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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL  
GOVERNOR

REVIEW COMMISSION

MERLE H. STANTON  
CHAIRMAN

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

104 BRIDGE ST.

CHARLES B. UPTON  
MEMBER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

JOHN C. ROBERTS  
MEMBER

*KOSHRC  
Decision &  
Order No 537*

March 13, 1978

KOSHRC #393

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

AMERICAN AIR FILTER COMPANY, INC.  
CLEAN AIR GROUP, REED PLANT

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STANTON, Chairman; UPTON and ROBERTS, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer John T. Fowler, Sr., issued under date of December 1, 1977 is before this Commission for review, pursuant to a Petition for Discretionary Review filed by the Respondent.

Several of the Respondent's machines are equipped with hand trips which activate the press. The citation involved in this case alleges that the trips on the cited machines are too close to the point of operation. The Respondent has admitted that the Compliance Officer's calculations are correct and the particular machines are in violation of the distance requirements of the standard.

The Hearing Officer has affirmed the citation and sustained the proposed penalty, finding a violation of the standards and a danger to employees. This Commission agrees with the Hearing Officer's decision in this case. A violation of the standard has been admitted and the evidence introduced by the Respondent is not sufficient to establish economic infeasibility or impossibility of compliance.

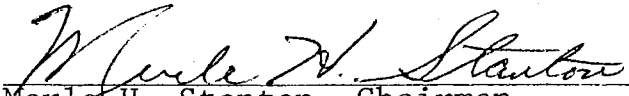
There is one point to be corrected in paragraph (2) of the Hearing Officer's Findings of Fact. The palm buttons are too close to the point of operation, and too close together as

KOSHRC #393  
(Decision and Order of Review Commission)

noted by the Hearing Officer.

It is the unanimous ORDER of the Review Commission that the Recommended Order of the Hearing Officer be and it hereby is AFFIRMED, and the citation and penalty are SUSTAINED.

Abatement shall be accomplished not later than thirty (30) days from date of this Order.

  
Merle H. Stanton, Chairman

/s/ John C. Roberts  
John C. Roberts, Commissioner

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

DATED: March 13, 1978  
Frankfort, Kentucky

DECISION NO. 537

KOSHRC #393  
(Decision and Order of Review Commission)

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 (Messenger Service)  
Commonwealth of Kentucky  
Frankfort, Kentucky 40601  
Attention: Honorable Michael D. Ragland  
Executive Director for  
Occupational Safety & Health

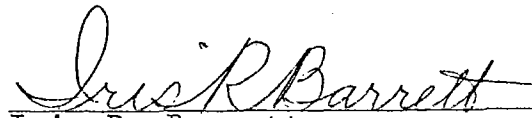
Honorable Kenneth E. Hollis (Messenger Service)  
General Counsel  
Department of Labor  
Frankfort, Kentucky 40601  
Attention: Timothy P. O'Mara  
Assistant Counsel

Honorable William D. Lambert (Certified Mail #783027)  
OGDEN, ROBERTSON & MARSHALL  
Attorneys at Law  
1200 One Riverfront Plaza  
Louisville, Kentucky 40370

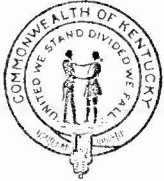
Mr. Martin L. Smith, Dir. Ind. Relations (First Class Mail)  
American Air Filter Co., Inc.  
Clean Air Group Reed Plant  
215 Central Avenue  
Louisville, Kentucky 40208

American Air Filter Co., Inc. (First Class Mail)  
Clean Air Group Reed Plant  
P. O. Box 110  
Louisville, Kentucky 40201

This 13th day of March, 1978.

