

COMMONWEALTH OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

KOSHRC NO. 2507-94

SECRETARY OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

NORTHEASTERN PRODUCTS CORPORATION

RESPONDENT

\* \* \* \* \*

DECISION AND ORDER  
OF THIS REVIEW COMMISSION

We call this case for review on our own motion by our authority contained in section 47 (3) of our rules of procedure (ROP).<sup>1</sup> Neither party petitioned this commission for review under ROP 48 (1).

After a thorough review of all the evidence presented in this case, this commission decided unanimously to vacate the \$12,000 proposed penalty and recalculate the penalty based on an additional adjustment factor of 20% for good faith. KRS 338.991 (6) says the commission may modify penalties proposed by the secretary of labor. We adopt all other findings and conclusions contained in our hearing officer's recommended order as if fully set out within this decision.

As compliance officer Darren Thompson testified, the base penalty for the failure to abate penalty in this case was \$30,000. Transcript of the Evidence (TE) 24. Since the proposed penalty in this case was \$12,000, the adjustment factor for size of the

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<sup>1</sup> Enacted as section 47 (3), 803 KAR 50:010.

company was 60%. TE 44.

This commission is thoroughly familiar with the adjustment factors for proposed penalties as found in the secretary of labor's field operations manual and we take judicial notice of it in the instant matter. KRE 201 (b) (2) and 201 (c).<sup>2</sup> We find the field operations manual says the maximum reduction for size is 60% and the maximum reduction for good faith is 25%. Field Operations Manual, page VI-9. and TE 44.

Compliance officer Thompson testified a respondent could get a complete elimination of a failure to abate penalty upon a showing of good faith. TE 26. Respondent received no credit from the secretary of labor for good faith in this case. TE 44.

We disagree with our hearing officer's conclusion the respondent showed no good faith.

Respondent was originally cited for 19 violations of the occupational safety and health standards (TE 33) but at the reinspection, 18 had been corrected. TE 34. Gary Rogers, for respondent, testified he had shown employees where the fire extinguishers were located and distributed a booklet on fire extinguishers to his employees. TE 53-54. He testified he tried to arrange fire extinguisher training from the Adair County fire department. TE 65. He thought he had complied with his responsibilities for training his employees on the use of fire extinguishers. TE 71-72.

Because respondent abated 18 of the 19 underlying violations

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<sup>2</sup> ROP 42.

and because he thought he abated the extinguisher training violation, we award respondent 20% credit for good faith. When the 60% for size and 20% for good faith are applied to the \$30,000 unadjusted penalty, we obtain an adjusted penalty of \$6,000.<sup>3</sup>

We affirm our hearing officer's conclusion that respondent failed to abate the violation of 29 CFR<sup>4</sup>1910.157 (g) (3) set forth in citation 2, item 10, originally issued September 8, 1993.

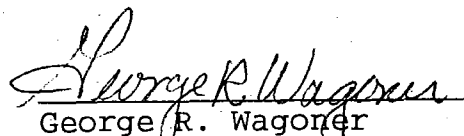
We set the penalty for failure to abate this violation at \$6,000. KRS 338.991 (6).

If abatement has not already been accomplished by respondent, we order him to do so within 30 days.

It is so ordered.

Entered October 19, 1995.

FOR THE FULL COMMISSION

  
George R. Wagoner  
Chairman

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<sup>3</sup> .6 + .2 = .8. Then 30,000 times .8 = 24,000. Then 30,000 - 24,000 = \$6,000.

<sup>4</sup> Code of Federal Regulations.

**CERTIFICATE OF SERVICE**

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

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This 19th Day of October, 1995.

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