
SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	OSHRC Docket Nos. 93-0848 &
	:	93-1715
ALBEMARLE CORPORATION,	:	
	:	
Respondent.	:	
	:	
OCAW INTERNATIONAL UNION,	:	
LOCAL 4-1600,	:	
	:	
Authorized Employee	:	
Representative.	:	

DECISION

BEFORE: WEISBERG, Chairman; ROGERS, Commissioner.

These consolidated cases involve a chemical plant in Pasadena, Texas, that the Occupational Safety and Health Administration (“OSHA”) inspected in late 1992 and again in early 1993 after reports of employee exposure to chemical hazards. The inspections resulted in serious citations that were contested by Albemarle Corporation, the plant operator and the employer of the exposed employees. The citations alleged violations of the Secretary of Labor’s standards for “[p]rocess safety management of highly hazardous chemicals,” 29 C.F.R. § 1910.119 (“PSM standards”), in that Albemarle did not provide adequate safety

procedures or adequate refresher training. The PSM standards became effective in early 1992, and this case represents the Commission's first review of alleged violations of the PSM standards. At issue are three alleged violations that Administrative Law Judge Louis G. LaVecchia affirmed.¹ For the following reasons, we affirm the violations.

I. Section 1910.119(f)(4) Requiring Safe Work Practices

A. Background

Albemarle's plant included a Multi-Products Unit ("MP-1") that manufactured a number of chemical products from varying liquid chemicals. On several occasions in late 1992, certain MP-1 operators were splashed with chemicals when they opened pipelines to insert "slipblinds" at a process changeover from one chemical product to another. A slipblind is a flat metal plate that, when inserted crosswise into a pipeline, blocks it off and prevents the chemicals it normally carries from flowing into the chemical process. The splash incidents that prompted OSHA's inspection occurred when operators opened pipelines at "low spots," which is where the liquid chemicals can accumulate if they have not been properly evacuated. Albemarle does not essentially dispute that it lacked written instructions specifying how to ensure that pipelines are clear of chemicals.²

¹We grant the Secretary's motion to withdraw two other items (items 2 and 4 in Docket No. 93-1715) that were included in the direction for review.

²Albemarle had a written instruction that informed the operators that, "[w]hen breaking a flange, the practice of first loosening [the] bolts on the side of the flange opposite the workman must be rigidly observed." Albemarle does not contend, however, that this instruction covered how to evacuate liquid chemicals from a pipeline and prevent splashes. Other written instructions pertaining to inserting slipblinds only covered such things as how to choose the correct size, what personal protective equipment to use while opening a pipeline, and what other precautions to take — including using a "safety standby man," locating the nearest serviceable safety shower, and installing barricades to protect other employees who might pass by.

The Secretary alleged that Albemarle violated 29 C.F.R. § 1910.119(f)(4)³ in that “written procedures for opening lines and installing slipblinds [were] not available.” Judge LaVecchia affirmed because Albemarle did not have a written procedure for evacuating chemicals from pipelines before inserting the slipblinds.

On review, the Secretary argues that Albemarle also did not have an unwritten work practice.⁴ The only MP-1 employee who described a work practice was MP-1 operator Lonnie Redd. He testified that he would “find a bleed point somewhere on the line” and “bleed it down — the pressure before you are breaking into” the pipeline — “unless there [is] a pressure gauge somewhere you could look at.” However, Redd also testified that the MP-1 supervisors only instructed the operators to “[b]e safe” or “[use] common sense.” The testimony of other MP-1 employees indicates that they did not follow a particular work practice to ensure that they safely evacuated the liquid chemicals from the pipelines. MP-1 operator Calvin Dixon testified that “proceed with caution” was the “particular procedure” he used and that “we would learn as we go.” MP-1 operator Danny Simien testified that he knew the pipelines must be cleared of chemicals before slipblinds are inserted, but he did not describe a particular practice for accomplishing it. Simien also testified that his initial training had included demonstrations regarding how to install a slipblind correctly, but he did not specify that the demonstrations included a particular practice for evacuating a pipeline safely. MP-1 operations superintendent Jerry Runk testified that, “as a general practice, you would empty the pipe.” He did not describe the practice for accomplishing this,

³Section 1910.119(f)(4) states:

The employer shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a facility by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

⁴Albemarle does not argue prejudice from the Secretary’s change of approach on review. Albemarle only protests that we “should not be misled” by her arguments that “recast the item” to allege a lack of unwritten safe work practices when her “gravamen” at the hearing level was the “absence of a writing.”

nor did he indicate that he demonstrated any particular practice to the operators. He only testified that he checked to see that new operators could perform the slipblinding operation.

