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March 10, 1975



Mr. Joe Volk
National Gypsum Company
R&D Laboratory
1650 Military Road
North Tonawanda, NY 14217

Dear Joe:

Here is the OSHRC decision we discussed. It has some rather interesting points.

Regards,

H. B. Rhodes
Area Manager
Marketing & Technology

HBR:cjb
Enclosure (Molded Industrial Friction Corp.)
(OSHRC Docket No. 6191)

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1365 PEACHTREE STREET, NE.
ATLANTA, GEORGIA 30309

EXECUTIVE SECRETARY

JUDGE'S DECISION REC'D NOV 21 1974

FINAL ORDER ON DEC 23 1974

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor,

Complainant,

v.

MOLDED INDUSTRIAL FRICTION CORPORATION,

Respondent.

OSHRC Docket No. 6191

DECISION

APPEARANCES: George D. Palmer and Ellis V. Cruse, Attorneys for the United States Department of Labor, Birmingham, Alabama

C. Lash Harrison and G. Paris Sykes, Attorneys for the Respondent, Atlanta, Georgia.

STATEMENT OF CASE

This proceeding is brought pursuant to Section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. (hereinafter referred to as the Act) to contest two citations issued by the Secretary of Labor (hereinafter referred to as the Secretary) pursuant to Section 9(a) of the Act. The citations which were issued December 26, 1973 alleged that as the result of an inspection of the Respondent's workplace at 327 Walnut Street, Prattville, Alabama, Respondent violated section 5(a)(2) of the Act by failing to comply with specific Occupational Safety and Health Standards promulgated by the Secretary pursuant to Section 6 thereof. A notice of proposed penalty was issued with the citation.

In citation number 1 the Secretary alleges that on November 29, 1973 Respondent violated the standard at 29 CFR 1910.93(a)(b)(1). It is alleged in citation Number 2 that on said date Respondent also violated the standards codified at 29 CFR 1910.93(a)(d), 29 CFR 1910.93(a)(g), 29 CFR 1910.93(a)(h), 29 CFR 1910.93(a)(i) and 29 CFR 1910.93(a)(j).

Molded Industrial Friction Corporation, is a corporation having a place of business at 327 Walnut Street, Prattsville, Alabama where it is engaged in the business of fabrication and production of brake lining. The hearing was held May 21, 1974 at Montgomery, Alabama, and no additional parties sought to intervene.

MOTION TO DISMISS

During the cross-examination of Mr. Anthony Stephanic, the compliance officer who conducted the inspection, Respondent moved to dismiss the complaint on the basis of the Secretary's failure to issue the citation with "reasonable promptness". The motion was based on Section 9(a) of the Act which provides in pertinent part as follows:

> If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, or any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations perscribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer.

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Mr. Stephanic's testimony revealed that eight days expired between the time it was determined the alleged violation existed and the time the citation was issued.

Respondent cites the case Secretary of Labor v. Chicago Bridge and Iron Company, 6 OSAHRC Docket No. 244, in which the Commission set forth a limitation of 72 hours within which to meet the requirements of "reasonable promptness" as provided in the Act. The 72 hour period is deemed to commence when the determination has been made that a violation exists, and it is held to be sufficient time within which to perform the ministerial functions associated with the issuance of the citation. The Secretary argues that the issue was not timely raised and no opportunity was provided to offer evidence on the issuance of the citation. It being asserted that the testimony of the area director of the Occupational Safety and Health Administration, who made the decision to issue the citation, was necessary. Respondent contends that the oral motion was made at the earliest possible time upon learning the dates involved in making the decision to issue the citation.

It must be held that the Commission decision in the Chicago Bridge and Iron Co. case is binding. The Commission stated:

> Respondent raised the issue of reasonable promptness during the issue formulation stage of this proceeding... and requested vacation of the citation.

A footnote to this sentence sets forth:

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> This is the kind of issue that can and should be raised early in the proceedings, i.e. in a notice of contest or in the employer's answer. Because it is such an issue we will deem it waived if it is not raised during the issue formulation stage.

The specific language of the Commission clearly has application to the issue of "reasonable promptness" as raised by the Respondent. The issue was raised during the course of the hearing, and certainly after the issue formulation stage. It has not been shown that the Respondent was in any way prejudiced by the expiration of the time herein, nor were other exceptional circumstances shown to exist. Therefore the motion to dismiss is denied.

