that at the numerous motor control centers ("circuit breaker" for all motors), the magnitude of energy for each motor is generally labeled. Also, he stated that there are manufacturers' identification tags on each piece of equipment identifying the magnitude of energy (Tr. 461). If the magnitude of energy is not identified and even when there is an identification tag,

E&I employees also use an amp probe to determine the magnitude of energy (Tr. 465). He described ARP's lockout procedure as involving E&I and maintenance employees. The program requires each employee to separately attach their lockout devices at the motor control room. Then, the E&I employee goes to the equipment to verify that it will not start. Also, he removes the housing, and he checks the motor to make sure there is no stored energy (Tr. 490). Based on the training, the identification tags at the control room and on the equipment, and the use of the amp probe, Ramion testified that employees know the magnitude of energy (Tr. 452). However, he agreed that ARP's written program does not identify the magnitude of energy or its location. Also, ARP's program does not state that employees need to know the energy before performing a lockout (Exhs. 4a, 4b, 4c).

DISCUSSION

Section §1910.147(d) provides that:

> The established procedures for the application of energy control (lockout or tagout procedures) shall cover the following elements and actions and shall be done in the following sequence:
>
> > (1) Preparation for shutdown. Before an authorized or affected employee turns off a machine or equipment, the authorized employee shall have knowledge of the type and magnitude of the energy, the hazards of the energy to be controlled, and the method or means to control the energy.

It is uncontroverted that ARP's employees are engaged in the servicing and maintenance of machines and equipment in which unexpected energization or release of stored energy could cause injury to employees (Exhs. R-4a, R-4b, R-4c). Thus, the lockout/tagout standards at §1910.147 apply. Also, the record reflects that ARP has a written lockout program and provides training. ARP argues that its employees did have knowledge of the magnitude of energy based on their training and the identification tags at the motor control room and on the equipment. However, ARP acknowledges that the magnitude of energy is not written in its lockout procedures (Exhs. 4a, 4b, 4c; Tr. 551).

While both parties agree as to the importance of knowing the magnitude of energy, the issue is whether the standard requires that it be written as part of the lockout program. The court agrees with the Secretary. Section 1910.147(c)(4)(i) specifically requires a written energy control procedure. As part of the written control procedure, § 1910.147(d) mandates that such established procedures for energy control need to provide that "authorized employees" have knowledge of the magnitude of energy. Therefore, as part of the written energy control procedure contemplated by §1910.147(c)(4)(i), knowledge of the magnitude of energy as required by §1910.147(d) needs to be in the written procedures. By having such information in its written lockout program, employees are notified of its importance in performing a proper lockout.

The violation is correctly classified as other than serious. Compliance Officer Smith testified that employees appeared well trained. Also, Smith did not identify any other deficiencies in ARP's lockout program.

Accordingly, an other than serious violation of §1910.147(d) is affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The foregoing decision constitutes the findings of fact and conclusions of law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure.

ORDER

SERIOUS CITATION NO. 1

1. Item 1, serious violation of §1910.23(a)(2), is affirmed. A penalty of $500 is assessed.
2. Item 2, serious violation of §1910.68(b)(8)(i), is affirmed. A penalty of $500 is assessed.

OTHER THAN SERIOUS CITATION NO. 2

1. Item 1, other than serious violation of §1910.147(d), is affirmed. No penalty is assessed.

KEN S. WELSCH
Judge

Date: February 26, 1996