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SECRETARY OF LABOR
Complainant,
v.
MCCAIN FOODS, INC.
Respondent.

OSHRC DOCKET
NO. 92-3285

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 May 4, 1994. The decision of the Judge will become a final order of the Commission on June 3, 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 May 24, 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
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Review Commission
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Petitioning parties shall also mail a copy to:

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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: May 4, 1994

Ray H. Darling, Jr.
Executive Secretary

DOCKET NO. 92-3285

NOTICE IS GIVEN TO THE FOLLOWING:

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SECRETARY OF LABOR, Complainant, v. MCCAIN FOODS, INC., Respondent,	OSHRC Docket No. 92-3285

Appearances:

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Office of the Solicitor
U.S. Department of Labor
For Complainant

Kathleen M. Dillon, Esq.
Robert Mann, Esq.
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Chicago, IL
For Respondent

Before: Administrative Law Judge Barbara L. Hassenfeld-Rutberg

DECISION AND ORDER

This is a proceeding under section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., (the Act).

Respondent, McCain Foods, Inc. (McCain) is a large corporation with a food processing plant in Easton, ME., the site of the inspections.

Pursuant to an employee complaint about overexposure to asbestos, an Occupational Safety and Health Administration (OSHA) Compliance Officer (CO) Cyrille Young (Young), other COs and Assistant Area Director Paul Cyr conducted inspections of the work site

from April 1, 1992 to July 16, 1992. On September 30, 1992, OSHA issued one citation alleging eleven serious violations; a second citation alleging four willful violations and a third citation alleging one other-than-serious violation of workplace safety standards promulgated under the OSHA Act. The serious citation proposed penalties totaling $26,500.00; the willful citation proposed penalties totaling $140,000.00 and the other-than-serious citation proposed no monetary penalty.

In the Secretary's Post-Hearing brief, Serious Citation 1, items 2a and 2b are withdrawn.

A hearing was held in this case on November 16, 1993 through November 19, 1993 in Bangor, Maine, presided over by Judge Barbara L. Hassenfeld-Rutberg.

DISCUSSION

Willful citation 2, items 1a and 1b

The standard alleged in item 1a at 29 CFR 1926.59(h) and the standard alleged in item 1b at 29 CFR 1910.1200(h) both provide: Employers shall provide employees with information and training on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard is introduced into their work area. Item 1a alleges a violation in the (food) processing area (where a renovation project was being conducted) while item 1b alleges the same violation in the boiler room.

At CO Young's first visit to the site on April 1, 1992, she was purposely deceived by McCain management as to the existence of the asbestos pipe removal work being done at the facility during the major construction/renovation project known as Project Cope, involving the food processing areas. When the CO asked about asbestos in the construction area, she was misled and shown only a part of the site that McCain knew did not contain asbestos on the pipes, and indeed the samples she took from there did not contain asbestos (Tr.11, 205-207).

As a result of information subsequently learned by OSHA, in Ms. Young's absence, Assistant Area Director Paul Cyr went to the site on April 19, 1992 and discovered the truth about the asbestos involved in renovation project (Tr. 364, 365, & 368).

During the period of the inspections, Project Cope involved the removal of old pipes containing asbestos to be replaced by updated ones to improve the facility's production

and enable McCain to close down its Presque Isle plant (Tr. 667, 704). The construction area did not specifically entail the boiler room but was adjacent to it. A polywall had been installed to divide the area where the renovations were taking place and the food processing area that was still being actively used.

