United States of America
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

Phone: (202) 606-5400
Fax: (202) 606-5050

SECRETARY OF LABOR
Complainant,
v.
LOUISIANA PACIFIC CORP.
Respondent.

OSHRC DOCKET
NO. 93-0872

# 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 June 7, 1995. The decision of the Judge will become a final order of the Commission on July 7, 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 June 27, 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.

Date: June 7, 1995

Ray H. Darling, Jr.
Executive Secretary

DOCKET NO. 93-0872

NOTICE IS GIVEN TO THE FOLLOWING:

Tedrick Housh, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
1210 City Center Square
1100 Main Street
Kansas City, MO 64105

Greg R. Tichy, Esquire
Interstate Professional Center
15407 E. Mission, Suite 425
Verdale, WA 99037

Benjamin R. Loye
Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 250
1244 North Speer Boulevard
Denver, CO 80204 3582

00116125014:08

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1244 N. Speer Boulevard
Room 250
Denver, Colorado 80204-3582

PHONE:
COM (303) 844-3409
FTS (303) 844-3409

FAX:
COM (303) 844-3759
FTS (303) 844-3759

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| SECRETARY OF LABOR,<br><br>Complainant,<br><br>v.<br><br>LOUISIANA-PACIFIC COMPANY,<br><br>Respondent. | OSHRC DOCKET<br>NO. 93-0872 |

APPEARANCES:

For the Complainant:

Elizabeth C. Lawrence, Esq., Office of the Solicitor,
U.S. Department of Labor, Kansas City, MO

For the Respondent:

Gregory Tichy, Esq., Veradale, WA

## 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, Louisiana-Pacific Company (L-P), at all times relevant to this action, maintained a worksite at 3300 Raser Road, Missoula, Montana, where it was primarily engaged in particle board manufacturing. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On February 11, 1993, pursuant to an August 1992 inspection of L-P's Missoula worksite (Tr. 112), the Occupational Safety and Health Administration (OSHA) issued three 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).

On August 2-4, 1994 a hearing was held in Missoula, Montana. At the hearing, Complainant's motion to amend "Repeat" citation 1, item 1(c) to allege a "serious" violation was granted (Tr. 21). The parties have submitted briefs on the issues, as amended, and this matter is ready for disposition.

**Alleged Violation of §5(a)(1)**

Serious citation 1, item 1 alleges:

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to:

(a) The hazard of being struck by a particle board kicking back on the #1 sander in Reman when a jam-up occurred on or about August 15, 1992 and at times prior thereto, at Louisiana Pacific Corporation, Missoula, Montana.

Among other methods, one feasible and acceptable abatement method to correct this hazard is to provide kickback fingers which would prevent the material from kicking back.

*Facts*

On August 15, 1992, Ronald Huston, a member of the L-P "bullnose" crew, was observing the 764-2 sander on L-P's paint line (Tr. 272). As Huston watched, he saw two boards double feed into the sander (Tr. 272). The operator shut down the sander belts, and began to raise the sander heads to release the jammed boards (Tr. 211, 273, 344). The feed belt to the sander began to move forward (Tr. 349-50, 379), and a sheet of plywood was ejected from the sander, striking Mr. Huston and resulting in severe internal injuries (Tr. 119, 284).

Cecil Brotherton, assistant chief engineer with Timesavers, Inc., testified that Timesavers, Inc. designs, manufactures and services wide-belt sanding equipment (Tr. 28-29). Brotherton stated that Timesavers has supplied L-P with twenty sanders; four of which,

including the model 764-2 dual head sander which is the subject of this action, are found at the L-P facility in Missoula (Tr. 28-33).

Brotherton testified that there is a recognized danger of the wood stock being kicked back, or ejected from the 764-2 sander, in the event the sander is double fed (Tr. 44, 54-55, 91). Timesavers first became aware of certain hazards associated with its sanders as the result of a number of (approximately 20) lawsuits (Tr. 59). In 1987, Timesaver's began mailing out pamphlets to its customers, advising them of the hazards associated with its sanders (Tr. 45-46). The mailings warned users never to allow stock to overlap, "kickout or product jam may be experienced;" never to stand in line with the product flow, in the "path of a product kickout;" and that where pieces are not firmly held by the pinch rolls, "kickout may be experienced." (Tr. 52-54; Exh. C-15, p. 3, No. 10, 11, 13).