The Alleged Violation of 29 CFR 1910.93(a)(b)

This standard which pertains to permissible exposure to airborne concentrations of asbestos fibers provides...

> The eight-hour time-weighted average airborne concentrations of the asbestos fibers of which any employee may be exposed shall not exceed five fibers, longer than five micro-meters, per cubic centemeter of air as determined by the method described in paragraph (e) of this section.

The alleged violation is described in the amended complaint as follows:

> "Employees exposed to airborne concentrations of asbestos fibers exceeding the time and concentration limits specified in the standard cited below, and the employer failed to provide feasible engineering or administrative controls to reduce the exposure to an acceptable level in the press and preform area. Standard violated: 29 CFR 1910.93(a)(b)."

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Mr. Stephanic explained that the operation in the area inspected involved the pressing of brake shoes. He stated that this involved the scooping of asbestoes from a drum and placing it on a scale for weighing from which it is placed in a mold where it is pressed into the brake shoe form. This operation involved two employees, Mr. Grady Bowman and Mr. Clem Hauser, from whom air samples were taken with a conventional type sampler strapped to the employee where it could obtain a sample of air in his breathing zone. (Tr. 11) The device was described as an open face sampler with a membrane filter using a small vacuum pump. Two meters of air per minute were pumped through the filter depositing whatever particulates in the air on the membrane. He related that the instrument used for the testing is recognized as standard by processionals in the field.

On November 29, Mr. Stephanic stated he took twelve samples in the press and preform area, nine of which were breathing zone samples and three were general air samples. Four samples were also taken in the saw area which was adjacent to the press and preform area. Also, he revealed that two control samples were made to assure the membrane was without any contaminates. (Tr. 12-13) He indicated that the samples were taken during a period of fifteen minutes to half an hour, and explained that if a sample was heavily loaded on the membrane it would present difficulty in counting therefore a sample taken for a shorter period of time is usually less loaded and is easier to count. (Tr. 21)

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The samples were forwarded to Salt Lake City for analysis by the National Institute of Occupational Safety and Health Laboratory. (Tr. 13, 14) By agreement, the sample identification sheets and analysis worksheets were received into evidence as complainant's Exhibit No. 2.

At the time of the closing conference the compliance officer established that employees Clem Hauser and Grady Bowman had worked approximately 6 to 7 hours in the area where the samples were taken. (Tr. 19)

Mr. Stephanic testified that the only engineering control in the area consisted of a hood which was being fabricated and installed, however he believed its effectiveness was questionable in view of the analysis of the samples.

On cross-examination Mr. Stephanic agreed that he had inspected Respondent's place of business during the summer of 1973. At that time he took air samples in the area of the drilling operation. (Tr. 39) He revealed that an analysis of the samples showed they were too heavily loaded with phenylic resin in order to provide an accurate analysis. Also, he stated that the phenylic resin was added to the asbestos in the high pressure press area which is adjacent to the present preform areas. (Tr. 41, 42) He returned to the plant during October but it was not in operation due to the installation of a ventilation system and therefore no inspection was conducted. It was his understanding that the purpose of the ventilation system was to remove dust from the areas where employees were exposed. (Tr. 47)

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On his return visit November 29, 1973, he observed the progress made in the installation of the system which was operational in the drilling, saw, press, and weighing areas, however it was made known to him that the installation was not completed and the plant had not returned to production. (Tr. 50, 51) He requested an opportunity to take air samples in the press and preform area where asbestoes was being used by two employees, namely, Grady Bowman, and Tommy Gibson. The mixing area was not in operation at that time however but a sufficient amount of substance was on hand so that operation of the mixer was not required. (Tr. 53-55) He did not inquire as to the composition of the mixture. (Tr. 76-77)

When he returned on the 18th of December he was able to verify the time the employees spent on the job in the areas tested. He indicated the working conditions were much better than on the day of the sampling, and much cleaner. (Tr. 68, 69)

Mr. Willard Dixon testified that he is an analytical chemist with the United States Public Health Service in Salt Lake City, Utah, where he is in charge of counting asbestos fibers. (Tr. 126) The evidence shows that samples taken by Mr. Stephanic were counted by Mr. Dixon. His count of five or more fibers per cubic centimeter resulted in totals of 33.1, 14.2, 26.4, 20.8, 7.0, 6.9, and 23.4. Such samples were taken within the breathing zones of the employees tested. He testified that he counted

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asbestos fibers of a chrysotile type using a magnification of 400 times and utilizing phase contrast illumination. (Tr. 134) He used a number 12.5 circle which is 5.5 microns in diameter. (Tr. 135)

Mr. Dixon indicated that Joint Exhibit No. 1-C which contained recommended methods for air sampling, contained the following:

> The concentration of any air contaminent resulting from an industrial operation also varies with time. Therefore, a longer sampling will better approximate the actual average.