Item 1a alleges that during the removal of the steam pipes and the 4x4s in the hash tunnel, asbestos was removed and cleaned up by McCain employees without any information or training having been provided to those employees about the dangers of asbestos prior to their removal and cleanup of this hazardous material. In the summer or fall of 1991 (prior to the commencement of Project Cope), McCain employees brought it to the attention of Mr. Robert Nadeau, safety manager at the facility, that there was asbestos on the pipes in the boiler room (adjacent to the processing room)(Tr. 396, 756,758-59). It was common knowledge that the orange covering that was quite visible on the pipe insulation meant asbestos (Tr. 465, 580-81). As a result of employee complaints about asbestos in the boiler room, Mr. Nadeau obtained bids in December, 1991 from two asbestos abatement contractors to determine the existence of any asbestos in the boiler room (Tr. 764, Exs. C-2A, C-2B) and if so, the cost to remove it. Mr. Nadeau also sent samples of the boiler room pipe insulation to McCain's insurance company's consultant whose report confirmed the presence of asbestos in the boiler room (Ex.C-11, Tr. 411-12, 756, 758-59). All the reports unanimously confirmed the existence of asbestos in the boiler room but the abatements bids proved that the asbestos also extended into the processing area (Exs. C-4A, C-4B and C-11). Also there were three witnesses who testified that prior to the commencement of Project Cope, they and McCain management knew there were steam pipes in the processing area that were orange coated, indicating the existence of asbestos on them (Tr. 580-81, 608).

Although McCain clearly knew before Project Cope began of the existence of the asbestos in the construction site, it never acted on those asbestos abatement bids to remove the asbestos because it was too busy with the major renovation project (Tr. 681-82, 805). McCain defended its lack of training for and information about hazardous materials by saying that they eventually planned to remove the asbestos once Project Cope was completed (Tr. 684). Mr. Nadeau still "professed his ignorance" concerning the asbestos extending beyond the boiler room, despite clear evidence to the contrary cited hereinabove.

McCain knew what the standards required because asbestos had been removed at other plants, and indeed Mr. Nadeau had even supervised the removal of asbestos containing insulation at other McCain sites and well knew the significance of the orange coating (Tr. 781). He had also received OSHA training, including the subject of asbestos removal (Tr. 732-733). However, when McCain employees at Easton requested protective equipment and training, none was provided with the sole exception of an improper mask (compare Ex. C-15 showing McCain's knowledge of the proper procedure) given to an employee who specifically requested one because there was considerable amount of dust caused by sweeping up the asbestos debris left by the subcontracting plumber's removal of pipe containing asbestos (Tr. 506, 583-84, 594-95, 700). This dust was sometimes very thick (Tr. 467-68, 476-77). However, McCain employees were told to just wet down the dust (Tr. 475-76), clearly not the proper method to use to prevent exposure to airborne asbestos. The 4x4's being removed in the hash tunnel demolition were clearly labeled as "asbestos", but no proper instructions or training was provided to the employees for its removal.

Item 1b involves the situation covered in the boiler room where the maintenance crews routinely repaired, replaced and maintained asbestos containing gaskets and steam pipes with asbestos insulation connected to the boilers (Tr. 41-42, 82-83, 215-17, 393-94, 464-65). The only "information" that Mr. Nadeau provided those employees was in the nature of some signs given to an employee in the boiler room to post, one or two of which were posted but others were later found in a desk drawer. These signs did not provide the specific information as required by law. There was no attempt at training the employees about the hazardous materials to which they were exposed.

McCain clearly knew of the danger present from asbestos that could cause serious physical harm or death ("serious violation" as defined by section 17(k) of the Act, 29 U.S.C. section 666(k)).[1]

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

McCain's actions clearly constituted willful violations as alleged in items 1a and 1b as it clearly and unmistakedly demonstrated acts done voluntarily that were serious violations as defined herein and those actions were done with either an intentional disregard of, or a plain indifference to Act's requirements. *Ensign-Bickford Co. v. Occupational Safety and Health*, 717 F.2d 1419 (D.C. Cir. 1983) (and cases cited therein), cert. denied 466 U.S. 937, 104 S. Ct. 1909, 80 L.E. 2d 458 (1984). A violation is not "willful" if the employer believed in good faith that the violative condition conformed to the requirement of the cited standard. *C.N. Flagg & Co.*, 2 BNA OSHRC 1539, 1974-75 CCH OSHD , par. 19,251 (No. 1409, 1975). The test of good faith is an objective one: whether the employer's belief was reasonable under the circumstances. *Western Waterproofing Co. v. Marshall*, 576 F. 2d 139 (8th Cir. 1978).

