

STATE OF ALASKA
DEPARTMENT OF LABOR

DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

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STATE OF ALASKA, DEPARTMENT)
OF LABOR, DIVISION OF LABOR)
STANDARDS AND SAFETY,)
OCCUPATIONAL SAFETY AND)
HEALTH SECTION,)
)
Complainant,)
)
v.)
)
SAXMAN SAWMILL, INC.,)
)
)
Contestant.)
_____)

Docket Nos. 94-1070
94-1091
94-1092

DECISION AND ORDER

This matter involves three occupational safety and health inspections conducted by the Alaska Department of Labor, Occupational Safety and Health Section (OSHA) at workplaces under the control of Saxman Sawmill, Inc. (Saxman) in Ketchikan on August 30, 1994.

OSHA's inspections consisted of one health inspection (Docket No. 94-1070) and two safety inspections (Docket Nos. 94-1091 and 94-1092) at two different locations. Following the inspections, OSHA issued three separate citations alleging violations of Alaska occupational safety and health codes.

Docket No. 94-1070

Citation 1, Item 1 alleges a violation of Occupational Health and Environmental Control Code (OHEC) 04.0104(b)(1) for failure to use administrative methods and/or engineering controls to reduce the noise exposure to sawmill operators

below permissible exposure levels. Item 2a alleges a violation of OHEC 04.0104(d)(1) for failure to have a hearing conservation program in place. Item 2b alleges a violation of OHEC 04.0104(m)(2)(A) for failure to provide hearing protection where noise levels exceeded permissible exposure levels. Item 2c alleges a violation of OHEC 04.0104(f)(1) for failure to implement a monitoring program for noise exposure. Item 2d alleges a violation of OHEC 04.0104(o)(1) for failure to institute a training program for employees exposed to occupational noise above the action level. Item 2e alleges a violation of OHEC 04.0104(p)(1) for failure to post and make available to employees copies of the OSHA noise standard. Item 3a alleges a violation of Hazard Communication Code (HC) 15.0101(e)(2) for failure to develop, implement and maintain a written hazard communication program at the workplace. Item 3b alleges a violation of HC 15.0101(i) for failure to provide information and training to employees regarding hazardous chemicals and physical agents present at the workplace. Item 3c alleges a violation of HC 15.0101(g)(8) for failure to maintain material safety data sheets and physical agent data sheets for each hazardous chemical or physical agent present in the workplace.

Citation 1 was classified as "serious" with a total monetary penalty of \$2,100.

Docket No. 94-1091

Citation 1, Item 1 alleges a violation of Sawmill Code 07.220(a)(1)(B) for removing log wrappers without ensuring that the load of logs was secured. Citation 1 was classified as "serious" and a penalty of \$750 was assessed.

Citation 2, Item 1 alleges a violation of Logging Code 07.115(k)(1)(A) by permitting an employee to work without wearing a fluorescent high-visibility vest. Item 2 alleges a violation of Logging Code 07.155(c)(1) for failure to have log wrappers properly

in place on a log truck while hauling logs. Item 3 alleges a violation of Construction Code 05.150(b)(2)(D)(i) for failure to equip a log loader with a backup alarm or an observer. Item 4 alleges a violation of Sawmill Code 07.215(c)(5) for failure to construct stairs in accordance with the General Safety Code. Citation 2 was classified as "other than serious" with no monetary penalty.

Docket No. 94-1092

Citation 1, Item 1 alleges a violation of Logging Code 07.115(k)(1)(B) for failure to provide adequate leg protection for an employee operating a chain saw. Item 2 alleges a violation of Logging Code 07.125(b) for permitting the use of a chain saw without an operable chain brake. Item 3 alleges a violation of Sawmill Code 07.215(c)(4) for failure to install guard rails and/or toe boards on several elevated working areas. Item 4 alleges a violation of Sawmill Code 07.215(v)(1) for failure to provide a chipper operator with a safety belt and lifeline and for failure to guard the spout on the chipper machine. Item 5 alleges a violation of Electrical Code 03.003(f)(4) for failure to properly ground an electrical outlet and an electric motor. Item 6 alleges a violation of Sawmill Code 07.225(a)(8) for failure to provide eye and/or face protection to an employee. Item 7 alleges a violation of Sawmill Code 07.225(b)(1) for failure to install bumpers on the log feed table to the fast-track band saw. Item 8 alleges a violation of Sawmill Code 07.225(h)(3)(C) for failure to guard various chains and sprockets. Item 9 alleges a violation of General Safety Code 01.0809(c)(2)(A) for failure to guard the shaft and couplings on various electric motors. Item 10 alleges a violation of Electrical Code 03.004(a)(1)(A) for failure to assure effective electrical continuity on an electric motor. Citation 1 was classified as "serious" with a total penalty of \$4,950.

Citation 2, Item 1 alleges a violation of Logging Code 07.180(c)(5)(A) for failure to assure that the interlock switch on a chain saw was functioning. Item 2 alleges a violation of Sawmill Code 07.215(c)(5) for failure to construct stairways to elevated platforms in accordance with the General Safety Code. Item 3 alleges a violation of Construction Code 05.150(b)(2)(D)(i) for failure to provide an audible backup alarm or an observer for two front-end loaders. Item 4 alleges a violation of Construction Code 05.150(b)(2)(E) for operating a front-end loader with a cracked and broken windshield and front side windows. Item 5 alleges a violation of General Safety Code 01.1003(b)(4)(A) for storing two oxygen containers within five feet of an acetylene cylinder with no fire barrier. Item 6 alleges a violation of General Safety Code 01.0805(b)(9) for failure to provide a proper tongue guard on a bench grinder. Item 7 alleges a violation of General Safety Code 01.0805(a)(2) for failure to have a side plate on the abrasive wheel side of a bench grinder. Item 8 alleges a violation of Electrical Code 03.002(f) for failure to legibly mark the purpose of circuit breaker switches in a panel box. Item 9 alleges a violation of Sawmill Code 07.215(c)(1) for failure to provide walkways of sufficient width to provide adequate passage for employees. Citation 2 was classified as "other than serious" with no monetary penalty.