Brotherton testified that mailings went out to each of the L-P facilities owning Timesavers equipment (Tr. 46-47). Two L-P facilities, Sagola, Michigan, and Newberry, Michigan, acknowledged receipt of the mailing (Tr. 49; Exh. C-16). Four mailings went to the Missoula L-P facility, one addressed to P.O. Drawer C, Missoula, 59801, the others to Highway Ten West, Missoula, 59806 (Tr. 50).

John Coston, L-P's Reman supervisor (Tr. 634), testified that Highway Ten West was a truck delivery address for Evans Products, L-P's precursor (Tr. 678). Coston stated that L-P's mailing address is P.O. Box 4007, Missoula 59801; its street address, 3300 Raser Drive, Missoula (Tr. 653, 678). Coston maintained that, to his knowledge, L-P never received Timesavers' pamphlet warning them of a kickout hazard (Tr. 653).

Coston stated that in his 22 years with L-P, he had never known the 764-2 sander to eject a board (Tr. 639, 763). Coston admitted, however, that he heard of a kickback on a six head sander on the production line shortly after he began to work at L-P (Tr. 674). Arlin D. Sharbono, L-P's lead man on the Reman line where the 764-2 sander was located, testified that although he was not aware of any kickouts on the 764-2 sander prior to Ron Huston's accident, he knew that kickback was a possibility (Tr. 461-62). Compliance Officer Thomas Wild testified that the sander operators told him that approximately 10 years ago, a kickback incident similar to the August 15 accident had occurred on the same piece of equipment (Tr. 178-79). Thomas McConaughy testified that he witnessed that kickback

while operating the 764-2 sander ten to fifteen years ago (Tr. 729-30). That incident involved a jam, but occurred prior to McConaughy's shutting down the sander (Tr. 731). Other types of sanders in the L-P facility are equipped with antikickback devices and "bang-boards" to address the kickback hazard (Tr. 576-77).

In its 1987 mailing, Timesavers advised its customers to update their equipment with operator safety features, including an "[a]ntikickback device. . . To eliminate the kickback of the product being sanded (Exh. C-15, p. 5, No. 7). An antikickback device consists of a set of fingers which drag along the top of the product being sanded. In the event of a reverse in motion, the fingers dig into the top of the stock, restricting that backward movement (Tr. 55-56). Brotherton testified that such a device is available for sander model 764-2, and would eliminate kickbacks in a double feed or jam up (Tr. 56-57).

*Discussion*

The Commission has held that:

> In order to prove a violation of section 5(a)(1) of the Act, the Secretary must show that: (1) a condition or activity in the workplace presented a hazard to an employee, (2) the hazard was recognized, (3) the hazard was likely to cause death or serious physical harm, and (4) a feasible means existed to eliminate or materially reduce the hazard. The evidence must show that the employer knew, or with the exercise of reasonable diligence could have known, of the violative conditions. *(citations omitted)*

*Secretary of Labor v. Tampa Shipyards, Inc.*, 15 BNA OSHC 1533, 1992 CCH OSHD ¶29,617 (Docket Nos. 86-360, 86-469, 1992).

The accident involving Ron Huston establishes the first and third elements of the violation; *i.e.*, that there is a kickback hazard associated with double feeding the 764-2 sander, and that that hazard is likely to cause serious physical harm. Respondent argues, however, that the kickback hazard was not recognized, and that it had no reason to know that its sander posed a safety hazard. Respondent also maintains that the suggested abatement would not materially reduce that hazard.

Recognized Hazard

It is well settled that:

> This element. . . [is] shown by proving that the condition is generally known to be hazardous in the industry. Thus, whether or not a hazard is "recognized"

> is a matter for objective determination. It does not depend on whether the particular employer appreciated the nature of the hazard. (citations omitted)

*Georgia Electric Co.*, 5 BNA OSHC 1112, 1977 CCH OSHD ¶21,613 (No. 9339, 1977). Under Commission precedent, Complainant need not prove that Respondent had actual knowledge of a hazard generally recognized within its industry. In this case, however, the record establishes both industry recognition of a kickback hazard and L-P's constructive knowledge of the hazard.