There is no doubt that the employer McCain acted not only with intentional disregard but also with plain indifference to the safety of the employees--McCain's actions were so flagrant that they met both standards of conduct for willful, either of which alone is sufficient to be classified as willful. McCain's only concerns were the renovation project and the costs involved in that project--everything else was unimportant, especially employee safety. No attempt was ever made to meet the requirements for information and training regarding the hazards of asbestos. This judge finds it absurd for McCain to assert that training was not necessary because it was eventually planning to remove the asbestos in the boiler room after Project Cope was completed. Did McCain believe it was complying with the law by its safety director handing to an employee in the boiler room some signs to post or telling the employees to just wet down the airborne asbestos? Mr. Nadeau clearly knew he was not in compliance with the law, yet he intentionally disregarded the law and had a plain indifference to the law and his employees' safety.

Willful citation 2, item 2

The standard alleged in item 2 at 29 CFR 1926.58(f)(2)(i) provides: Each employer who has a workplace or work operation covered by this standard, except as provided for in paragraphs (f)(2)(ii) and (f)(2)(iii) of this section, shall perform initial monitoring at the

initiation of each asbestos job to accurately determine the airborne concentration of asbestos to which employees may be exposed.

At or about March 25, 1992 was the approximate commencement date of Project Cope. McCain never even attempted to comply with the above standard by performing any initial monitoring of the asbestos prior to working being performed on it to determine the airborne concentration of the asbestos to which it would be exposing its employees (Tr. 97-98). McCain intentionally disregarded their safety well knowing of the existence of asbestos and McCain also was clearly indifferent to the Act's requirements. The Secretary alleges and has proven three different instances where McCain failed to follow the standard:

> a) Asbestos-containing pipe insulation around the steam line. This clearly was not monitored as required.
>
> b) 4x4's on the hash tunnel which were labelled as "asbestos"--not only was monitoring not done but McCain tried to distinguish this type of asbestos from the friable type found on the steam pipe and used the baseless defense that monitoring was not necessary because the type of asbestos found in the hash tunnel does not become airborne upon removal. The overwhelming expert evidence in the case did not support that theory of defense.
>
> c) On asbestos-containing pipe insulation in the boiler room--no initial monitoring was ever done there either. Exhibits C-1A, C-1B, C-1C, and C-5C are proof that asbestos was present on the pipe over the catwalk in the boiler room. In the late 1970's or early 1980's, asbestos had been removed from the boiler room without the proper monitoring. Routine maintenance and repair were performed on a regular basis involving the asbestos containing gaskets and boilers in the boiler room, also without the required monitoring.

This item is affirmed, but it should be noted that if the proposed penalty of $35,000.00 had been higher, this judge would have affirmed that amount.

Willful citation 2, item 3

The standard alleged in item 3 is at 29 CFR 1926.58(k)(2)(i) and provides: Labels shall be affixed to all products containing asbestos and to all containers containing such

products, including waste containers. Where feasible, installed asbestos products shall contain a visible label.

The violation alleged and proved was that McCain did not label the asbestos-containing pipe insulation in the processing area (where the renovations were occurring) and in the boiler room. The feeble attempt to belatedly "label" the pipes in the boiler room by Mr. Nadeau's handing to an employee to put up some signs was in no way compliance with the standard. Some of those signs were later found in a desk drawer; Mr. Nadeau never cared enough to check on their posting which is only further proof of McCain's plain indifference. Samples taken from the areas cited in exhibits C-6, C-7A, C-7B and C-7C prove the presence of asbestos.

Willful citation 2, item 4

The standard alleged in item 4 is at 29 CFR 1926.58(l)(2) which provides: Asbestos waste, scrap, debris, bags, containers, equipment, and contaminated clothing consigned for disposal shall be collected, and disposed of in sealed, labeled, impermeable bags or other closed, labeled, impermeable containers.