B. Discussion

The Secretary argues⁵ that § 1910.119(f)(4) implicitly requires “a written memorialization to ensure consistent safe work practices.” However, “[i]t is well settled that the test for the applicability of any statutory or regulatory provision looks first to the text and structure of the statute or regulations whose application is questioned.” *Unarco Commercial Prod.*, 16 BNA OSHC 1499, 1502, 1993-95 CCH OSHD ¶ 30,294 at p. 41,732 (No. 89-1555, 1993). We first note that, in contrast to related standards that the Secretary did not cite, § 1910.119(f)(4) does not use the word “written,” or otherwise require that procedures be in writing. For example, “written” operating procedures must be developed and implemented under § 1910.119(f)(1); “readily accessible” to the employees under § 1910.119(f)(2); and “reviewed” to ensure that they reflect “current operating practice” under § 1910.119(f)(3). In contrast, while § 1910.119(f)(4) requires the development and implementation of safe work practices, it neither expressly nor by implication requires that they be in writing. Accordingly, we conclude that no writing was intended to be required. *See Russello v. U.S.*, 464 U.S. 16, 23 (1983)(“Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally. . .”).

The Secretary has not asked that we defer to its interpretation of § 1910.119(f)(4), but points instead to the preamble to the PSM standards for support. We find, however, nothing in the preamble to support the notion that § 1910.119(f)(4) requires the “safe work practices” employers must “develop and implement” to be set forth in writing. Indeed, the implication is otherwise. The preamble only states that the “[o]perating procedures” required by § 1910.119(f)(1)-(3) must be written. 57 Fed.Reg. 6356, 6379-80 (1992) (summary of final

⁵OCAW participated below and filed a brief on review. However, OCAW’s arguments do not specifically address the items on review.

rule).⁶ More importantly, when we compare the proposed version of § 1910.119(f), which only included (f)(1) through (f)(3), to the final version that included (f)(4) (“safe work practices”), it is evident that OSHA *deleted* an explicit requirement for written procedures for pipe opening from (f)(1) (“written operating procedures”). 55 Fed.Reg. at 29164 (1990) (containing proposed § 1910.119(f)(1)(iii)(D)).⁷ Inasmuch as the plain and natural meaning of the language the Secretary chose for § 1910.119(f)(4) does not include a writing requirement, we decline, under all the circumstances here, to infer one.⁸

⁶The Secretary relies on the preamble’s summary of § 1910.119(f). However, it only indicates that employers must have “written operating procedures” and must train their employees in “safe practices”:

OSHA believes that the provisions *concerning operating procedures* included in the final standard meet the requirements of sections 304(c)(6) and (7) of the [Clean Air Act Amendments (“CAAA”)] which state that the OSHA standard [on process safety management] must require employers to:

(6) Develop and implement *written operating procedures* for the chemical process including procedures for each operating phase, operating limitations, and safety and health considerations.

(7) Provide written safety and operating information to employees and training employees in operating procedures, emphasizing hazards and safe practices.

57 Fed. Reg. at 6380 (emphasis added).

⁷Proposed § 1910.119(f)(1)(iii)(D) stated: “The employer shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each process consistent with the process safety information and shall address . . . [s]afety and health considerations . . . [including] [s]afety procedures for opening process equipment (such as pipe line breaking)”

⁸The Secretary claims that § 1910.119(f)(4) must be read to require written procedures because she has other standards that require written procedures for some of the activities listed there. Sections 1910.146 and 1910.147 covering confined space entry and lockout/tagout, respectively, both require written procedures. However, as Albemarle points out, the Secretary does not have any standard other than the one cited here, § 1910.119(f)(4), on the subject of opening pipes. Therefore, whenever her concern is opening pipes, she is limited by the language of § 1910.119(f)(4). Her standards on confined space entry and

(continued...)