The record establishes that the kickback hazard associated with belt fed sanders is well recognized in the woodworking industry. A number of lawsuits led the manufacturer of L-P's sanding machinery to issue warnings to prior purchasers about the possibility of kickbacks as early as 1987, warnings which were received by at least two other L-P facilities. Warnings concerning kickbacks are now included with all the sanding equipment Timesavers sells (Tr. 49).

Moreover, L-P supervisory personnel had at least constructive knowledge of a generic kickback hazard in that they were or should have been aware that kickbacks had occurred on other L-P sanding equipment, and that kickouts were at least a possibility on the 764-2 sander.

Complainant has established this element.

Feasibility

In order to show an abatement measure's feasibility, the Complainant must show that its recommended precautions are recognized by "knowledgeable persons familiar with the industry as necessary and valuable steps for a sound safety program in the particular circumstances existing at the employer's worksite." *Cerro Metal Products Division, Marmon Group, Inc.*, 12 BNA OSHC 1821, 1986 CCH OSHD ¶ 27,579, (No. 78-5159, 1986).

Brotherton, an engineer representing the manufacturer, testified that installation of a kickback device is a valuable safety precaution which should be taken for the 764-2 sander. Brotherton was knowledgeable about the mechanics of Timesavers' sanders, and the undersigned finds his testimony credible.

L-P argues that the antikickback device would be ineffective in preventing kickbacks where the sander heads are opened up while the machine is still running (Tr. 642, 646, 650).

The evidence establishes, however, that kickout may also result from a double feed, without loosening the pressure on the heads to unjam the sander (Tr. 44, 54-55, 731; Exh. C-15, p. 3, No. 10). Antikickback fingers would, therefore, materially reduce the kickout danger which exists prior to unjamming operations being undertaken.[1]

The additional hazard identified by L-P., *i.e.,* that of kickbacks during unjamming operations, is addressed by the remaining citations.

*Penalty*

The Secretary has proposed a penalty of $5,000.00 for this item.

Louisiana-Pacific is a large company, with approximately 200 employees at its Missoula plant alone. CO Wild testified that L-P, Missoula had been cited by OSHA within the three year period immediately preceding the issuance of the instant citation (Tr. 116, 239).

The gravity of the cited hazard is high. The accident involving Mr. Huston demonstrates that a kickback accident would most likely result in severe injuries, possibly leading to death. The paint line sander operator and his assistant were exposed to the kickback hazard, as well as forklift operators, millwrights and supervisory personnel using the walkway alongside the sander (Tr. 123-26, 243).

Taking into account the relevant factors, the undersigned finds the proposed penalty appropriate, and $5,000.00 will be assessed.

**Alleged Violations of §1910.147 *et seq.***

*Facts*

It is uncontroverted that prior to the instant citation, operators of the 764-2 sander were not required to lock out that piece of equipment to clear out jammed boards (Tr. 154, 332-33, 441). Brown testified that the accepted procedure was to shut the machine off by pressing the emergency stop or the off button, raise the pressure rolls to release the jammed boards, and restart the machine (Tr. 154, 159, 172, 334). Pressing the off button stopped the sander drums; pressing the E-stop shut down both the sander drums and the conveyor

[1] The undersigned notes that L-P could also have reduced the cited hazard by replacing the original "no go" bar on the sander, which was intended to prevent double feeds.

feed (Tr. 349, 355-56, 463). Sharbono testified that it was improper to push only the off button, and that the operator should push the E-stop or the brakes, to get the heads shut down as fast as possible (Tr. 470). Randy Elliot testified that he generally used the brakes to stop the sander heads in the event of a jam-up (Tr. 488).

The sander could be restarted by pressing the start button if only the off button had been pressed; or if the E-stop had been pressed, by pulling out the E-stop, pushing the off button to recycle, and then pressing the start button (Tr. 338, 464, 492, 664).

John Mikkelson, L-P's safety director, conducted plant wide annual training sessions on energy control (Tr. 538, 655-56). L-P's energy control program consisted of handouts, a video presentation, and a physical demonstration, which was conducted in house (Tr. 120, 155, 192, 541; Exh. R-2, R-3, R-7). Mikkelson stated that the program was generic, in that it attempted to address the major hazardous energy sources, electrical, compressed air and hydraulic (Tr. 543, 575-76). Training on specific pieces of machinery, including the paint line sander, was not provided (Tr. 126, 130, 134, 329-330). Mikkelson testified that there were procedures established for each machine, though they had not been reduced to writing (Tr. 563, 567, 657).