With the following recommended sampling procedure, it is possible to collect samples in the workers breathing zones for periods from 4 to 8 hours, thus permitting the evaluation of average exposures for a half or full 8-hour shift--a desirable and recommended procedure.

> Furthermore, dust exposures of the more informal work pattern results from the use of personal samplers. Evaluating daily exposures, samples should be collected as near as possible to workers breathing zones. (Tr. 152-154)

Mr. Dixon described the characteristics of asbestos and pointed out whenever he has the least suspicion of the nature of the fiber he employs a cross-poller with a rotating crystal which more specifically identifies the fibers. He did not recall using this technique in this case. (Tr. 160) He did not know the composition of the substance which contained the asbestos in this case. (Tr. 161) But the presence of other substances would not

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change his analysis because he was looking for asbestoes fibers which he could specifically identify, however, he revealed that he had not seen chipped brass or barytes under a microscope. (Tr. 164, 166)

He agreed that the more variation that exists between the samples the less reliable the sample is in determining the accuracy of the condition being sampled, but he indicated that this could be compensated for by counting larger numbers in order to obtain an average, as the minimum number of fibers recommended for counting is 100. (Tr. 170) He agreed that this number was established perhaps to obtain more statistical reliability. (Tr. 172) He agreed that five samples taken, m-12 through m-16, varied between 275 and 300%, however, he pointed out that the samples were not taken at the same time and precisely the same place. (Tr. 175) Mr. Dixon also explained the problem with reference to the sampling for asbestos in that the longer the period of time a sample is taken, the more the possibility of contamination with dust, which presents difficulty in counting the asbestos fibers. (Tr. 177, 178)

Mr. Grady Bowman testified that on November 29, 1973, he worked approximately 7 hours and 10 minutes operating a preform machine and that during the taking of the samples herein he was preforming his usual work. (Tr. 189-191) He stated that he had been laid off while the plant was shut down, and upon returning to work sample products were made, but at the time of the inspection he believed the plant had returned to full scale operation. (Tr. 191, 192) In the course of taking the samples Mr. Stephanic was not present at

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all times however he would check periodically and change the filters using his wrist watch for the purpose of timing. (Tr. 194, 195.) He indicated that on November 29, while working in the preform area he wore a respirator, pursuant to policy. (Tr. 196-198) policy. (Tr. 196-198)

Mr. Murrell Amos, process engineer for Respondent testified that the product manufactured was brake blocks for large tractors and trailers. He stated that the basic formula of the substance used for making the blocks in weight percentage is 5.79 brass, 20.67 resin, 41.32 asbestos, and 17.36 re-processed rubber. (Tr. 204) His testimony revealed that pursuant to the requirements of the State Environmental Protection Agency, Respondent undertook to clean the air being deposited on the outside of the plant. The plant had been shut down during the installation of the necessary equipment to clean the air both on the inside and outside of the plant. (Tr. 205, 207) He indicated that an air collection system and new duct work was to be installed. (Tr. 208, 209) The duct work including the suction devices for the whole plant was scheduled for completion about the first of December. The remodeling also included the purchase of a new mixer and air compressor in addition to the new hydraulic system, and the moving of various machinery. (Tr. 214, 215)

He briefly explained that the raw materials are weighed according to formula, mixed and then poured into the preform presses, after which the blocks are placed in the high pressure press. (Tr. 217, 218) However, at the time of the inspection herein the

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machinery was in the process of being cleaned and adjusted as a result of the lay off of three or four months. (Tr. 219) Upon Mr. Stephanic's request to take air samples in the preform area he informed him the controls and ducts were not in operation and at that time the preform press was not being operated. (Tr. 224, 225) He instructed employees Bowman, Gibson and Hauser to perform duties in order to provide the samples for the Compliance Officer. He indicated that it was his understanding that Mr. Stephanic would return at a subsequent time for further sampling in order to compare readings. (Tr. 228, 229)