The debris from the asbestos-containing pipe insulation that was removed from the steam pipe and asbestos from the 4x4's from the hash tunnel was not disposed of in accordance with the standard. One of the procedures used by McCain to dispose of asbestos covered pipes was to have it brought out in back of the building where the renovations were occurring and put it in a scrap metal pile. Photos of such debris are seen in exhibits C-3A, C-3B and C-3C. Test results from samples of materials from that debris are found in exhibits C-5A and C-5B. Smaller pieces of debris were often put into totes; indeed, when McCain learned that OSHA and the state Department of Environmental Protection (DEP) were on site, a tote containing asbestos debris was immediately removed from the work area and buried out back (Tr. 104-05, 519-521, 523-24, 542-43, 809). This tote was unburied as a result of instructions from DEP and asbestos debris was taken from the tote and sent out by an OSHA compliance officer for testing (Tr. 323-29, 831). The results were positive for asbestos (Exs. C-7A, C-7B, C-7C and Tr. 337-39). McCain employees were instructed not to tell OSHA about the presence of asbestos (Tr. 591). McCain's behavior in this matter

clearly demonstrated an intentional disregard for the law. Knowingly burying the asbestos is about as flagrant as one can get.

This item is affirmed, and it should be noted that if the proposed penalty had been more than $35,000.00, this judge would have affirmed that amount.

Other items in the complaint and citation that involved McCain's improper handling of asbestos as a hazardous material are cited in the Serious citation 1, items 7, 8a, 8b, 8c and 9, discussed hereinbelow.

Serious citation 1, item 7

The standard alleged in item 7 is at 29 CFR 1926.58(n)(2)(iii): The employer shall maintain this record for at least thirty years, in accordance with 29 CFR 1910.20. This standard refers to the keeping of records to monitor employee exposure to asbestos.

The citation alleges that although asbestos was removed in the late 1970's (Tr. 753, 854), exposure monitoring records were not kept in accordance with the law (Tr. 112-113). Although the above standard did not come into effect until 1986, its predecessor required keeping the records for 20 years, which standard was not met either. The item is affirmed.

Serious citation 1, items 8a, 8b & 8c

The standard alleged in item 8a stated at 29 CFR 1926.58 (i)(1) provides: The employer shall provide and require the use of protective clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos that exceed the TWA and/or excursion limit prescribed in paragraph (c) of this section. (TWA is the time weighted average limit as described in the CFR.)

McCain did not provide the required protective clothing when employees worked on or near the removal of asbestos; indeed, the employees wore just ordinary work clothes that they then wore home (Tr. 120, 408, 475-76). This judge will infer from the credible testimony of the employees that the thick dust caused from sweeping up the asbestos debris, exceeded the airborne concentrations allowed by the standards. There is no doubt that McCain made no attempt whatsoever to provide and require the use of protective clothing

that the law requires. This failure to do so was despite its knowledge of the existence of asbestos in the renovation area and of employee inquiry and concern about the asbestos.

Item 8b alleges violation of the standard in 29 CFR 1926.58(i)(3) which provides: Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and be labeled in accordance with paragraph (k) of this section.

The employees who worked on or near the asbestos removal wore ordinary work clothes to and from work. McCain not only did not provide the proper protective clothing but it also allowed the employees to leave the premises wearing contaminated clothes. There were no bags or containers provided to meet the standard for transportation of such contaminated clothes.

Item 8c alleges a violation of the standard in 29 CFR 1926.28(a) which provides: The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees.

When McCain employees removed asbestos debris from the steam pipes and the hash tunnel, they were not provided with or required to wear face shields or vented goggles as required by the standards. Employees eyes and faces were exposed to hazards from the airborne asbestos.

Items 8a, 8b and 8c are affirmed.

Serious citation 1, item 9

Item 9 alleges a violation of 29 CFR 1926.58(h)(1) that provides: The employer shall provide respirators, and ensure that they are used, where required by this section.

The only evidence of providing a face mask was an improper one given to an employee who requested a mask suitable for asbestos removal and cleanup. Despite his request for protection, he was provided with the wrong type of mask (Tr. 129-33, 280-81). There is no doubt from the overwhelming testimony that the airborne concentrations existing at the time of the removal of asbestos during Project Cope required the use of respirators in accordance with the cited standard. The item is affirmed.

Serious citation 1, item 1

The standard alleged in item 1 at 29 CFR 1910.22(d)(1) provides: In every building or other structure, or part thereof, used for mercantile, business, industrial or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent.

When CO Young viewed the storage area above the personnel office, she did not see any load capacity rating label as required by the cited standard (Exs. C-18 A-C). Because the area contained heavy items, the employees in the office below such platform were subject to serious harm or death (Tr. 144-48). McCain clearly violated the applicable law, and the item is affirmed.

