Gran Townsend
Brownsville

OSHA-2006

PLAINTIFF'S EXHIBIT

UC-1750

COMPLIANCE OPERATIONS MANUAL

January 1972

UNITED STATES DEPARTMENT OF LABOR Occupational Safety and Health Administration

BRF 0336

3. On Site Action

In all such cases, the CSHO shall discuss the employee conduct with the employees and their representatives to attempt to obtain future compliance. During the closing conference, the CSHO shall point out to the employer such employee actions or conduct for which the employer may be cited. The CSHO shall also advise the employer that it is his responsibility under the Act to assure compliance by his employees with the applicable standards.

4. In cases where employees systematically refuse to comply with the standards applicable to their own actions and conduct, the matter shall be referred to the Regional Administrator. Involvement in labor/management disputes or collective bargaining issues shall be avoided.

E. Establishment Operated by Employee of One Employer While Employees of a Second Employer Are Also Working in That Establishment

1. Generally, each employer is responsible for the working conditions of his own employees. Difficult matters of judgment in citing will arise where employees of different employers are working in the same establishment. For example, employees of an employer who operates an establishment may be present, along with employees of a second employer (or contractor) who may be working in or on the same establishment, such as employees whose employer has contracted with the operating employer to perform such work as remodeling, general maintenance, or special services.

2. The following guidelines will be helpful in determining which employer to cite. If a question remains in any case, contact the Regional Administrator for guidance as to particular situations.

a. If an employer creates a violating condition and that condition affects his employees or another employer's employees, or both, then the employer who created the condition will be cited. Two or more employers who create a violating condition may each be cited for the violation.

b. An employer, although not creating the hazard, may be cited if he knew or reasonably should have known of the hazard before permitting his employees to work in the hazardous area or with hazardous equipment.

F. Abatement

1. General

a. The establishment of an abatement date requires the exercise of maximum professional judgment on the part of the CSHO

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complete abatement. The date for long-range abatement or the submission of the plan would depend on such matters as the difficulty and complexity of abatement and the anticipated effectiveness of the stopgap abatement measures contained in the citation.

c. In providing for multi-step abatement the following factors should be taken into consideration.

(1) Engineering controls afford the best protection to employees, and abatement by engineering controls should be required in all instances to the extent that such engineering controls are feasible. Such controls remove the cause of the potentially hazardous condition and afford the worker maximum long-range protection. Allowance of temporary protection (such as personal protective equipment) as the manner of abatement, as opposed to feasible engineering controls, as a practical matter often operates improperly to transfer the responsibility for compliance or noncompliance from the employer to individual workers. Control of the atmosphere or control and reduction of the opportunity for exposure, rather than protective devices against exposure, should be the primary objective in writing citations.

(2) A determination regarding the feasibility of engineering controls should involve an evaluation of engineering ability to accomplish the control. In most instances there is sufficient engineering and scientific knowledge to perfect engineering controls satisfactorily abating a hazard. The question of economic feasibility of implementing such controls will not normally be a factor. But, if a major reconstruction of a plant or a capital expenditure, which would seriously jeopardize the financial condition of the company, is the only method that would achieve effective engineering controls, and if there were feasible alternative administrative controls or protective devices available, engineering controls would not be considered feasible. However, spending that has less serious consequences, for example, replacement or installation of large units of machinery or equipment, even though amounting to thousands of dollars by not otherwise jeopardizing the financial condition of a company, would be considered feasible.

(3) If engineering controls are not feasible, citations can properly order full abatement by feasible administrative controls by a specified date. Administrative controls are the next best alternative to engineering controls as a long-range abatement solution. In addition to feasible engineering controls, administrative controls should be required for full abatement so as to afford maximum protection to employees. Administrative controls include periodic rotation of employees on shifts, but do not include such methods as biological monitoring or audiogram testing. Biological sampling or audio-

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