He indicated that possibly two or three days prior to the inspection, stock was placed in the press to see if production could be run. He pointed out that considerable work was involved in preparing the presses for production as a result of material sticking to the molds. (Tr. 247) A small amount of material had been processed the day preceeding the inspection and actual production commenced around the first of December. (Tr. 235, 238, 239)

Mr. Thomas Terrell, plant manager, testified that he had first met Mr. Stephanic in September or October of 1973, who, upon learning the plant was not in operation indicated he would return at a later date. (Tr. 256) He indicated that on November 29, Mr. Stephanic wanted to take some air samples in the preform and press areas, but he explained that installation of the air polution equipment had not been completed nor were the mixers in operation. He indicated that the air sampling was performed over the objections of Mr. Amos who was working on the timing of the

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presses and believed such tests should be performed upon complete installation of the equipment. (Tr. 260)

Mr. Terrell also testified that it was his understanding Mr. Stephanic was to return at a later date for further sampling to be used for comparative purposes. (Tr. 269) He revealed that the conditions under which the samples were taken were not represented of the normal preform operation. (Tr. 273, 274)

Mr. Tom Gibson testified that his usual job was operating the cure press (hot press). (Tr. 276) On November 29, prior to the inspection he worked at cleaning and scraping the cure press as there was a problem with the material sticking to the molds. (Tr. 278) He was then asked to work in the preform area for the purpose of running some samples. (Tr. 280)

In order to establish a violation of the standard it necessarily is incumbent upon complainant to show that the essential factors which constitute such violation are present. Upon reviewing the evidence of record regarding the alleged violation it must be concluded that complainant has failed to sustain the allegations by a preponderance of the evidence. Brennan v. Armor Elevator Company, Inc. 5 OSAHRC 260.

In defining asbestos the analyst stated that there were other fibrous minerals which met the same general description of asbestos. Joint Exhibit 1B-Supplement, which is a draft copy of USPHS/NIOSH Membrane Filter Method for Evaluating Airborne Asbestos Fibers, indicates that all objects with an aspect ratio of 3 to 1

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(length to width) or greater and a length of 5 micrometers or greater should, in the absence of other information, be considered to be asbestos fibers and counted as such.

The analyst stated that at the time of his analysis and counting he did not know the mineral composition of the substance used by the employees tested. He was not familiar with the component barytes, nor had he seen chipped brass under a microscope. He had seen reprocessed rubber, and believed that it should have been noted on the sample identification sheets, in addition to anything else that could possibly interfere with the count of asbestos fibers.

The Compliance Officer testified that during an inspection of July 1973 he tested for possible air contaminants including phenylic dust. However, throughout the inspection and air sampling procedure, there was no indication of the presence of phenylic dust or of the other components contained in the substance used which could possibly interfere with the proper count of asbestos fibers. Item 10 of Exhibit C-2 (sample identification sheets) reveals no possible interferences were present for the analysis of asbestos.

In view of the method used for evaluating the asbestos fibers, it is quite possible other fibers could have been counted as asbestos, or, interferences were present which could prevent an accurate count thereof.

There is no dispute that in sampling the more samples taken the more accurate the testing procedure becomes. The record indicates that employee Bowman was sampled most often--five times, within a total period of approximately 87 minutes, and there was a variation of approximately 275% in the count of the samples. This procedure was inconsistent with the recommended procedure set forth

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in joint Exhibit 1-C for the collection of samples for evaluation of average exposures from a half to a full work shift. It is also noted complainant learned at a subsequent time from the employees tested, the approximate time they worked under the circumstances alleged, in order to establish a violation of the standard herein.

The evidence is not in dispute that for some time prior to the inspection of November 29, Respondent's plant had not been in operation, and during the period in question it was not in production but Respondent was in the process of installing ventilation equipment for reducing dust levels. Respondent maintains that upon commencement of full operation the system reduced employee exposure to within acceptable limits. Complainant introduced no evidence to show that upon resuming full operation the system was ineffective in reducing exposure to concentrations of any contaminants. In view of the evidence in reference to Respondent's plant being closed down for the purpose of installing engineering controls, the nature of the work performed at the time of the inspection, and the procedure used in obtaining the count of asbestos fibers, a violation of this standard cannot be sustained.