*Applicability of §1910.147 et seq.*

Respondent argues that the cited standard is not applicable to unjamming operations. Section 1910.147(a)(1) *Scope*, states that the standard "covers the servicing and maintenance of machines and equipment in which the unexpected energization or start up of the machines or equipment, or release of stored energy could cause injury to employees.. . ." Unjamming of machines or equipment is specifically named in §1910.147(b) *Definitions*, as a maintenance activity. Respondent maintains, however, that there is no possibility of unexpected energization during unjamming operations.

The evidence establishes that the 764-2 sander could be energized by accidentally pressing a single start button if the machine's operation had been halted without using the E-stop. Accidental activation is specifically named in the preamble to §1910.147 as a hazard to which employees who work with or are otherwise in the immediate area of covered equipment are exposed. 54 F.R. 36646, 36653 (9/1/89).

In addition, it is clear from the preamble that the Secretary considered the failure to ensure that equipment is actually shut down, the immediate cause of the August 15 incident, and deemed it a significant factor to be addressed by any energy control program. *Id.* The lockout/tagout standard specifically addresses procedures for equipment shutdown at §1910.147(d)(2).

The undersigned finds, therefore, that the lockout/tagout standards at §1910.147 are applicable to unjamming operations on the 764-2 sander.

Respondent nonetheless argues that unjamming the 764-2 sander is an exempted production operation under the terms of the standard. Section 1910.147(a)(2) *Application* states:

> (i) This standard applies to the control of energy during servicing and/or maintenance of machines and equipment. (ii) Normal production operations are not covered by this standard. . .. Servicing and maintenance which takes place during normal production operations is covered by this standard only if:
>
> (A) An employee is required to remove or bypass a guard or other safety device; or
> (B) An employee is required to place any part of his or her body into an area on a machine or piece of equipment where work is actually performed upon the material being processed (point of operation) or where an associated danger zone exists during a machine operating cycle.

Respondent bears the burden of proving that the claimed exception provided in §1910.147(a)(2)(ii) applies in the cited circumstances. *Falcon Steel Co.*, 16 BNA OSHC 1179, 1993 CCH OSHD ¶29,426 (No. 89-2883, 89-3444, 1993); *StanBest Inc.*, 11 BNA OSHC 1222, 1983-84 CCH OSHD ¶26,455 (No. 76-4355, 1983). Specifically, the preamble to the lockout/tagout standard states that to establish the claimed exemption the employer must demonstrate that the means of performing unjamming operations do not expose employees to greater or different hazards than those encountered during normal production operations. 54 F.R. 36647 (9/1/89).

Respondent L-P here failed to show that unjamming operations are routine, repetitive tasks which are part of the normal production. Nor did L-P establish that the hazards associated with unjamming are identical to the hazards involved normal production.

Sharbono testified that jam-ups are "not a normal situation" (Tr. 470). Billy Brown, the 764-2 sander operator, testified that jams may occur up to three or four times a day, but only when they run quarter inch board (Tr. 333). John Coston testified that jams may occur only two or three times a month (Tr. 689).

Moreover, the hazards to L-P employees are different when a jam occurs than the hazards encountered during normal production. When the pressure rolls are raised, to release pressure from jammed boards on the feed belt, the boards may move forward, hit a still moving sander head, and be ejected from the sander (Tr. 349-350, 508). After the sander heads have been turned off, they continue to rotate for between 5 and 30 seconds, depending on whether or not there is a board in the sander providing friction (Tr. 337, 463, 519, 644). Brown estimated the wind down time at as long as 1-1/2 to 2 minutes (Tr. 337). As noted by L-P, even the installation of an anti-kickback device would be ineffective in preventing a kickback where the pressure rolls are raised.

The described kickback hazard is created solely during unjamming operations.

Respondent failed to demonstrate that unjamming the 764-2 sander is an exempted routine maintenance operation involving the same hazards encountered during normal production. The provisions of §1910.147 *et seq.* are, therefore, applicable.

**Willful citation 2, items 1a and 1b**

The cited items allege, respectively:

29 CFR 1910.147(c)(7)(i): The employer did not provide adequate training to ensure that the purpose and function of the energy control program was understood by employees:

(a) Paint Line: Employees exposed to the hazards of kickbacks on the sanding machines.