  
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Iris R. Barrett  
Executive Director

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*393 (494)*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL  
GOVERNOR

REVIEW COMMISSION

MERLE H. STANTON  
CHAIRMAN

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

104 BRIDGE ST.  
FRANKFORT, KENTUCKY 40601

CHARLES B. UPTON  
MEMBER

PHONE (502) 564-6892

John C. Roberts  
MEMBER

December 1, 1977

*KOSHRC  
Decision +  
Order No. 494*

KOSHRC # 393

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

AMERICAN AIR FILTER COMPANY, INC.  
CLEAN AIR GROUP, REED PLANT

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. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

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 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, 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 directed by one or more Review Commission members.

Copy of this Notice and Order has been served by mailing or personal delivery on the following:

Commissioner of Labor (Messenger Service)  
Commonwealth of Kentucky  
Frankfort, Kentucky 40601  
Attention: Honorable Michael D. Ragland  
Executive Director for  
Occupational Safety & Health

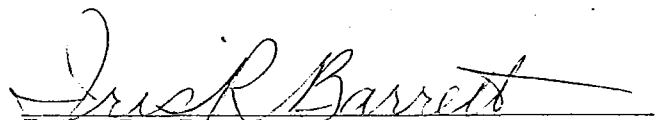
The Honorable Kenneth E. Hollis (Messenger Service)  
General Counsel  
Department of Labor  
Frankfort, Kentucky 40601  
Attention: Timothy P. O'Mara  
Assistant Counsel

The Honorable William D. Lambert (Certified Mail #240798)  
OGDEN, ROBERTSON & MARSHALL  
Attorneys at Law  
1200 One Riverfront Plaza  
Louisville, Kentucky 40370

Mr. Martin L. Smith, Dir. Ind. Relations (First Class Mail)  
American Air Filter Co., Inc.  
Clean Air Group Reed Plant  
215 Central Avenue  
Louisville, Kentucky 40208

American Air Filter Co., Inc. (First Class Mail)  
Clean Air Group Reed Plant  
P. O. Box 110  
Louisville, Kentucky 40201

This 1st day of December, 1977.

  
Iris R. Barrett  
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

KOSHRC NO. 393

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

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

AMERICAN AIR FILTER COMPANY, INC.  
CLEAN AIR GROUP, REED PLANT

RESPONDENT

\* \* \* \*

Hon. Timothy P. O'Mara, Attorney for Complainant, 801 West Jefferson Street, Louisville, Kentucky 40202.

Hon. Martin L. Smith, Director of Industrial Relations, American Air Filter Company, Inc., 215 Central Avenue, Louisville, Kentucky 40208, Representative for the Respondent.

FOWLER, Hearing Officer

\* \* \* \*

On May 23, 24, 25, 26 and June 6, 1977 the Department of Labor, through its Compliance Officers, made a routine inspection of a plant operated by the American Air Filter Company, Inc. at its Clean Air Group, Reed Plant located at 215 Central Avenue in Louisville, Kentucky. As a result of that inspection some 39 nonserious alleged violations were noted and a citation issued by the Department of Labor. Only 1 of those citations, namely number 20 of the citations, is in contest in this matter.

The item which is in contest and the subject matter of this decision is an alleged violation of 29 CFR 1910.217(c)(3)(viii)(c) in that:

The following full revolution mechanical power presses which were provided with two (2) hand trips as a point of operation device did not have a safety distance between the two (2) hand trips and the point of operation which was greater than the distance determined by the formula provided in the standards:

- 1) "Bliss" No. 745, Department 280,
- 2) "Toledo" No. 297, Department 280,
- 3) "Bliss" No. 54, Department 280,
- 4) "Toledo" No. 422, Department 280.

The abatement date for the alleged violation was set at July 18, 1977 and the proposed penalty was \$44.00.

The aforesaid Hearing was held under the provisions of KRS 338.071(4), one of the provisions dealing with the safety and health of employees which authorizes the Review Commission to hear and rule on appeals from citations, notifications and variances issued under the provisions of this Chapter, and to adopt and promulgate rules and regulations with respect to procedural aspects of the Hearings. Under the provisions of KRS 338.081, Hearing was authorized by provisions of said Chapter and such may be conducted by a Hearing Officer appointed by the Review Commission to serve in its place. After Hearing and appeal, the Review Commission may sustain, modify or dismiss a citation or penalty.