The Secretary also argues that Albemarle did not develop and implement an unwritten safe work practice for pipe-clearing. We find from the testimony of the MP-1 personnel that the Secretary has made her case in this regard. Only one operator, Redd, could articulate a pipe-clearing practice. The other operators may have known (and they all testified that they did know) they should evacuate the liquid chemicals from the pipeline before opening it to insert a slipblind. However, they did not describe the practice they followed to evacuate the liquid chemicals. Moreover, Redd testified that there was no formal training regarding performing slipblinding, and Dixon testified that the operators would “learn as we go.” Most tellingly, Redd testified that he was only instructed to “[b]e safe” and use “common sense.” Dixon testified that “proceed with caution” was the “particular procedure” that he followed. Even superintendent Runk did not testify that Albemarle had a standardized work practice that it required the operators to follow, and he did not describe how pipe-clearing should be done. In sum, although the MP-1 personnel may have understood that the pipelines should be clear of liquid chemicals before slipblinds are inserted, only one person in the MP-1 Unit could describe a particular practice for ensuring that the pipelines were clear. We therefore find that Albemarle did not “develop and implement” a safe work practice as required by § 1910.119(f)(4) “for the control of the hazards” from chemical splashes when pipelines are opened for slipblinds to be inserted.⁹ We affirm the alleged violation of § 1910.119(f)(4) (item 6 in Docket No. 93-848).

⁸(...continued)

lockout/tagout may overlap § 1910.119(f)(4) where confined space entry and lockout/tagout are concerned, but not where opening pipes is concerned.

⁹Albemarle contends that the standard does not give adequate notice as to how detailed the work practices must be. Albemarle argues that the Secretary was therefore required to show that a reasonable person familiar with the slipblinding process in the industry would have recognized a need for more detailed practices than Albemarle had. We reject this argument because the standard’s plain language informs employers that they must have safe work practices and, while Albemarle knew that the presence of liquid chemicals constituted a hazard to employees who were opening pipes, *see supra* note 2 and *infra* note 10, it did not establish evacuation of such chemicals as a step in its work practices.

The record establishes that the violation is serious as alleged. The operation here exposed employees to splashes of xylene and maleic anhydride, among other chemicals. Redd testified that the operators were instructed to wear personal protective equipment whenever there would be a danger of a chemical splash, and Albemarle had a written instruction regarding what personal protective equipment to use. Thus, Albemarle recognized that splashes present a danger or hazard. In addition, Albemarle's written instruction to MP-1 employees recognizes the hazardous nature of the chemicals involved in the process in stating that "[i]mmediate flushing with large volumes of water will kill residual alkyl and cool burned tissue." Simien, Redd, and Dixon had all been splashed during pipe-opening. We therefore affirm that the violation was serious.

There remains the penalty to be assessed. Section 17(j) of the Act, 29 U.S.C. § 666(j), provides that in assessing penalties the Commission should give due consideration to the gravity of the violation, the size of the employer, its good faith, and its "history of previous violations."

We turn first to the matter of the gravity of the violation involved here. We note that at least three MP-1 operators performed slipblinding to facilitate changeovers from one chemical process to another. The record does not show how frequently changeovers took place or how many slipblinds were generally installed during a typical changeover. However, it is clear from the record here that changeovers were a regular event inasmuch as the MP-1 Unit produced a number of chemical products using varying chemicals. Also, although the record does not show that any chemical splash had ever resulted in physical harm, the fact that a splash could be a matter of substantial gravity is indicated by Albemarle's instructions to the operators to wear complete personal protective equipment.¹⁰ Albemarle also required

¹⁰Albemarle's Operator Training Manual required the personnel engaged in opening pipelines to wear rubber "rain" suits, hard hats, rubber gloves and boots, and face/eye protection such as cartridge-type masks, full face shields, goggles or safety glasses with side shields. Albemarle's Safety Manual required "[c]hemical goggles" and a "[n]on-insulated fire resistant aluminumized suit consisting of heat, coat, trousers, and gloves which are chemically resistant to aluminum alkyls" for opening pipelines.

that the “safety shower nearest the work area” be “located and found serviceable” before pipelines were opened. We therefore find that the gravity of the violation was moderate.

As for the remaining factors that § 17(j) of the Act requires us to consider, we note that Albemarle is a large employer and that Albemarle had prior serious citations — within approximately one to two years before the issuance of the citation at this particular chemical plant. The record contains some evidence of Albemarle’s good faith efforts to protect its employees by requiring them to use personal protective equipment; by providing some initial training, both in-the-classroom and on-the-job under supervision; and by encouraging employee interaction with supervisors to clarify confusion about and make improvements in the plant’s operational procedures. However, the record also raises questions about Albemarle’s good faith inasmuch as the testimony of the MP-1 personnel indicates almost uniformly that they primarily relied on their own judgment rather than a standardized practice for evacuating hazardous liquid chemicals from the pipelines before opening them during process changeovers. We therefore assess \$5,000, the penalty that the Secretary proposed and that the judge assessed.

