

Done
JULIAN M. CARROLL

GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC Decision
& Order # 176*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

October 21, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

PUBLIC SERVICE COMMISSION OF KY.
(For and on behalf of
COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY)

KOSHRC #141

COMPLAINANT

VS.

CAPITOL OIL & GAS COMPANY

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON,
Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer Roger D. Riggs,
dated September 4, 1975, is before the Commission for review.

Upon thorough review of the record before it, and no
error being found therein, it is the unanimous order of this
Commission that the findings of the Hearing Officer in this case
be and they hereby are AFFIRMED in all respects not inconsistent
with this opinion.

H. L. Stowers
H. L. Stowers, Chairman

/s/ Charles B. Upton
C. B. Upton, Commissioner

DATED: October 21, 1975
Frankfort, Ky.

/s/ M. H. Stanton
M. H. Stanton, Commissioner

DECISION NO. 176

1417761

This is to certify that a copy of this Decision and Order has been served by mailing or personal delivery on the following:

Commissioner of Labor
Commonwealth of Kentucky
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety and Health


Public Service Commission of Kentucky
24th Floor - Capital Plaza Tower
Frankfort, Kentucky 40601
Attention: Richard D. Heman, Jr., Secretary

~~Public Service Commission of Kentucky~~
24th Floor - Capital Plaza Tower
Frankfort, Kentucky 40601
Attention: A. F. Humphries
Director of Engineering

The Honorable Morris E. Burton
Attorney at Law
326 W. Main Street
Frankfort, Kentucky 40601

Mr. D. A. Fassas, Managing Agent (Certified Mail #467101)
Capitol Oil & Gas Company
Irvine Road, P. O. Box 826
Richmond, Kentucky 40475

This 21st day of October, 1975.


Iris R. Barrett, Executive Director

Done



141 (162)

JULIAN M. CARROLL



GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC
Decision +
Order No. 162*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

September 4, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 141

PUBLIC SERVICE COMMISSION
OF KENTUCKY (For and on behalf of
DEPARTMENT OF LABOR)

COMPLAINANT

VS.

CAPITOL OIL & GAS CO.

RESPONDENT

NOTICE OF RECEIPT OF
RECOMMENDED ORDER, AND
ORDER OF THIS COMMISSION

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a Decision, Findings Of Fact, Conclusions Of Law, And Recommended Order is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may within 25 days from date of this Notice submit a petition for discretionary review by this Commission.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission, and it is hereby ordered that unless this Decision, Findings Of Fact, Conclusions Of Law, And Recommended Order is called for review and further consideration by a member of this Commission within 30 days of this date, it is adopted and affirmed as the Decision, Findings Of Fact, Conclusions Of Law, And Final Order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been filed by one or more Review Commission members.

This is to certify that a copy of this Notice and Order has been served by mailing or personal delivery on the following:

Commissioner of Labor
Commonwealth of Kentucky
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety and Health

Public Service Commission of Kentucky
24th Floor - Capital Plaza Tower
Frankfort, Kentucky 40601
Attention: Richard D. Heman, Jr., Secretary

Public Service Commission of Kentucky
24th Floor - Capital Plaza Tower
Frankfort, Kentucky 40601
Attention: A. F. Humphries
Director of Engineering

The Honorable Morris E. Burton
Attorney at Law
326 W. Main Street
Frankfort, Kentucky 40601

Mr. D. A. Fassas, Managing Agent (Certified Mail #467059)
Capitol Oil & Gas Company
Irvine Road, P. O. Box 826
Richmond, Kentucky 40475

This 4th day of September, 1975


Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #141

PUBLIC SERVICE COMMISSION OF KENTUCKY

COMPLAINANT *

VS. DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER

CAPITAL OIL & GAS COMPANY

RESPONDENT

* * * * *

On March 21, 1975 an inspection took place at Respondent's facilities located at Campton, Kentucky. As a result of the inspection of respondent's work location, the Kentucky Department of Labor, Division of Occupational Safety and Health, issued citations to respondent charging five other than serious violations of the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972), in the following respects:

Citation No. 1, Item No. 1: Respondent was charged with a violation of OSH-11,29 CFR 1910.309 (a) N.E.C. 250-45(d) (now 803 KAR 2:020) described as:

Failed to ground metal parts of cord- and plug- connected equipment which are liable to become energized. For example: Black and Decker grinder located in Shop at Campton, Kentucky.

The date by which the alleged violation must be corrected was April 9, 1975. A penalty of \$200.00 was proposed.

Citation No. 2, Item No. 1: Respondent was charged with a violation of OSH-11, 29 CFR 1910.215 (a)(4) (now 803 KAR 2:020) and was described as:

Failed to provide on offhand grinding machines that workrests shall be used to support the work. They shall be of rigid construction and be designed to be adjusted to compensate for wheel wear, with a maximum opening of one-eighth (1/8) inch. For example: Black and Decker grinder located in Shop, Campton, Kentucky.

The date by which the alleged violation was to be corrected was stated as April 9, 1975. No penalty was proposed.

Citation No. 2, Item No. 2 alleged a violation of OSH 11,29 CFR 1910.151(b) and was described as:

Failed to assure that in the absence of an infirmary, clinic or hospital in near proximity to the work place which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first-aid. First-aid supplies approved by the consulting physician shall be readily available. (1) Documentary approval from physician for first-aid kits was not available (2) Documentary evidence of first-aid training was not available.

The date by which the alleged violation was to be corrected was stated as April 30, 1975. A penalty of \$43 was proposed.