The alleged violation of 29 CFR Section 1910.93(a)(b)

The standard which relates to personal protective equipment reads in pertinent part as follows:

> (1) Compliance within the exposure limits prescribed by Paragraph (b) of this section may not be achieved by the use of respirators or shift rotation of employees, except:

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(i) During the time period necessary to install the engineering controls and to institute the work practices required by paragraph (c) of this section; ...

The alleged violation is described in the citation as follows:

Employer failed to provide personnel exposed to asbestos fibers during the period when engineering controls were being installed:

(a) Respiratory protection

(b) Special Clothing and Change Rooms.

Mr. Stephanic testified that he observed asbestos fibers on the floor and on the clothes of employees Bowman, Hauser and Gibson. He indicated that Bowman was wearing a respirator, but Hauser and Gibson were not. (Tr. 23, 24) He indicated that the type of respirator in use was acceptable, however, there was no special clothing used by the employees which could be left on the job to prevent employees from further contaminating the surroundings. (Tr. 25) Also, there were no change rooms provided for the removal of such clothes however he did observe a mobile type change room in the process of being installed. (Tr. 25)

Mr. Bowman indicated that it was normal policy to wear respirators. (Tr. 197, 198) Mr. Amos, the process engineer maintained that the operation of the machines herein for the purpose of sampling was conducted at the request of Mr. Stephanic, and the operation would not ordinarily be conducted in like manner.

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(Tr. 227, 228) He also indicated that Mr. Stephanic suggested the use of respirators for the sampling, and the duties being performed by the employees prior to Mr. Stephanic's visit, did not require the use of respirators. However, respirators were provided for the employees. (Tr. 230) He also pointed out that the new equipment to be installed in the plant included change rooms and restrooms. (Respondent's Exhibit No. 3., Tr. 23)

The evidence clearly establishes that engineering controls were being installed, and that Respondent's plant was not operating on a production basis. Therefore on the basis of the evidence, which includes a showing that respiratory protection had been provided employees, and that installation of change rooms was in the process, it must be concluded that this standard has not been violated.

The alleged violation of 29 CFR 1910.93(a)(g)

The standard which relates to caution signs provides in pertinent part as follows:

> Caution signs shall be provided and displayed at each location where airborne concentration of asbestos fibers may be in excess of exposure limits prescribed in paragraph (b) of this section...

The alleged violation is described in the citation as follows:

> Employer failed to provide display and caution signs at each location where the airborne concentrations of the asbestos are in excess of 5 fibers per cc of air (press/preform and fixing areas).

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Mr. Stephanic testified that in the areas where the samples were taken he inspected for caution signs but none were present. (Tr. 28)

This standard requires caution signs to be posted where the exposure limits exceed those set forth in paragraph (b). It must be held that in view of complainant's failure to establish a violation of the standard at 29 CFR 1919.93(a)(b), the standard herein cannot be held violated.

The alleged violation of 29 CFR 1910.3(a)(h)

The standard which relates to housekeeping states in pertinent part as follows:

> All external services in any place of employment shall be maintained free of accumulation of asbestos fibers if, with their dispersion there would be an excessive concentration.

The alleged violation is described in the citation as:

> Employer failed to maintain work areas free of the accumulations of asbestos fibers.

Mr. Stephanic testified that he observed asbestos fibers in the areas identified in the citation, more specifically, in the press and preform rooms, on the floors and machinery. (Tr. 229, 230) He believed that asbestos dust could become airborne upon the movement of an individual through the area. On cross-examination he indicated that the asbestos dust observed on the floor could be an "accumulation." (Tr. 112) He indicated that the standard does not define an "accumulation" of asbestos. (Tr. 112, 114)

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In view of complainant's failure to establish precisely the amount of asbestos fibers present as the result of the sampling, it cannot be held here that there were "accumulations of asbestos fibers," which upon dispersion could result in "an excessive concentration," in violation of the standard. It is therefore held that this standard has not been shown to be violated by the Respondent.

The alleged violation of 29 CFR 1910.93(a)(i)

The standard which relates to recordkeeping provides in pertinent part:

> Every employee shall maintain records of personal or environmental monitoring required by this section. Records shall be maintained for a period of at least three years and shall be made available upon request to the Assistant Secretary of Labor...