II. Section 1910.119(f)(1) Requiring Written Operating Procedures

A. Background

This alleged violation concerns a near-explosion during a reactor shutdown in the “SWAG” Unit.¹¹ Tracy Hewitt, the SWAG process operator who was doing the shutdown, followed a “daily order” — a temporary or informal set of instructions — that had been written by a SWAG assistant superintendent, Karl Meyer. During the shutdown, reactor-coolant water leaked into the chemical process and caused the process pressure to rise rapidly. Hewitt prevented an explosion by activating the SWAG block-and-bleed system¹² with the help of another process operator, John Lambeth.

¹¹Also known as the ED Cooler Area and part of the Alpha Olefins Unit.

¹²Meyer testified that “[t]he term block and bleed means to block the inlets and outlets of [the] water supply and [the] return to a heat exchanger[,] and [to] bleed off the water from the water side of the exchanger.”

The Secretary alleged that Albemarle did not have written operating procedures stating how to perform the block-and-bleed procedure. The Secretary cited 29 C.F.R. § 1910.119(f)(1).¹³ Meyer’s daily order did not refer to the block-and-bleed system. Albemarle’s written International Standards Organization procedure (“ISO procedure”) for SWAG shutdowns only stated: “Activate the SWAG block and bleed system.” Judge LaVecchia affirmed the violation because Meyer’s daily order did not mention the block-and-bleed activity and the ISO procedure did not detail how to perform the block-and bleed activity.

B. Discussion

Albemarle argues that § 1910.119(f)(1) does not apply to Hewitt’s block-and-bleed activity because it was “a maintenance activity that commenced after the [reactor] process had been shut down.” The testimony Albemarle relies on, however, shows that Hewitt activated the block-and-bleed system while he was shutting the reactor down and before any maintenance work was begun.¹⁴ Therefore, Hewitt’s block-and-bleed constituted part of the shutdown activity, not a maintenance activity. Furthermore, nothing in either the PSM

¹³In pertinent part, section § 1910.119(f)(1) states:

(f) *Operating procedures* (1) The employer shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements.

(I) *Steps for each operating phase:*

.....

(F) Normal shutdown . . .

.....

(ii) *Operating limits:*

(A) Consequences of deviation; and

(B) Steps required to correct or avoid deviation.

¹⁴Hewitt testified that he discovered the need to activate the block-and-bleed system while he was shutting the reactor down. He and Meyer testified that the maintenance work was planned to take place after the reactor was shut down. Albemarle claims there is evidence establishing that the block-and-bleed procedure is exclusively a maintenance procedure, but we have carefully reviewed the record as a whole without finding any such evidence.

standards or the preamble to them indicates that § 1910.119(f) does not cover maintenance-related shutdowns.¹⁵ In fact, § 1910.119(f)(1) expressly lists both “emergency” and “normal” shutdowns as operating phases for which there must be written operating procedures. There is nothing to suggest that a third category of “maintenance-related” shutdowns exists. Notably, Meyer testified that Albemarle’s ISO procedures, which refer to the block-and-bleed system, cover shutdowns for maintenance work. We conclude, therefore, that the shutdown for maintenance here was a normal shutdown and an operating phase covered by the PSM standards. We reject Albemarle’s contention that § 1910.119(f)(1) does not apply.

Albemarle also argues that § 1910.119(f)(1) is a “performance standard” that does not specify the level of detail that employers must include in their written operating procedures.¹⁶ We disagree. Regardless of whether § 1910.119(f)(1) is a “performance standard,” as a whole it does require greater detail than Albemarle provided in its written operating procedures. Section 1910.119(f)(1) plainly states that the written operating procedures must “provide clear instructions *for safely conducting activities involved in each covered process*” (emphasis added). The written operating procedures must address all of the “[s]teps for each

¹⁵The PSM standards cover every “process” that involves a specified quantity of either a chemical or a liquid/gas defined as flammable. 29 C.F.R. § 1910.119(a)(1)(I) and (ii). The stated purpose of the PSM standards is to manage “hazards associated with processes using highly hazardous chemicals” through “procedures for process safety management that will protect employees by preventing or minimizing the consequences of chemical accidents involving highly hazardous chemicals.” 57 Fed.Reg. 6356 (1992) (summary of final rule). An employer who conducts a covered process must develop and implement “[o]perating procedures.” 29 C.F.R. § 1910.119(f); *see also* 57 Fed. Reg. at 6379.