Citation No. 2, Item No. 3 alleged a violation of OSH 11,29 CFR 1910.106 (g)(3)(IV)(d) (now 803 KAR 2:020) and was described as:

Failed to provide that dispensing units for flammable liquids shall be mounted on a concrete island or protected against collision damage by suitable means. For example: Gasoline dispensing unit at gate to Plant at Campton, Kentucky.

The date by which the alleged violation was to be corrected was April 23, 1975. No penalty was proposed.

Citation No. 2, Item No. 4 alleged a violation of OSH 12, 29 CFR 1926.100(1) (now 803 KAR 2:030) and was described as:

Failed to assure that hard hats conforming to specifications of the American National Standards Institute, Z89.1 (1971), shall be worn by all employees engaged in construction work. For example: Installing a bypass of the compressors. Located in Plant, Campton, Kentucky.

The date by which the alleged violation was to be corrected was April 23, 1975. A penalty of \$43 was proposed.

Citation No. 2, Item No. 5 alleged a violation of OSH 12, 29 CFR 1926.100(1) (now 803 KAR 2:030) and was described as:

The Annual Summary of Occupational Injuries and Illnesses (Form Number 102) had not been posted at the Plant Office at Campton, Kentucky.

The date by which the alleged violation was to be corrected was April 9, 1975, and no penalty was proposed.

On April 14, 1975, the Public Service Commission received a letter from respondent stating employer's intention to contest the alleged violations. Thereafter the Department of Labor issued a complaint, alleging the violations as previously noted and proposing said penalty amounts.

The proper notices were promptly sent to the parties and a letter certifying that the required notice had been duly posted was received by the Review Commission on May 2, 1975.

Hearing was held on June 10, 1975 at the hour of 2:00 p.m. in the office of the Madison Area Vocational School in Richmond, Kentucky under the provisions of KRS 338.071 (4), a section of Chapter 338 of the Kentucky Revised Statutes dealing with the safety and health of employees. This statute authorizes the Review Commission to hear and rule on appeals from citations, notifications, and variances issued under the provisions of said Chapter and to adopt and promulgate rules and regulations concerning the procedural aspects of its hearings. By virtue of the provisions of KRS 338.081, hearings authorized by the provisions of this Chapter may be conducted by a Hearing Officer appointed by the Review Commission to represent the Commission in this manner. Following the hearing of an appeal, or on review of the decision of the Hearing Officer by its own motion, the Review Commission may sustain, modify, or dismiss a citation or penalty.

After hearing the testimony of the witnesses, and having considered the same together with the stipulations, and representations of the parties, it is concluded that the substantial evidence on the record considered as a whole, supports the following:

FINDINGS OF FACT

1. Respondent failed to ground electrically energized cord-and-plug equipment known as a Black and Decker grinder.

2. Respondent failed to provide workrests to support the work on offhand grinding machines.

3. Plant was not in the near proximity to an infirmary, clinic or hospital and (1) there was no documentary approval from a physician of first-aid kits or supplies, and (2) there was no one available who had obtained the proper first-aid training.

4. Dispensing units for flammable liquids (gasoline) were not mounted on a concrete island or protected adequately against collision damage.

5. Hard hats were not being worn by employees engaged in work where such hats are required.

6. The Annual Summary of Occupational Injuries and Illnesses was not posted at the plant office.

CONCLUSIONS OF LAW

At an inspection in March of 1974 Respondent was cited for failure to have a ground plug on a Black and Decker grinder; no penalty was assessed. In March of 1975, at a second inspection the Compliance Officer cited Respondent for the same violation on the same grinder. Mr. Fassas stated that he had been informed by an employee that the prior violation had been corrected. Whether the violation was at once corrected and a two-prong plug later replaced on the cord or whether the violation was never corrected is not clear. In any event, the employer is responsible to see that his operation is in compliance with the Act; and where a violation is specifically pointed out to him and it is not corrected or allowed to re-occur, then responsibilities and liabilities to be fined are

both increased. Under the circumstances as explained by the Compliance Officer it appears that the proposed penalty of \$200 for the repeated violation should stand as reasonable and appropriate.


The proposed penalties for Items numbered 2 and 4 of Citation Number 2 cannot stand. Although the Compliance Officer did express, very generally, the methodology by which he arrived at a proposed penalty; there is no factual information on the record concerning either of these violations which can be considered in determining whether or not these or any proposed penalties would be appropriate.

As to Complainant's motion for judgment on the pleading due to Respondent's failure to Answer, it has been the policy of this Commission to proceed with any action once a letter of contest has been received and a Complaint filed, whether or not a formal Answer has been received from the Respondent. Such a policy (1) prevents a delay in proceeding to a prompt hearing, and (2) prevents the employer who is without counsel from losing his opportunity to be heard due to a procedural mistake. The enforcing agency, however, will be held accountable for filing the proper pleadings through which it seeks to enforce the Act. Wherever the decision in Public Service Commission v. Union Light, Heat and Power, KOSHRC #100, is inconsistent herewith it is hereby overruled.

RECOMMENDED ORDER

IT IS ORDERED AND ADJUDGED that the proposed penalty of \$200 for Item Number 1 of Citation Number 1 shall be and

the same hereby is SUSTAINED: and that the proposed penalty of \$43 for Item Number 2 of Citation Number 2, and the proposed penalty of \$43 for Item Number 4 of Citation Number 2 shall be and the same hereby are VACATED.



Roger D. Riggs, Hearing Officer
KOSHRC

Decision No. 162

Dated: Sept. 4, 1975
Frankfort, Kentucky