



UNITED STATES OF AMERICA  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
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SECRETARY OF LABOR  
Complainant,

v.

GENERAL ELECTRIC COMPANY AIRCRAFT  
Respondent.

OSHRC DOCKET  
NO. 92-2881

**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 December 27, 1993. The decision of the Judge will become a final order of the Commission on January 26, 1994 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 January 18, 1994 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  
Occupational Safety and Health  
Review Commission  
1120 20th St. N.W., Suite 980  
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.  
Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
Room S4004  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

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. / SNA*  
Ray H. Darling, Jr.  
Executive Secretary

Date: December 27, 1993

DOCKET NO. 92-2881

NOTICE IS GIVEN TO THE FOLLOWING:

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Benjamin R. Loye  
Administrative Law Judge  
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SECRETARY OF LABOR,  
Complainant,

v.

GENERAL ELECTRIC COMPANY  
AIRCRAFT ENGINE GROUP,  
Respondent.

OSHRC Docket No. 92-2881

**APPEARANCES:**

Elizabeth R. Ashley, Esq., Office of the Solicitor, U.S. Department of Labor,  
Cleveland, Ohio.

William V. Killoran, Jr., Esq., GE Aircraft Engines, Cincinnati, Ohio.

Before: Benjamin R. Loye, Esq.

**DECISION AND ORDER**

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

Respondent, General Electric Company, Aircraft Engine Group (GEAE), at all times relevant to this action maintained a place of business at 1 Nueman Way, Evendale, Ohio, where it was engaged in the manufacture of aircraft engines. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act (Tr. 12).

On June 22-23, 1992 the Occupational Safety and Health Administration (OSHA) conducted an inspection of GEAE's Evendale worksite (Tr. 17). As a result of the inspection, GEAE was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest GEAE brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

Prior to hearing all items were settled, with the exception of "serious" citation 1, item 2, alleging violation of §1910.305(e)(1). On September 14, 1993, a hearing was held in Cincinnati, Ohio, on the remaining issue. The parties have submitted briefs on the issues and this matter is ready for disposition.

#### Issues

The sole issue to be determined here is the applicability of §1910.305(e)(1). The cited section provides:

*Enclosures for damp or wet locations.* (1) Cabinets, cutout boxes, fittings, boxes, and panelboard enclosures in damp or wet locations shall be installed so as to prevent moisture or water from entering and accumulating within the enclosures. In wet locations the enclosures shall be weatherproof.

The Secretary maintains GEAE's Column D-25, Building B is a "wet location" both because the column is sunk into a concrete foundation which is in contact with the earth, and because the column was unprotected from the weather due to roof leaks at the time of the inspection.

#### Facts

The relevant facts in this case are not in dispute. The parties stipulate that: During OSHA Compliance Officer (CO) John Collier's June 23, 1992 inspection of GEAE's Building B, he examined the area around Column D-25 in the Jet Pac area. The column held a telephone, a switch for overhead lights, and an electrical receptacle with two three pronged outlets. An electric water cooler was plugged into one of the outlets. The area is normally dry. At the time of the inspection, conditions on and around the column were dry; however, there was evidence of water stains running down the column. Prior to the inspection, rainwater had leaked through the roof and run

down the column during storms. (Tr. 7-9; General Electric's Response to Scheduling Order).

On June 2, 1992, and at times prior thereto, work orders were issued to repair roof leaks at column D-25 (Exh. R-1, R-22, R-26, R-27). The roof was eventually replaced, and no leaks have been reported since September 1992 (Tr. 18, 189, 197-98).

#### Discussion

Section 1910.305(e) dictates the type of electrical enclosures to be installed in damp or wet locations, dependent on the amount of moisture expected to be encountered in those locations. Locations are defined in §1920.399:

(i) *Damp location.* Partially protected locations under canopies, marquees, roofed open porches, and like locations, and interior locations subject to moderate degrees of moisture, such as some basements, some barns, and some cold-storage warehouses.

(ii) *Dry location.* A location not normally subject to dampness or wetness. A location classified as dry may be temporarily subject to dampness or wetness, as in the case of a building under construction.

(iii) *Wet location.* Installations underground or in concrete slabs or masonry in direct contact with the earth, and locations subject to saturation with water or other liquids, such as vehicle-washing areas, and locations exposed to weather and unprotected.

Building B in the GEAE facility is a roofed structure, located aboveground. Its interior is not normally subject to moisture from exposure to the weather, direct contact with the earth, or wet operations. Building B is clearly a "dry area" which was temporarily subject to dampness due to roof leaks.

Complainant argues that its interpretation of the standard is entitled to deference. However, the Supreme Court has held that a reviewing court, i.e. the Commission, "should defer to the Secretary only if the Secretary's interpretation is reasonable." *Martin v. OSHRC (CF&I Steel Corp.)*, 111 S.Ct. 1171, 1180 (1991) (emphasis in the original).

Complainant's interpretation is unreasonable, in that it is inconsistent with the plain language of the regulation itself. The definition of a "dry location" expressly provides for temporary exposures to dampness or wetness in covered buildings normally

protected from the weather. The Secretary's interpretation would include any location temporarily exposed to weather conditions (as well as all buildings with concrete foundations) within the definition provided for "wet locations." Adopting Complainant's interpretation would extend the reach of §1910.305 beyond the standard's plain meaning and deprive the employer of fair warning of the proscribed conduct. It is well settled that the Secretary may not so extend a standard's meaning. See e.g., *Bethlehem Steel v. OSHRC*, 573 F.2d 157 (3rd Cir. 1978); *Dravo Corporation v. OSHRC*, 613 F.2d 1227, (3rd Cir. 1980).

The Secretary has failed to demonstrate the applicability of the cited standard. The citation will, therefore, be dismissed.

#### Findings of Fact and Conclusions of Law

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

#### ORDER

1. Serious citation 1, item 2, alleging violation of §1910.305(e)(1) is VACATED.



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Benjamin R. Loye  
Judge, OSHRC

Dated: December 17, 1993