

COMMONWEALTH OF KENTUCKY  
OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

KOSHRC #1917-90

SECRETARY OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

KENTUCKY UTILITIES COMPANY

RESPONDENT

DECISION AND ORDER

Before SHIELDS, Chairman, BRADEN and YOCOM, Commissioners.

This matter is before the Commission for Review of Hearing Officer Pettyjohn's opinion and recommended order issued on September 24, 1991.

The Complaint consisted of one citation charging seven other than serious violations and recommending no penalty. The Respondent withdrew its contest of Item 7 of the Citation which alleged a failure to include in its written hazard communication program methods to inform any contractor employers of exposure of its employees to hazardous chemicals. Therefore, that item need not be addressed by the Commission.

The Commission has reviewed the entire record in this case, including the hearing transcript, exhibits and briefs of the parties, and makes the following Findings of Fact and Conclusions of Law in this matter.

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

Item 1 of the Citation alleged a failure to keep a proper log and summary of occupational illnesses and Item 2 alleged a failure to have available supplementary records of occupational illnesses. The hearing officer recommended dismissal of Item one, finding there was insufficient evidence that the Respondent knew or reasonably should have known of a specific occupational illness prior to a workmen's compensation claim having been filed with the Respondent regarding that illness. The unique facts and circumstances of this case, wherein the medical evidence concerning the alleged occupational illness is in dispute and there was sufficient reason for the employer to not be aware of an employee's claim of an occupational illness until he specifically claimed he was suffering from an occupational illness, supports the hearing officer's dismissal of Item 1.

Item 2 of the Citation deals with the Respondent's failure to supplement its records regarding this occupational illness within six working days following the notice of the occupational illness. Although the hearing officer believed that the Respondent should have placed additional information in its records after receiving the employee's worker's compensation claim (which eliminates any question of notice to the employer of an occupational illness claim), it is the opinion of the Commission that Kentucky Utilities still had a legitimate question as to the occurrence of an occupational illness and acted in good faith in its recordkeeping in this matter. The Commission finds in the instant case there is sufficient evidence to determine the Respondent's records were in substantial compliance with the regulations and that Item 2 of the Citation should be dismissed.

Items 3 through 6 of the Citation allege violations of subsections of 29 CFR 1926.58(f) by the Respondent in its failure to monitor employees who are in regulated areas because of their exposure to hazardous materials (i.e., asbestos) and failure to provide a shower for the employees upon their leaving a regulated area.

The situation involved removal of asbestos from a water line that needed to be replaced because it was leaking. Kentucky Utilities' employees used the glove bag technique in removing the asbestos. Although there is no question that asbestos is a hazardous material, it is the Commission's finding that there is insufficient evidence to determine that the Respondent is in violation of the cited standard. There was significant evidence regarding the precautions that the Respondent exercised in performing this job and the minimal amount of asbestos that was to be removed. The Commission agrees with the Respondent's claim that the primary purpose of the job was replacement of the water line, not removal of the asbestos.

There was no indication that any employee was exposed to asbestos at a level that was above the permissible exposure level. In addition, the Respondent introduced a history of a prior job of a similar nature which had been monitored and the exposure never exceeded the permissible exposure level.

The Commission finds that the Respondent acted reasonably and used appropriate methods for the removal of the asbestos as a necessary part of the work project that was actually performed for the removal of a water line. Items 3, 4, 5 and 6 should be dismissed.

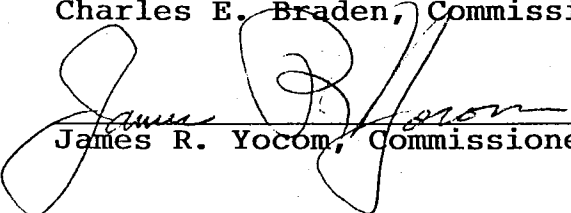
#### DECISION AND ORDER

IT IS HEREBY ORDERED that the decision of the hearing officer dismissing Item 1 of the Citation is **AFFIRMED** and that the decision affirming Items 2, 3, 4, 5 and 6 is **VACATED**, and therefore,

Items 1, 2, 3, 4, 5, and 6 of the Citation are hereby  
**DISMISSED.**

  
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William H. Shields, Chairman

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s/Charles E. Braden  
Charles E. Braden, Commissioner

  
\_\_\_\_\_  
James R. Yocom, Commissioner

DATED: December 18, 1991  
DECISION NO. 2293-91

Copy of the foregoing Decision and Order has been served upon the following parties in the manner indicated:

Hon. Terry Anderson  
Assistant Counsel  
Labor Cabinet  
Office of General Counsel  
U. S. 127 South  
Frankfort, KY 40601

(Messenger Mail)

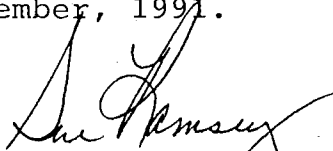
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This 18th day of December, 1991.



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