



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR
Complainant,
v.
D & J MANUFACTURING, INC.
Respondent.

**OSHRC DOCKET
NO. 93-1001**

**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 April 21, 1994. The decision of the Judge will become a final order of the Commission on May 23, 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 11, 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. / RHA
Ray H. Darling, Jr.
Executive Secretary

Date: April 21, 1994

DOCKET NO. 93-1001

NOTICE IS GIVEN TO THE FOLLOWING:

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Counsel for Regional Trial Litigation
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Paul L. Brady
Administrative Law Judge
Occupational Safety and Health
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SECRETARY OF LABOR,

Complainant,

v.

D & J MANUFACTURING, INC.,

Respondent.

OSHRC Docket No. 93-1001

APPEARANCES:

Maureen Cafferkey, Esquire
Office of the Solicitor
U. S. Department of Labor
Cleveland, Ohio
For Complainant

Mr. Danny El-Assir
Mr. John El-Assir
D & J Manufacturing, Inc.
Toledo, Ohio
For Respondent *Pro Se*

Before: Administrative Law Judge Paul L. Brady

DECISION AND ORDER

This proceeding is brought pursuant to section 10 of the Occupational Safety and Health Act of 1970 (Act) to contest a citation issued by the Secretary of Labor (Secretary) pursuant to section 9(a) of the Act.

There is no dispute that respondent, D & J Manufacturing (D & J), is a manufacturer of custom print advertising specialties and novelties. On August 5, 1992, it was issued citations alleging violations of 29 C.F.R. § 1910.1200(e)(1), § 1910.20(g)(1), § 1910.1200(h),

and § 1910.20(g)(2). The citations were subsequently affirmed as final orders of the Occupational Safety and Health Review Commission (Commission).

An inspection on February 12, 1993, resulted in the issuance of the citation which is the subject of this proceeding.

Alleged Repeat Violation of § 1910.1200(e)(1)

The standard requires in pertinent part that:

Employers shall develop, implement, and maintain at the workplace, a written hazard communication program for their workplaces

The citation alleges that D & J had not developed or maintained such a program at the workplace.

Ms. Laura Ulczynski, industrial hygienist, conducted the inspections which gave rise to issuance of citations to D & J in both instances. She conducted the follow-up inspection with Ms. Debbie DeHaven, who was working in the front office, and the closing conference was held with Danny El-Assir, one of the owners of D & J (Tr. 24-25, 36).

Testimony shows that Ms. DeHaven could not provide the inspector with a written hazard communication program (Tr. 38). El-Assir did not know about such a program and could not find one. Ms. Ulczynski explained that a program was required by this employer because of the work that involved use of hazardous chemicals. The same chemicals and process were used in the workplace during her prior inspection (Tr. 39-40).

Ms. DeHaven testified that she did not know what a written hazard communication program was (Tr. 108). Mr. J. B. Groins, who had worked as a cutter, and later in charge of cutting and assisting other workers, had never heard of a written hazard communication program prior to the inspection herein (Tr. 141, 148). He did not know what types of chemicals were used in the workplace, but knew they produced strong odors. He was aware of employee complaints, and was told by an employee who was pregnant, that her doctor recommended she leave the job. To his knowledge, nothing was done about the employee complaints (Tr. 142-143, 147-148).

Danny El-Assir testified that D & J had a written program at the time of the inspection. He stated it was located in a cabinet next to the one checked during the inspection (Tr. 282, 285). Danny El-Assir also stated Debbie DeHaven was without authority to conduct the walk-around inspection. He stated she should have contacted employee J. B. Groins for that purpose as he was also more knowledgeable (Tr. 284).

It is noted that Groins believed DeHaven was in charge at the time (Tr. 156). Also, if he had the authority, as suggested by El-Assir, he knew nothing about the required hazard communication program.

The evidence establishes the repeat violation as alleged.

Alleged Repeat Violation of § 1910.1200(g)(1)

The standard requires in pertinent part:

Employers shall have a material safety data sheet for each hazardous chemical which they use.

