



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OF LABOR
Complainant,

v.

AMALGAMATED SUGAR COMPANY
Respondent.

OSHRC DOCKET
NO. 94-0096

**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 13, 1995. The decision of the Judge will become a final order of the Commission on May 15, 1995 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 4, 1995 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.
Ray H. Darling, Jr.
Executive Secretary

Date: April 13, 1995

DOCKET NO. 94-0096

NOTICE IS GIVEN TO THE FOLLOWING:

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Benjamin R. Loye
Administrative Law Judge
Occupational Safety and Health
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SECRETARY OF LABOR,

Complainant,

v.

AMALGAMATED SUGAR COMPANY,

Respondent.

OSHRC DOCKET
NO. 94-0096

APPEARANCES:

For the Complainant:

Cathy L. Barnes, Esq., Office of the Solicitor,
U.S. Department of Labor, Seattle, WA

For the Respondent:

Richard C. Boardman, Esq., Boise, ID

DECISION AND ORDER

Loye, Judge:

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C., Section 651, *et. seq.*, hereafter referred to as the Act).

Respondent, Amalgamated Sugar Company (Amalgamated), at all times relevant to this action maintained a worksite at Highway 19, Receiving Station 66 Doles, Caldwell Idaho, where it was engaged in receiving and warehousing sugar beets. Amalgamated admits it is

an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

In December 1993 the Occupational Safety and Health Administration (OSHA) conducted an inspection of Amalgamated's Caldwell worksite. As a result of the inspection, Amalgamated was issued citations, together with proposed penalties, alleging violations of the Act. By filing a timely notice of contest Respondent brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

The parties stipulate that the sole matter at issue in this case is whether the general industry standards at 29 C.F.R. §1910 *et seq.* are applicable to Amalgamated's operation. The parties agree that should the §1910 standards be found applicable, the cited violations shall be affirmed as amended, and the agreed upon penalties be assessed (Tr. 5-6).

On January 10, 1995, a hearing was held in Boise, Idaho on the matter remaining at issue. The parties have waived or submitted briefs and this matter is ready for disposition.

ISSUE

Amalgamated maintains that it is engaged primarily in agriculture operations at its Caldwell receiving station, and that those operations are regulated by OSHA's industry specific standards for agriculture found at 29 C.F.R. §1928 *et seq.* Respondent argues that §1928.21(b) exempts agricultural employers from the operation of the general industry standards at §1910 *et seq.*

FACTS

Amalgamated's primary business is the production of sugar, beet pulp and molasses from sugar beets (Tr. 49). Amalgamated also maintains an "agricultural department" which functions as a liaison between the company and the private growers who sell their crops to Amalgamated (Tr. 28). The agricultural liaison negotiates the amount of acreage to be planted, type of seed, and delivery schedule with the growers; Amalgamated's "field men" provide consulting services after planting (Tr. 27-34). Amalgamated's crop receiving stations are designated part of the agriculture department (Tr. 44-45).

During the harvesting season, Amalgamated receives the growers' beet crops at its outlying stations (Tr. 34). The growers provide their own trucking (Tr. 35), and the beets remain the property of the growers until they are weighed and dumped at the receiving

stations (Tr. 42). Once Amalgamated takes possession, the beets are cleaned and moved into storage by a conveyor system (Tr. 19-21, 39-40).

Employees at the Caldwell receiving station are all either operators of equipment (tractors, front-end loaders, beet pilers), scalehouse operators or maintenance personnel (Tr. 17-20). None are involved in the growing or harvesting of beets (Tr. 77). Receiving station personnel are assigned as needed; following the harvest they return to Amalgamated's shop for the winter, where they perform repair and maintenance duties (Tr. 21, 40).

Amalgamated was cited for failing to develop energy control procedures for use when servicing beet pilers, and for failing to develop and implement safe working practices for use when servicing electrical equipment.

Discussion

For purposes of determining whether an operation is agricultural for purposes of coverage, the Commission must:

...examine the specific task that exposed the worker to the alleged noncomplying condition for which the employer was cited and decide whether the task is part of, or integrally related to, an agricultural operation.

Darragh Company, 9 BNA OSHC 1205, 1980 CCH OSHD ¶25,066 (Nos. 77-2555, 77-3074, 77-3075, 1980). In *Darragh*, the Commission noted that the particular task performed by the cited employer, the delivery of feed, was necessary to the raising of the agricultural product in that case, chickens. They also took into account the fact that the work done by the cited employer was actually performed on an agricultural establishment, or farm, where chickens owned by the cited employer were raised by contract poultry farmers.

In this case the noncomplying condition involved maintenance performed on equipment used in the warehousing of sugar beets purchased by Respondent's refinery subsequent to the beets' harvest and delivery by the beet farmers. The receiving station personnel had no connection to the production or harvesting of the beet crop whatsoever. The nexus between the beet grower and Amalgamated's beet warehousing operation is no closer than that between a grower/farmer and any other wholesale purchaser of agricultural

products. That connection is too attenuated to meet the "integral relation" test set forth in *Darragh*.¹

The undersigned finds that Amalgamated's receiving facility is not an agricultural operation for purposes of coverage, and that the general industry standards are applicable to that operation.

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 1, alleging violation of §1910.147(c)(4)(i) is AFFIRMED, and a penalty of \$1,800.00 is ASSESSED.
2. Serious citation 1, item 2, alleging violation of §1910.132(b)(1) is AFFIRMED, and a penalty of \$2,500.00 is ASSESSED.
3. Citation 1, item 3, alleging violation of §1910.333(b)(2)(i) is AFFIRMED as an "other than serious" violation, and a penalty of \$500.00 is ASSESSED.
1. Serious citation 1, item 4, alleging violation of §1910.333(b)(2)(iii)(A) is AFFIRMED, and a penalty of \$2,500.00 is ASSESSED.


Benjamin R. Loye
Judge, OSHRC

Dated: April 7, 1995

¹ Both parties rely in part on the *Standard Industrial Classification Manual* published by the Office of Management and Budget. This judge finds that document inapposite, in that it addresses only the employer's primary business, which Amalgamated admits is sugar refining. Whether a specific task is an agricultural operation is determined solely by the criteria set forth in *Darragh*.