A Recommended Order of Hearing Officer Paul Shapiro, issued under date of May 11, 1979, is currently before this Commission for review pursuant to a Petition for Discretionary Review filed by the Complainant.

Hearing Officer Shapiro sustained violations of 29 CFR 1910.1000(c), 29 CFR 1910.134(a)(1), and 29 CFR 1910.1000(e)(as adopted by 803 KAR 2:020). These violations, cited as serious, were reduced to non serious and the proposed penalty was vacated. The reduction in severity and the penalty dismissal are the issues on review before the Commission.

The Kentucky Occupational Safety and Health statute, at KRS 338.991(12), defines a serious violation. A review of the record in this case reveals that the proof submitted by the Complainant is not sufficient to establish a "substantial probability" of death or serious physical harm to employees of the Respondent from the dust exposure.
The Hearing Officer's reduction of the gravity of the dust exposure violations to non serious, and the penalty dismissal, are hereby SUSTAINED.

All other findings of the Hearing Officer not inconsistent with this decision are likewise SUSTAINED.

DATED: August 1, 1979
Frankfort, Kentucky

DECISION NO. 751
Copy of this Order has been served by mailing or personal delivery on the following:

Commissioner of Labor
Commonwealth of Kentucky
U. S. 127 South
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

Honorable Larry D. Hamfeldt
Assistant General Counsel
Department of Labor
801 West Jefferson - 1st Floor
Louisville, Kentucky 40202

Mr. Larry D. Hoth, Manager
B. C. Christopher & Company
dba Hutson Grain Terminal
Route #3
Murray, Kentucky 42071

This 1st day of August, 1979.

Iris R. Barrett
Executive Director