29 CFR 1910(c)(7)(iii)(a): Retraining was not provided for authorized and affected employees when there was a change in their job assignments, a change in machines, equipment or processes that presented a new hazard, or when there was a change in the energy control procedures:

(a) Paint Line: Affected employees exposed to the hazards of kickbacks on the sanding machines.

*Violation of the Standards*

L-P admits that it did not provide training on lockout procedures for specific pieces of machinery. L-P's generic training instructed employees that they needed to lock out equipment only when they had to climb on top of or reach into the machinery (Tr. 327, 330, 444). It is undisputed that employees were not instructed to lock out the 764-2 sander when unjamming the machine.

CO Wild's testimony that four new employees being trained on the paint line, including Mr. Huston, were not provided energy control retraining upon their reassignment to the bullnose area was also uncontested (Tr. 127, 161, 168).

Because L-P provided no training, or retraining covering lockout procedures for specific pieces of equipment, or the precise conditions under which lockout is required, including unjamming the 764-2 sander, its training was inadequate. Complainant has established the cited violations.

*Willfulness*

The Commission has held that:

> A willful violation is one committed with intentional, knowing or voluntary disregard for the requirements of the Act, or with plain indifference to employee safety. It is differentiated from other types of violations by a "heightened awareness -- of the illegality of the conduct or conditions -- and by the state of mind -- conscious disregard or plain indifference.
>
> * * *
>
> A finding of willfulness is not justified if an employer has made a good faith effort to comply with a standard, even though the employer's efforts are not entirely effective or complete.

*Calang Corp.*, 14 BNA OSHC 1789, 1791, 1987-90 CCH OSHD ¶29,080, p. 38,870 (No. 85-319, 1990).

The record establishes that L-P had an extensive lockout /tagout program including written materials and a video presentation (Exh. R-1 through R-5). Training was provided (Exh. R-7); the employees involved in the 1992 incident, including Mr. Huston, understood the purpose and function of the lockout/tagout rules in general terms (Tr. 271, 290-91, 498-99, 509).

L-P believed that unjamming the 764-2 sander was part of normal production operations, and did not expose employees to any additional dangers involving the unexpected energization of the equipment. This judge concludes otherwise. However, L-P's conclusion was not so unreasonable as to justify a finding of willfulness. The evidence establishes, rather, that L-P's interpretation of the standard was made in good faith. The cited standards will be affirmed as "serious" violations of the Act.

*Penalty*

The Secretary proposes a combined penalty of $35,000.00 for these violations. Based on the penalty factors discussed above, and on the reclassification of these violations as "serious," a penalty of $3,500.00 is deemed appropriate and will be assessed.

**Repeat citation 3, item 1a**

The citation alleges:

29 CFR 1910.147(c)(4)(i): Procedures were not developed, documented and utilized for the control of potentially hazardous energy when employees were engaged in activities covered by this section:

(a) Paint Line: Specific procedures were not developed for the #1 sander and other equipment with a potential for stored or residual energy where employees were required to perform maintenance of machines and equipment.

*Discussion*

It is admitted that L-P did not document lockout/tagout procedures for individual pieces of equipment as required by the cited standard. In particular, no procedures were developed or utilized for locking out the 764-2 sander prior to unjamming.

Complainant has established the cited violation.

*Penalty*

The violation is cited as a "repeat" violation. A penalty of $50,000.00 has been proposed by the Complainant. L-P argues that a repeat violation may be based on violations occurring at distinct physical locations only if the corporation exerts day to day control of the separate facilities.

The Commission has rejected the idea that "commonality of supervisory control" bears upon whether a particular violation is repeated. *Potlatch Corp.*, 7 BNA OSHC 1061,

1979 CCH OSHD ¶23,294 (No. 16183, 1979). Here, the attorney and management representative representing L-P at a 1992 informal settlement conference between OSHA and L-P, where lockout/tagout citations at its Kremmling plant were discussed, also represented L-P in this matter (Tr. 398). Complainant's position, that L-P should be held accountable for the knowledge of its corporate management and legal counsel is reasonable. The violation is properly characterized as "repeat," because L-P received citations under the same standard based on similar violations in its Kremmling plant in 1992 (Tr. 397-402).