The pertinent procedural information is as follows:

1. Inspection May 23, 24, 25, 26 and June 6, 1977 by the Department of Labor at 215 Central Avenue, a place of employment at which employees of the Respondent company were working.
2. Citation issued June 15, 1977 listing 39 violations,

only 1 of which is in contest.

3. Notice of Contest received July 12, 1977 contesting item number 20 of the original citation as contained in paragraph 6 of the Complaint.

4. Notice of Contest with copy of citations and proposed penalty transmitted to the Review Commission on July 13, 1977.

5. Notice of Receipt of Contest mailed July 14, 1977 and Certification of Employer Form received July 18, 1977.

6. Complaint received July 25, 1977 and Answer filed on August 12, 1977.

7. Case assigned to a Hearing Officer August 17, 1977.

8. Hearing scheduled and held September 7, 1977 at the Department of Labor, 801 West Jefferson Street, Louisville, Kentucky.

9. The Transcript of the Receipt of Evidence was mailed September 26, 1977.

10. Brief of the Complainant was received October 7, 1977, and Brief for the Respondent was received October 25, 1977.

The Respondent company is a manufacturer of air pollution control equipment and essentially the charge in contest is that the 4 presses involved, were required to be operated by two hand trips which had to be pushed simultaneously in order to activate the press. The question is raised by the Department that the hand trips were too close to the point of operation and did not have safety distance which is required by the standards.



### DISCUSSION OF THE FACTS

Compliance Officer, Howland, for the Department of Labor testified concerning the opening conference, walk-around and closing conference which were held with a Mr. Stonefield (TE 6); and explains the standard and the method used to arrive at a minimum safety distance in accordance with a formula which she has set forth in the evidence (TE 7).

There is an explanation to determine the safety distance required by the two hand trips which is from a formula adopted in 29 CFR 1910.217 and its subsequent subparts.

The four presses involved, according to the Compliance Officer were full revolution presses, meaning that once the press has been tripped it could not be disengaged until a full cycle had been completed and that the hand trips were the only safety devices existing on the presses (TE 9). It appears that all four presses were in the Fabrication Department and they included two Toledo presses and two Bliss presses (TE 10); pictures are introduced in the evidence to show the machines in question (TE 11).

The Compliance Officer tells of the measurements that she made between the palm buttons and the point of operation and explains in accordance with the formula, distances were computed as follows:

The Bliss Number 745 Press was a distance of 16 to 18 inches where the formula for safe distance required 47 1/4 inches distance.

The Toledo 297 Press had palm buttons at a distance of 16 inches from the point of operation and the formula provided a distance of 70.8 inches.

The Toledo 422 at a distance of 22 inches and the formula showed a safe distance of 40.4 inches. (TE 13 & 14).

It is stipulated by and between the parties that the distance as testified to by the Compliance Officer is correct and also that the computation of distances under the regulations was correct. There is further testimony as to the exposure of the war employees and the proof showed that the exposure factor was as follows:

For the 745 Bliss Press - 28 hours a week of exposure,  
For the 297 Toledo Press - 16 hours a week of exposure,  
For the 422 Toledo Press - 6 hours a week of exposure.  
(TE 15).

The computation of the proposed penalty is not in dispute (TE 16); it was the testimony of the Compliance Officer that barrier guards could be used instead of palm buttons to be in compliance with the act (TE 17).

On cross-examination the Compliance Officer says that she actually went through the formula for each of the machines and that they were truly reflected as she had testified and reported above. (TE 20).