¹⁶Albemarle argues that the Secretary cannot enforce § 1910.119(f)(1) without showing that a reasonable person familiar with the circumstances surrounding the hazardous conditions, including any facts unique to the particular industry, would recognize a hazard warranting more detailed written operating procedures than Albemarle had. There is no evidence here that Albemarle’s industry writes more detailed operating procedures for reactor shutdowns. We need not reach this issue, however, because we find that § 1910.119(f)(1) gives employers notice that more detailed written operating procedures are required than the ones presented in this case. We also need not address whether to take official notice of certain excerpts from D. Wieringa, C. Moore and V. Barnes, *Procedure Writing, Principles and Practices* (1993), that Albemarle attached to its review brief as appendix A.

operating phase.” Section 1910.119(f)(1)(I). They must also address the “process operating limits, including . . . [the] *consequences of deviation*” from operating procedures.” Section 1910.119(f)(1)(ii) (emphasis added). They must include any “*safety systems* (including detection and monitoring equipment).” Section 1910.119(f)(1)(ii) (emphasis added). They must include the “[*p*]recautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment.” Section 1910.119(f)(1)(iii) (emphasis added). They must also include “[a]ny *special* or unique hazards.” Section 1910.119(f)(1)(iii) (emphasis added). *See also* 57 Fed. Reg. at 6380. In fact, the preamble to the PSM standards specifies that “activities involved in” or “tasks and procedures directly and indirectly related to” a covered process must be “clear” and “communicated to employees.” 57 Fed.Reg. at 6379. In essence, § 1910.119(f)(1) provides reasonable notice that employers must include instructions for safely conducting an explosion-preventing activity such as the block-and-bleed system in their written operating procedures relating to normal shutdowns.

Albemarle’s written operating procedures relating to normal shutdowns did not accomplish this objective. The record reveals that the block-and-bleed activity is not simply a matter of pushing a button. Hewitt testified that “[t]here is a series of switches that shut actuated valves that block water to and from exchangers, as well as open actuated valves that drain any water trapped on the exchanger to the sewer,” and that “[o]n a couple of exchangers it is necessary to use hand operated chain valves.” The ISO procedure only contained a one-sentence instruction to “[a]ctivate the SWAG block and bleed system.” This does not give any information for *safely conducting* the activity, contrary to the express mandate of § 1910.119(f)(1). Meyer’s daily order did not make up the deficiency, for it did not even mention the block-and-bleed activity. Therefore, we find that Albemarle violated § 1910.119(f)(1) (item 1 in Docket No. 93-1715).

The potential for death or serious physical harm from a SWAG reactor explosion is not disputed. Therefore, the Secretary properly classified the violation as serious. Its gravity was high. The reactor here could have exploded if Hewitt and Lambeth had not successfully activated the block-and-bleed system. Albemarle was a large employer having prior serious

citations. Albemarle's lack of written operating procedures regarding a crucial process activity raises question regarding its good faith, although Albemarle took many other precautions, such as requiring personal protective equipment, providing initial training, and encouraging employee interaction with supervisors regarding the plant's operational procedures. We therefore assess \$5,000 for the violation, as did the judge.

III. Section 1910.119(g)(2) Requiring Refresher Training

A. Background

The Secretary also alleged that Albemarle did not provide refresher training for its SWAG operators as required by 29 C.F.R. § 1910.119(g)(2).¹⁷ The Secretary contends that Hewitt's performance during the reactor shutdown in this case demonstrates that refresher training was needed. Hewitt had Lambeth's assistance in stabilizing the reactor shutdown. Lambeth testified that "[w]e did initiate block and bleed and got the water off the system." Hewitt testified, in essence, that he was "able to stabilize the situation" because he "had assistance from foremen and supervisors."¹⁸ Hewitt testified that the block-and-bleed procedure is simple and that he was sufficiently knowledgeable to deal with normal SWAG operations. He testified, however, that he and other operators he had observed occasionally became confused about how to deal with "[u]pset conditions." In the event of questions, they would consult the ISO procedures or SWAG supervisors. Hewitt was the least experienced SWAG operator at the time; he had only participated in a reactor shutdown a couple of times as a trainee with the supervision of a qualified operator and, to the best of his recollection, had only conducted one solo reactor shutdown as a qualified operator. He

