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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

John Y. Brown, Jr.
GOVERNOR

REVIEW COMMISSION

MERLE H. STANTON
CHAIRMAN

IRIS R. BARRETT
EXECUTIVE DIRECTOR

104 BRIDGE ST.

CHARLES B. UPTON
MEMBER

FRANKFORT, KENTUCKY 40601

JOHN C. ROBERTS
MEMBER

PHONE (502) 564-6892

June 16, 1980

KOSHRC #627

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BARMORE CONSTRUCTION, INC.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; UPTON and ROBERTS, Commissioners.

PER CURIAM:

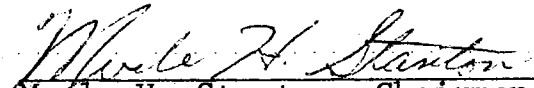
A Recommended Order of Hearing Officer Paul Shapiro issued under date of February 12, 1980, is presently before this Commission for review pursuant to a Petition for Discretionary Review filed by the Respondent.

We affirm the Hearing Officer's findings of fact and conclusions of law sustaining the alleged violation of 29 CFR 1926.52(a) (as adopted by 803 KAR 2:030). We reverse his findings and conclusions recommending a reduction in penalty, and therefore reinstate the proposed penalty of \$630.

In sustaining the Hearing Officer's Recommended Order in this matter, we find that the Complainant's proof herein meets the standard of proof adopted in our recent Decision and Order in the case of Commissioner of Labor v. A. O. Smith Corporation, KOSHRC #565. In that case we held that dosimeter readings may be acceptable as a sole measuring device to test excessive noise levels, but that "to sustain a violation the recorded readings must be considered along with the representative nature of the sample and all other relevant factors in the record." Commissioner of Labor v. A. O. Smith, supra.

We reverse the Hearing Officer's recommended reduction in penalty because we find that the proof establishes that the Commissioner of Labor adjusted the initially proposed penalty downward for size in conformance with standard guidelines established by the Labor Department which require that a penalty adjustment for size be based upon the total number of persons employed by the Respondent statewide. We do not find other mitigating circumstances in the record sufficient to justify a penalty reduction.

Accordingly, it is ORDERED by this Commission that the Hearing Officer's Recommended Order is AFFIRMED insofar as it has sustained a violation of 29 CFR 1926.52(a) (as adopted by 803 KAR 2:030). For the reasons set forth herein, however, we REVERSE the Hearing Officer's recommended reduction in penalty, and REINSTATE the proposed penalty of \$630. All other findings and conclusions of the Hearing Officer not inconsistent with this opinion are hereby AFFIRMED.


Merle H. Stanton, Chairman

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

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

DATED: June 16, 1980
Frankfort, Kentucky

DECISION NO. 878

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
U. S. 127 South
Frankfort, Kentucky 40601
Attention: Hon. Michael D. Ragland
Executive Director for
Occupational Safety & Health

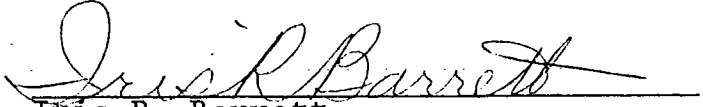
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501 South Second Street
Louisville, Kentucky 40202

This 16th day of June, 1980.


Iris R. Barrett
Executive Director