The citation alleges:

The company did not maintain material safety data sheets for inks, solvents, adhesives, and Glo-Lux pigment used in their establishment.

Ulczynski testified that D & J could not provide any material safety data sheets (MSDS) for the chemicals used in the workplace (Tr. 40). She had asked DeHaven, Joe Douglas, a silk screener, and Danny El-Assir at the closing conference (Tr. 41). Ulczynski found that materials used in the workplace contained hazardous chemicals including zinc oxide, isophorone, and petroleum distillate (Exhs. C-6, C-7, C-9, C-10, C-12; Tr. 29-35). DeHaven testified that the MSDSs could not be found (Tr. 108-109).

Danny El-Assir testified that the MSDSs were kept in the same cabinet with the written programs as noted above (Tr. 278, 282). He also points out that J. B. Groins should have been asked to locate the MSDSs (Tr. 272). But Groins testified DeHaven was in charge of the workplace.

The evidence sufficiently establishes the violation as alleged.

Alleged Repeat Violation of § 1910.1200(h)

The standard requires as follows:

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.

The citation alleges D & J employees did not receive training upon their initial assignment with the company relating to hazardous chemicals used in the workplace.

Ulczynski testified that employees were not provided with information and training on hazardous chemicals that they worked with. She stated Joe Douglas, who worked with the hazardous chemicals, said he had no training on the hazards associated with their use (Tr. 42).

DeHaven testified she had received no training concerning the chemicals used in the workplace. She was aware of complaints by employees of having eye and throat irritations from the chemicals. Also, neighboring companies complained about employees having reactions to fumes from chemicals used at D & J (Tr. 110-111).

J. B. Groins, who worked about 5 to 10 feet from where the chemicals were used, stated he was not trained on hazards regarding their use (Tr. 142, 184).

Mr. Hussan Alsayed testified that Joe Douglas was trained on the silk screening process but was not sure about the hazards associated with use of the chemicals (Tr. 238-239). Similar testimony was provided by Mr. John El-Assir (Tr. 294-295).

The evidence clearly establishes a repeat violation.

Alleged Repeat Violation of § 1910.20(g)(2)

The standard, which pertains to employee information, states in pertinent part that:

Each employer shall keep a copy of this section and its appendices, and make copies readily available, upon request, to employees.

It is alleged in the citation that D & J did not keep a copy of § 1910.20(g)(2) and its appendices at the workplace and make it available to employees.

Ulczynski stated that neither DeHaven nor Danny El-Assir could provide a copy of the regulation. Ulczynski explained that D & J was required to have the regulations on site to allow employees access to medical and exposure records. During the initial inspection in July 1992, she provided John El-Assir a copy of the regulations. He was told they should keep a copy at the workplace and make it available to employees (Tr. 16, 43-45).

Danny El-Assir stated that three copies of the regulations were at the worksite. One was in the secretary's desk, one was by the shipping door, and one was hanging on the wall or in the cabinet. Again, El-Assir asserts that DeHaven should have asked J. B. Groins about these documents (Tr. 272). Groins testified that he had no knowledge of the regulations prior to the inspection of February 12, 1993 (Tr. 152).

The evidence establishes the violation as alleged.

Penalty Determination

Section 17(j) of the Act authorized the Commission to assess appropriate penalties after giving "due consideration" to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations. Under section 17(a), a civil penalty may be assessed of not more than \$10,000 for repeat violations.

Upon consideration of the foregoing factors, appropriate penalties have been determined for the violations in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

ORDER

Based on the foregoing decision, it is ORDERED:

The citation is hereby affirmed and the following penalties are assessed:

<u>Standard</u>	<u>Penalty Assessed</u>
29 C.F.R. § 1910.1200(e)(1)	\$2,000.00
29 C.F.R. § 1910.1200(g)(1)	2,000.00
29 C.F.R. § 1910.1200(h)	2,000.00
29 C.F.R. § 1910.20(g)(2)	160.00

/s/ Paul L. Brady
PAUL L. BRADY
Judge

Date: April 12, 1994