Serious citation 2, item 3

The standard cited in that item at 29 CFR 1910.151(c) provides: 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.

The emergency shower in the battery charging area was found by the CO Young to not be working properly (Tr. 155-57). Without such a functioning shower, McCain exposed its employees to hazards of an explosion of batteries and thus exposed its employees to serious injury. McCain did not meet the requirements of the cited standard. The item is affirmed.

Serious citation 1, items 4a and 4b

The standard cited in item 4a is part of OSHA's lockout/tagout standard and is set out in 29 CFR 1910.147(c)(4)(ii) that provides: The procedures shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control

of hazardous energy, and the means to enforce compliance including, but not limited to items enumerated as (A)-(D) of the section.

When CO Young asked McCain for its lockout/tagout procedures, she was originally provided with exhibit C-21, which refers to 29 CFR 1910.261(b)(4). This standard applies to paper/pulp mills and not to the site inspected here. About 4 weeks after the receipt of that exhibit, she received from McCain the documents labeled exhibits C-22 and C-23. Exhibits C-21 and C-23 were essentially identical to each other than the cited section of the regulations; however, both programs were deficient in not being directed to the specific machines covered at the site. The programs also failed to account for the steam line as a source of energy (Tr. 159-63, 370-90). Although exhibit C-22 covered the start-up and shut-down procedures for the machines, it was still inadequate and did not meet the requirement of the regulations as it failed to indicate how to isolate all sources of power to insure that a machine did not become energized from the main disconnect or other source of power (Ex. C-31 and Tr. 370-90). Thus, McCain was not in compliance with this standard, and the item is affirmed.

Item 4b cites a violation of 29 CFR 1910.333(b)(2)(i) that provides: The employer shall maintain a written copy of the procedures outlined in paragraph (b)(2) and shall make it available for inspection by employees and by the Assistant Secretary of Labor and his or her authorized representatives.

McCain's failure to have an updated version of the OSHA regulations on site means that it violated the cited standard in item 4b, and the item is affirmed.

Serious citation 1, item 5

Item 5 alleges a violation of 29 CFR 1910.178(p)(1) that provides: If at any time a powered industrial truck is found to be in need of repair, defective, or in any way unsafe, the truck shall be taken out of service until it had been restored to safe operating condition.

The forklift in question is clearly seen in exhibits C-24A and C-24B. The broken windshield was on a forklift used outside in the area of employee traffic and other forklifts (Tr. 164-69). There is no excuse for allowing the operation of a forklift that is so blatantly in need of repair and McCain clearly violated the cited standard, and the item is affirmed.

Serious citation 1, item 6

The standard cited in item 6 alleges a violation of 29 CFR 1910.215(b)(9) which provides: Safety guards of the types described in subparagraphs (3) and (4) of this paragraph, where the operator stands in the front of the opening, shall be constructed so that the peripheral protected member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (b)(3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed one-fourth inch.

In exhibit C-17, bottom photo, the machine at issue is shown and the testimony from CO Young was that this machine was located in plain view in the maintenance shop. The tongue guard was 1/2" from the wheel which violated the standard requiring no more than 1/4". The item is affirmed.

Serious citation 1, item 10

The standard alleged violated is 29 CFR 1926.404(b)(1)(i) which provides: The employer shall use either ground fault interrupters as specified in paragraph (b)(1)(ii) of this section or an assured equipment grounding conductor program as specified in paragraph (b)(1)(iii) of this section to protect employees on construction sites. These requirements are in addition to other requirements for equipment grounding conductors.

McCain did not have the required equipment as evidenced by a test by a CO of an electrical outlet used to power construction during Project Cope. The ground fault circuit interrupter (GFCI) was not tripped as it should have been by the electrical current supplied to the tested outlet (Ex. C-16, Tr. 136-141); thus, McCain did not meet the standard, and the item is affirmed.

Serious citation 1, item 11

The standard that was alleged to have been violated in item 11 at 29 CFR 1926.405(b)(1) provides: Conductors entering boxes, cabinets, or fittings shall be protected

from abrasion, and openings through which conductors enter shall be effectively closed. Unused openings in cabinets, boxes, and fittings shall also be effectively closed.