¹⁷The pertinent part of the standard states: "Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process" The Secretary contends that Albemarle failed to provide refresher training "more often if necessary." Presumably because the standard only became effective in 1992, *i.e.*, within approximately one year of the inspection in this case, the Secretary does not contend that Albemarle failed to provide refresher training every three years.

¹⁸Albemarle's recitation of the facts implies that Lambeth only helped when "a flange blew out" after the block-and-bleed system had been activated by Hewitt. However, Lambeth's testimony on the transcript page Albemarle relies on states "[w]e did initiate block and bleed."

did not recall whether his one solo shutdown involved the block-and-bleed procedure. Judge LaVecchia affirmed the item on the basis the Hewitt needed help to perform block-and-bleed.

B. Discussion

We need not discuss further Albemarle's argument that Hewitt's block-and-bleed activity was a maintenance activity. As we previously concluded, the record does not support this claim, and the PSM standards cover normal maintenance-related shutdowns.

Albemarle's main argument is that, inasmuch as Hewitt successfully activated the block-and-bleed system, the Secretary failed to show that more refresher training was necessary. Albemarle contends that the word "necessary" is "so amorphous" that a showing of industry practice is required to establish a violation. However, Hewitt testified that he and other operators were occasionally unable to handle "upset conditions" by themselves, despite the training they had received. In light of the potential for an explosion if the block-and-bleed system were not activated in a timely fashion, an operator conducting a reactor shutdown must be able to handle a potentially explosive situation without, at the last minute, having to seek the assistance of supervisors or consult the ISO procedures. We therefore reject Albemarle's argument that the Secretary did not make her case.¹⁹ The Secretary established

¹⁹We reject Albemarle's argument that the record does not establish that it knew or could have known of a need for refresher training. Here, an explosion was prevented when process operators Hewitt and Lambeth activated the block-and-bleed system. Hewitt was the least experienced operator in the SWAG Unit. He testified that he had observed more experienced operators become confused during "upset conditions." Although activating the block-and-bleed system is only infrequently necessary, it clearly is an operation vital to safety in the SWAG Unit. The assistant area director who conducted the inspection testified that "[o]perating experience should have indicated that when you do a procedure very seldom, that a certain level of refresher training is required before you repeat that procedure" and that the "history of the industry indicates that some of the people involved in doing that procedure are going to be rusty." He further testified that his interviews with employees about their knowledge of procedures led him to conclude they needed refresher training. He also testified that an employer should consult with its employees to discover whether they need refresher training and that Albemarle "was not consulting with the employees." Superintendent Meyer testified that Albemarle only "directed and encouraged" the operators
(continued...)

a violation of § 1910.119(g)(2) (item 3 in Docket No. 93-1715). The violation was serious and, based on the penalty factors that we have previously discussed, we assess a penalty of \$5,000, as did the judge.

ORDER

We affirm the judge's decision finding that Albemarle violated 29 C.F.R. § 1910.119(f)(4) and we assess a penalty of \$5,000 (item 6 in Docket No. 93-848). We affirm the judge's decision finding that Albemarle violated 29 C.F.R. § 1910.119(f)(1) and we assess a penalty of \$5,000 (item 1 in Docket No. 93-1715). We affirm the judge's decision finding that Albemarle violated 29 C.F.R. § 1910.119(g)(2) and we assess a penalty of \$5,000 (item 3 in Docket No. 93-1715).

/s/ _____
Stuart E. Weisberg
Chairman

/s/ _____
Thomasina V. Rogers
Commissioner

Date: April 26, 1999

¹⁹(...continued)

“to alert management at any level if confused about a procedure . . . or in need of refresher training.” Hewitt testified that he had not had any refresher training. On the basis of this evidence we conclude that Albemarle could have known that its SWAG Unit operators needed refresher training in procedures for “upset conditions.” A reasonably diligent employer will actively ascertain that its process operators, especially the least experienced one, can perform crucial operations with speed and as independently as possible.