



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OF LABOR
Complainant,

v.

ALCORN WELL SERVICE, INC. DIV.
Respondent.

OSHRC DOCKET
NO. 92-1568

**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 17, 1995. The decision of the Judge will become a final order of the Commission on May 17, 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 8, 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.
Executive Secretary

Date: April 17, 1995

DOCKET NO. 92-1568

NOTICE IS GIVEN TO THE FOLLOWING:

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Louis G. LaVecchia
Administrative Law Judge
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SECRETARY OF LABOR,

Complainant,

v.

ALCORN WELL SERVICE, INC.,
 A DIVISION OF DAWSON WELL
 SERVICE, INC.,

Respondent.

OSHRC DOCKET NO. 92-1568

APPEARANCES:

Robert A. Fitz, Esquire
 Dallas, Texas
 For the Complainant.

George R. Carlton, Jr., Esquire
 Dallas, Texas
 For the Respondent.

Before: Administrative Law Judge Louis G. LaVecchia

DECISION AND ORDER

This proceeding arises under section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* ("the Act"). Respondent Alcorn seeks review of two citations issued by the Occupational Safety and Health Administration ("OSHA") after a fatal accident at a well site outside of Giddings, Texas, on January 13, 1992. Serious citation 1 alleges a 5(a)(1) violation and violations of 29 C.F.R. 1910.1200(g)(8) and 1910.1200(h). "Other" citation 2 alleges a violation of 29 C.F.R. 1910.23(d)(1)(iii). The hearing in this matter was held April 12, 1994. Neither party filed a post-hearing brief.

Background

The basic facts of this case are not disputed. Respondent Alcorn had a workover rig and a five-man crew at the site in order to service Proske Well Number 2. The well was not pumping due to a break in the sucker rods. The job entailed hoisting the top part of the

rod string out of the well to find the broken rod. The crew had pulled several hundred feet of rods when it discovered that a rod box into which two rods had been screwed was broken. The crew attached an "overshot," a tool with a grapple in it used to latch onto and "fish out" parted rods, to the end of the rod string and ran it down into the hole. The overshot latched onto the box but slipped off. The crew pulled the overshot out and put a smaller grapple in it and ran it down into the hole again. This time the overshot ran into a tight spot inside the tubing. Floor hands Terence Green and Louis Zabriskie each put a 24-inch Stilson pipe wrench around the rod protruding from the well and turned it to the right in an effort to get the overshot past the tight spot. As they did so Zabriskie lost his footing and control of the wrench. It swung left and hit him in the head, causing a fatal injury.

Serious Citation 1 - Item 1

This item alleges a violation of section 5(a)(1) in that the above operation is a recognized hazard in the industry and that Alcorn should have had a procedure requiring the use of a wheel-type wrench or a back-off wrench and power tongs for the operation.

The well servicing industry requires a back-off wheel or a back-off tool and power tongs to be used to screw on or back off (unscrew) rods. (C-13; C-33-34). Alcorn had a procedure meeting this requirement and the rig at the site had a back-off tool and power tongs. (Tr. 35; 48-49; 59-60; 73-74; 89-90). *See also* C-2, Alcorn's safety policy, page 6, item 6. OSHA compliance officer Elizabeth Slatten inspected the site. She conceded the crew was not screwing on or backing off rods. She nonetheless felt back-off equipment was required because torque was being applied to the rods. (Tr. 138-40). Wayne Davis, an individual with many years of experience in the industry, testified that the buildup of torque can be hazardous and that when torque occurs during the subject operation back-off equipment should be used. (Tr. 148-49).

Davis further testified that while he expects torque anytime rods are turned "down hole" the operation does not necessarily produce torque and the crew at the site would not necessarily have expected it. He said the industry practice is to put a couple of 24-inch wrenches on the rod, put one or two turns on it, and, if no rotation occurs, then release the torque and use either a circle wrench or a back-off tool and power tongs. He also said every

job is different and that the proper procedure that day was a judgment call based on the situation at that site. (Tr. 142-68).

In view of Davis' testimony, the Secretary has not met his burden of proving a violation. Alfred Baros, the tool pusher at the site, testified the usual procedure was to rotate the rods to the right with wrenches to see if the overshot would drop through. He expected no problems as the overshot had gone down the first time that day without incident. Baros also testified they were not expecting torque or intending to apply torque. He was unsure how many times the rods were turned but indicated they torqued up quickly. As he put it, "[I]t happened so fast, you know, it just wasn't nothing you could do. It just torqued up, and that is it." (Tr. 40-42; 47-50; 56-61). The testimony of Robert Millner and Michael Petrosky, two other crew members, was substantially the same. (Tr. 62-63; 69-79; 82-86; 89-91). In my opinion, the record does not show a violation. This item is vacated.

Serious Citation 1 - Items 2 and 3

These items allege violations of 29 C.F.R. 1910.1200(g)(8) and 1910.1200(h). These standards provide as follows:

1910.1200(g)(8) - The employer shall maintain copies of the required material safety data sheets for each hazardous chemical in the workplace, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s).

1910.1200(h) - 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 record shows the employees on the subject rig used 30-weight motor oil and tool joint compound at their worksites. The record also shows that Alcorn did not have a hazard communication program in January 1992 and that employees received no information or training about the hazards of these substances. Finally, the record shows that while Alcorn had a material safety data sheet ("MSDS") for the tool joint compound and 40-weight motor oil at the time of the inspection there were no MSDS's at the subject site. (Tr. 16-17; 52-55; 74; 86-88; 119-138; 141; 170-74).

The hazards of the oil and compound are established by C-3-4, the MSDS's for these substances, and the record establishes serious violations of the cited standards. Items 2 and

3 of serious citation 1 are affirmed. A penalty of \$1,050.00 for each of these items was proposed. In my opinion, these penalties are excessive. A penalty of \$525.00 for each of these items is assessed.

"Other" Citation 2

This citation alleges a violation of 29 C.F.R. 1910.23(d)(1)(iii), which states as follows:

Every flight of stairs having four or more risers shall be equipped with standard stair railings or standard handrails ... [o]n stairways less than 44 inches wide having both sides open, one stair railing on each side.

CO Slatten testified that the six-riser stairs to the rig, shown in C-32, were 22 to 24 inches wide and did not have a railing on the left side descending, exposing employees to a fall hazard. (Tr. 133-35). The alleged violation is clearly shown by C-32 and the CO's testimony, and Alcorn presented nothing in its defense. This citation is affirmed as a nonserious violation. No penalty was proposed, and none is assessed.

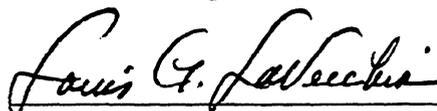
Conclusions of Law

1. The Commission has jurisdiction of this proceeding and the parties.
2. Respondent was not in violation of section 5(a)(1) of the Act.
3. Respondent was in serious violation of 29 C.F.R. 1910.1200(g)(8) and 1910.1200(h) and nonserious violation of 29 C.F.R. 1910.23(d)(1)(iii).

Order

On the basis of the foregoing, it is ORDERED that:

1. Item 1 of serious citation 1 is vacated.
2. Items 2 and 3 of serious citation 1 are AFFIRMED, and a penalty of \$525.00 for each item is assessed.
3. Item 1 of "other" citation 2 is AFFIRMED, and no penalty is assessed.



Louis G. LaVecchia
Administrative Law Judge

Date: APR 4 1995