A Mr. Harry Ovington testified on behalf of the Respondent and stated that he had been an American Air Filter Employee since 1946 as a die setter (TE 20); as a punch press operator for 11 years

(TE 21). The job description was entered as Respondent's Exhibit Number 1 (TE 22). The witness states that he has had 1 accident in the last 23 years which was not the fault of the palm buttons, and the witness further testifies that the palm buttons should always be in view of the operator (TE 28). The reason being given that some person could hit the palm buttons in a playful mood and that the operator should have the sole responsibility for so doing.

Mr. Bill Williamson, President of the Respondent Corporation states that he had tried to comply with the law and his counsel indicates that he has not found or does not know where the formula exists in relation to this particular alleged citation.

There appears to be no question concerning the distance as testified to by the Compliance Officer and also no questions asked about the computation of distances which were required to be safe under regulations, since the parties stipulated that the distance testified to by the Compliance Officer was correct and also that the computation of distance of the regulations for safe operation was correct.

Briefs were filed by both parties and the Brief for the Complainant does not cite any cases, but relies on the factual situations which they claim exists. The Respondent has filed a Brief also which sets forth several decisions, but do not seem to be applicable in any fashion to the case at hand. The Respondent quotes Secretary of Labor vs. The Great Atlantic and Pacific Tea Company, Inc., and further quotes several Federal cases from District

Courts, but none of them seem to be in any wise analogous to the factual or legal situation set forth in this case.

A complete analysis of the table or method used to determine safety distances discussed at CCH Paragraph 7167.4, attempting to cover that provision of 29 CFR 1910.217(c)(3).

Your Hearing Officer has conducted a research of authorities as is concerned in this particular alleged violation and I find that there have been no cases reported in Kentucky in a factual situation such as this. There appears to be very little factual similarity between this case and any case previously decided by the Review Commission, according to the research done by your Hearing Officer.

It appears to your Hearing Officer that the most significant thing is that the parties agreed and stipulated that the distances as testified to by the Compliance Officer were correct and also that the computation of safety distance was correctly computed.

There appears to be very little authority that has been written concerning this particular violation.

It is abundantly clear that the distances are correct, both as to measurement and compliance with the table since that is stipulated by the parties, and also seems abundantly clear that the formula which the Compliance Officer used in determining the safety distance between the palm buttons and the point of operation is also a known fact in this case.

The above leads your Hearing Officer to the following

Findings of Fact.

FINDINGS OF FACT

1. It is found as a matter of fact that the distances as reported by the parties is correct.

2. That the palm buttons were too close together to fulfill the requirements of the standard. The purpose of the formula is to arrive at the speed at which a person could move their hands into the machine prior to the point of its engaging and making its complete cycle, and the danger is, of course, that the trips could be pushed and an employee still have time to put his hand into one of the machines thus causing an injury to himself.

CONCLUSIONS OF LAW

It is concluded as a matter of law as follows:

1. That proper opening conference, walk-around rights, and closing conference were afforded to the Respondent.

2. That the Commission has jurisdiction over the parties and subject matter.

3. That the position of the palm buttons on the presses in question constituted a violation and a danger to the employees which is uncontradicted by reason of the stipulation entered into at page 15.

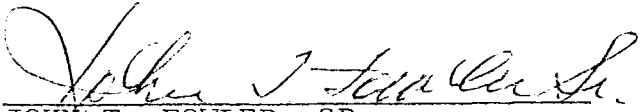
4. That under the facts of this case a violation is proven of the section of the standards provided for therein.

RECOMMENDED ORDER

IT IS ORDERED AND ADJUDGED that the citation against the

Respondent herein may be and the same is hereby affirmed, and  
IT IS FURTHER ORDERED AND ADJUDGED that the proposed penalty of  
\$44.00 may be and is hereby sustained.

IT IS FURTHER ORDERED AND ADJUDGED that the abatement  
of this condition shall be accomplished not later than thirty (30)  
days from the effective date of this order.

  
\_\_\_\_\_  
JOHN T. FOWLER, SR.  
Hearing Officer

DATED: December 1, 1977  
Frankfort, Kentucky

DECISION NO. 494