The alleged violation is described in the citation as:

> Employer failed to maintain records of any personal or environmental monitoring.

Mr. Stephanic testified that upon his request for records of environmental monitoring, no such records were produced. (Tr. 31) Respondent does not deny that personal monitoring was not performed prior to the inspection herein, however, it argues that upon complete installation of the ventilation system monitoring was conducted which showed no excessive concentration of asbestos fibers existed. (Tr. 262-265)

Complainant offered no evidence to show the existence of an asbestos hazard prior to the time of the inspection which required monitoring. In view of the conditions at the time of

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the inspection at Respondent's workplace, with no evidence showing the existence of an asbestos hazard prior to close down of the plant, it cannot be held Respondent violated the standard as alleged.

The alleged violation of 29 CFR 1910.93(a)(j)

The standard which relates to medical examinations states in part as follows:

> Employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph.

The alleged violation is described in the citation as follows:

> Employer failed to provide, or make available, at his cost, medical examinations relative to exposure to asbestos.

Mr. Stephanic testified that upon inquiring about medical examinations as required under this standard, no such records were made available, or produced. (Tr. 31)

Respondent does not dispute that no medical records were kept prior to the date of the inspection herein. However, considering the facts of this case it must be determined that the Complainant has failed to show by a preponderance of the evidence the necessity of the medical examinations, and there is no evidence as to any previous "exposure to asbestos" as required by the standard. Therefore it cannot be held the standard had been violated as alleged.

FINDINGS OF FACT

1. Molded Industrial Friction Corporation, is a corporation doing business at 327 Walnut Street, Prattville, Alabama, where it is engaged in the fabrication and production of brake linings.

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2. On November 29, 1973, and for approximately four months prior, Respondent's plant was not in production, but had closed down for general remodeling including the installation of a ventilation system to reduce employee exposure to airborne contaminates.

3. On November 29, 1973, an authorized representative of the Secretary conducted an inspection of Respondent's worksite and as a result thereof on December 27, 1973, two citations were issued Respondent.

4. The substance used by Respondent in the fabrication of brake lining contained barytes, brass, resin, and reprocessed rubber in addition to asbestos.

5. The procedure used by the Secretary for sampling and analysis of asbestos fibers, did not include the consideration of possible interferences of other materials which could have effected the count thereof.

6. The samples herein were taken during a less period of time than that recommended by the National Institute of Occupational Safety and Health.

7. Respiratory protection had been provided Respondent's employees, and change rooms were in the process of being installed at the time of the inspection herein.

8. Prior to the close down of Respondent's plant the existence of an asbestos hazard had not been established.

CONCLUSIONS OF LAW

1. Molded Industrial Friction Corporation, at all times pertinent hereto, was an employer engaged in a business affecting

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commerce within the meaning of section 3(5) of the Occupational Safety and Health Act of 1970, and the Commission has jurisdiction of the parties and subject matter herein, pursuant to section 10(c) of the Act.

2. Respondent is, and at all times pertinent hereto, required to comply with safety and health regulations promulgated by the Secretary pursuant to section 6(a) of the Act.

3. Respondent was not in violation of the standard at 29 CFR 1910.9(a)(b) on November 29, 1973, as charged in the amended complaint.

4. Respondent was not in violation of the standard at 29 CFR 1910.93(a)(d) on November 29, 1973, as charged in citation Number 2.

5. Respondent was not in violation of the standard at 29 CFR 1910(a)(g) on November 29, 1973, as charged in citation Number 2.

6. Respondent was not in violation of the standard at 29 CFR 1910(a)(h) on November 23, 1973, as charged in citation Number 2.

7. Respondent was not in violation of the standard at 29 CFR 1910(a)(i) on November 29, 1973, as charged in citation Number 2.

8. Respondent was not in violation of the standard at 29 CFR 1910.93(a)(j) on November 29, 1973, as charged in citation Number 2.

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Upon the basis of the foregoing findings of fact and conclusions of law, and the entire record, it is

ORDERED

1. That citation number 1 and the penalty proposed for violation thereof, is hereby vacated.

2. That citation number 2 and the penalties proposed for violation thereof, is hereby vacated.

Dated this NOV 21 1974 day of November, 1974.

Paul L. Brady

PAUL L. BRADY, Judge

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