Mr. Nadeau admitted that the new panel was supposed to be inspected weekly, but McCain employees were too busy with Project Cope to inspect as the company program required (Tr. 974-76). The panel in question is the top photo in exhibit C-17, which had a circuit breaker cap missing from the panel circuit #30, thus exposing the bus bar. An OSHA CO found a live current when she tested the opening (Tr. 141-44). McCain clearly violated the standard involved, and the item is affirmed.

Other citation 3, item 1

The standard allegedly violated in this item is 29 CFR 1910.303(g)(1)(ii) which provides: 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.

The panel that violated the standard can be seen in exhibit C-3C, top photo. That picture clearly demonstrates that the standard was not met for the electrical panel that was located in the storage area above the personnel office as the workspace in front of the panel was blocked with stored boxes and did not meet the requirements set out by the standard (Tr. 174-76). The item is affirmed as non-serious.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All findings of fact relevant and necessary to a determination of the contested issues have been found specially and appear herein. See Rule 52(a) of the Federal Rules of Civil Procedure. Proposed findings of fact or conclusions of law inconsistent with this decision are denied.

ORDER

Serious citation 1, item 1, alleging a violation of 29 CFR 1910.22(d)(1) is AFFIRMED and a penalty of $2500.00 is assessed.

Serious citation 1, item 2 is WITHDRAWN as requested by the Secretary of Labor.

Serious citation 1, item 3, alleging a violation of 29 CFR 1910.151(c) is AFFIRMED and a penalty of $2500.00 is assessed.

Serious citation 1, item 4a alleging a violation of 29 CFR 1910.147(c)(4)(ii) and item 4b alleging a violation of 29 CFR 1910.333(b)(2)(i) are AFFIRMED and a penalty of $2500.00 is assessed.

Serious citation 1, item 5 alleging a violation of 29 CFR 1910.178(p)(1) is AFFIRMED and a penalty of $2000.00 is assessed.

Serious citation 1, item 6 alleging a violation of 29 CFR 1910.215(b)(9) is AFFIRMED and a penalty of $1500.00 is assessed.

Serious citation 1, item 7 alleging a violation of 29 CFR 1926.58(n)(2)(iii) is AFFIRMED and a penalty of $1500.00 is assessed.

Serious citation 1, item 8a alleging a violation of 29 CFR 1926(i)(1); item 8b alleging a violation of 29 CFR 1926.58(i)(3) and item 8c alleging a violation of 29 CFR 1926.28(a) are all AFFIRMED and a penalty of $3500.00 is assessed.

Serious citation 1, item 9 alleging a violation of 29 CFR 1926.58(h)(1) is AFFIRMED and a penalty of $5000.00 is assessed.

Serious citation 1, item 10 alleging a violation of 29 CFR 1926.404(b)(1)(i) is AFFIRMED and a penalty of $2500.00 is assessed.

Serious citation 1, item 11 alleging a violation of 29 CFR 1926.405(b)(1) is AFFIRMED and a penalty of $1500.00 is assessed.

Willful citation 2, item 1a alleging a violation of 29 CFR 1926.59(h) and item 1b alleging a violation of 29 CFR 1910.1200(h) are affirmed and a penalty of $35,000.00 is assessed.

Willful citation 2, item 2 alleging a violation of 29 CFR 1926.58(f)(2)(i) is AFFIRMED and a penalty of $35,000.00 is assessed.

Willful citation 2, item 3 alleging a violation of 29 CFR 1926.58(k)(2)(i) is AFFIRMED and a penalty of $35,000.00 is assessed.

Willful citation 2, item 4 alleging a violation of 29 CFR 1926.58(1)(2) is AFFIRMED and a penalty of $35,000.00 is assessed.

Other citation 3, item 1 alleging a violation of 29 CFR 1910.303(g)(1)(ii) is AFFIRMED as a nonserious violation and no penalty is assessed.

Barbara L Hassenfeld-Rutberg

BARBARA L. HASSENFELD-RUTBERG
Judge, OSHRC

Date: April 29, 1994
Boston, Massachusetts