The gravity of the cited violation is high because of the danger to bystanders as well as to the sander operator. The injuries sustained by Mr. Huston were severe and could have resulted in death. In proposing its penalty, Complainant took into account L-P's size, good faith, and history of violations. The proposed penalty of $50,000.00 will be assessed.

**Repeat citation 3, item 1b**

The citation alleges:

29 CFR 1910.147(c)(6)(i): The employer did not conduct an annual or more frequent inspection of the energy control procedure to ensure that the procedure and requirements of this standard were followed:

(a) Paint Line: Employees exposed to the hazards of kickbacks on the sanding machines.

*Discussion*

The standard requires that energy control procedures be evaluated annually.

Respondent was able to produce written documentation for only two inspections involving energy control procedures (Tr. 131; Exh. R-27). In April and May, 1992, during scheduled down day maintenance, Pat McGowan performed a "random lockout checks" on "#2, S&W blowout" and on the "bag house air lock" (Tr. 132-33; Exh. R-27). No other evidence of energy control inspections was introduced (Tr. 133). Wild was told by McGowan that he "hadn't gotten around to" the rest of the equipment, including the equipment in the Reman section (Tr. 189-191). No down days were scheduled in Reman for 1992 (Tr. 548).

The random lockout checks performed by L-P do not comply with the requirements of the cited standard in that inspections involving all procedures did not occur at least annually. The violation has been established.

*Penalty*

For the reasons discussed above, the violation is properly characterized as "repeat." A penalty of $50,000.00 will be assessed.

**Serious citation 3, item 1c and 1d**

The citations allege, respectively:

29 CFR 1910.174(c)(6)(i)(C): Where lockout was used for energy control, the periodic inspection did not include a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected:

(a) Paint Line: Employees exposed to the hazards of kickbacks on the sanding machines.

29 CFR 1910.147(c)(6)(ii): The employer had not certified that periodic inspections of the energy control procedures had been performed:

(a) Paint Lines: Employees exposed to the hazards of kickbacks on the sanding machines.

*Discussion*

Items 1c and 1d assert that the required periodic inspection of L-P's sanding machines did not include a review of procedures with employees, and were not certified, as required by §1910.147(c)(6)(i)(C) and (c)(6)(ii). The evidence establishes that annual inspections were not performed. In item 1b, L-P was cited and found in violation of §1910.147, subsection (c)(6)(i) for its failure to perform such inspections. Because the two subsections at 1c and 1d address inadequacies in an employer's inspection plan, such a plan must exist before those subsections become applicable. The undersigned declines to rule on the adequacy of an inspection procedure which does not exist. Serious citation 3, items 1c and 1d will, therefore, be dismissed.

**Repeat citation 3, Item 2**

The citation alleges:

29 CFR 1910.147(d)(4)(i): Lockout or tagout devices were not affixed to each energy isolating device by authorized employees:

(a) Paint Line: Employees exposed to the hazards of kickbacks on the sanding machines.

*Discussion*

It is uncontroverted that the 764-2 sander was not locked out during unjamming operations. Such failure to lockout the machine was a high gravity "repeat" violation due to L-P's previous citation under the identical standard (Stipulations of Fact ¶7-10). For the reasons discussed above, the proposed penalty of $50,000.00 is deemed appropriate and will be assessed.

**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 §5(a)(1), is AFFIRMED and a penalty of $5,000.00 is ASSESSED.

2. Citation 2, item 1a and 1b, alleging violations of §1910.147(c)(7)(i) and (c)(7)(iii)(a), are AFFIRMED as "serious" violations and a combined penalty of $3,500.00 is ASSESSED.

3. Repeat citation 3, items 1a and 1b, alleging violations of §1910.147(c)(4)(i) and (c)(6)(i), are AFFIRMED and penalties of $50,000.00 each are ASSESSED.

4. Repeat citation 3, items 1c and 1d, alleging violations of §1910.147(c)(6)(i)(C) and (c)(6)(ii), are VACATED.

5. Repeat citation 3, item 2, alleging violation of §1910.147(d)(4)(i), is AFFIRMED and a penalty of $50,000.00 is ASSESSED.

Benjamin R. Loye
Judge, OSHRC

Dated: May 26, 1995