Saxman contested the Department's citations and penalties. A hearing was held before the Board in Ketchikan on July 17, 1995. OSHA was represented by Chief of Enforcement Dennis Smythe. Saxman did not appear at the hearing and was found to be in default. Under 8 AAC 61.205(m), OSHA presented witness testimony and evidence in support of the alleged violations. Upon consideration of the evidence submitted, the Board makes the following findings of fact, conclusions of law and order in this matter.

FINDINGS OF FACT

1. On August 30, 1994, OSHA compliance officer Krystyna Markiewicz conducted an occupational health inspection at Saxman Sawmill, 2868 South Tongass #5, Ketchikan, Alaska. The health inspection was part of a joint safety and health inspection. The inspection was a "general schedule" inspection, triggered by Saxman's placement on the list of "high hazard" industries in Alaska.

2. Markiewicz's inspection covered two workplaces under Saxman's control: a sawmill operation and, across the street, a log sort yard.

3. Prior to beginning her inspection, Markiewicz conducted an opening conference with Charles Fluid, Saxman's operations manager.

4. Markiewicz was primarily concerned about noise hazards at Saxman's workplace. She used noise monitoring equipment to determine the sound levels in various work areas.

5. Markiewicz determined that Saxman had no hearing protection program in place nor did it perform any monitoring for employee noise exposure. She determined that certain employees were exposed to noise levels above OSHA's permissible exposure levels. In particular, the booths where sawmill employees worked were not soundproof or airtight and had open, missing or broken windows. Some employees were using ear plugs and/or ear muffs but did not wear hearing protection equipment on a consistent basis.

6. Markiewicz determined that there were approximately 25 employees exposed to noise hazards at the workplace. Saxman had no information or training program regarding noise protection, nor did the company provide any administrative controls (e.g., job rotation) to minimize noise exposure.

7. Markiewicz also determined that Saxman had no written hazard communication program in place to provide employees with information regarding hazardous materials to which they were exposed. Employees were exposed to a variety of hazardous materials at the workplace, including welding gases and a variety of solvents.

8. In Markiewicz's opinion, the violations she found were serious because in the event of an accident, serious injury or death could result. For example, overexposure to noise over time can result in temporary or permanent hearing loss. Also, serious injury could result because employees had difficulty communicating with each other due to the high noise levels. Further, Saxman's failure to have a hazard communication program could result in a variety of serious injuries or illnesses resulting from improper handling of hazardous materials.

9. Based on the probability and severity of a potential injury or illness resulting from the alleged violations, Markiewicz calculated an initial proposed penalty of \$2,500 each for Items 1 and 2 and \$2,000 for Item 3. Saxman was given a reduction of 60% for small company size and 10% for no history of prior violations. However, no reduction was made for good faith since Saxman had no written programs regarding either noise protection or hazard communication. After applying the 70% penalty reductions, the final penalties assessed to Saxman were \$750 each for Items 1 and 2 and \$600 for Item 3, for a total of \$2,100.

10. On the same day as Markiewicz's health inspection, compliance officer Phil Oldring conducted occupational safety inspections at Saxman's sawmill and sort yard. Oldring was accompanied on the inspections by Saxman's operation manager Charles Pluid.

11. During his inspection of the sort yard, Oldring observed a log truck driver removing the log wrappers (a cable and chain assembly) without properly securing the load to prevent logs from rolling off the truck. Oldring classified the violation as "serious" because of the high potential for serious physical harm or death.

12. Oldring also found a number of safety violations in the sort yard including: a) a log buckler who was not wearing a high-visibility vest; b) logs hauled on the log truck from the sort yard to the sawmill, a distance of about 1,000 feet, did not have wrappers in place and were not otherwise secured; c) there was no backup alarm or observer for a log loader; and d) the stairs leading to the debarker cab were not built in accordance with Section 1107 of the General Safety Code. These violations were classified as "other than serious" because there was a lower likelihood of an accident resulting in serious injury.

13. During his inspection of the sawmill yard, Oldring found the following additional violations: a) an employee operating a chain saw was not provided with any leg pads; b) a chain saw was operated without a working chain brake; c) there were elevated working areas without guard rails and/or toe boards near the slash deck, the rollcase leading to the greenchain, and the edger feed table; d) the chipper operator did not have a safety belt or lifeline, nor was there a guard on the chipper spout; e) an electrical outlet adjacent to the saw operator's station and an electric motor adjacent to the fast-track operator's station were not properly grounded; f) no eye protection was provided to the edger off-bearer worker on the slash deck; g) there was no bumper on the log feed table to keep logs from rolling off; h) numerous chains and sprockets on various electric motors were not guarded; i) various exposed shafts and couplings on several conveyor motors and other

electric motors were not guarded; and j) the electrical motor on the floor adjacent to the stairs leading to the fast-track operator's booth did not have electrical continuity.

14. In Oldring's opinion, each of the above hazards was serious because in the event of an accident, serious physical harm or death would likely result.

15. Oldring also found a number of nonserious violations at the sawmill including: a) the interlock switch on a Husqvarna chain saw was not working; b) three sets of stairs leading to elevated work areas were not properly constructed; c) two front-end loaders did not have audible backup alarms or an observer for backing up; d) the windshield and front side windows on a front-end loader were cracked and broken; e) two oxygen containers were stored in the parts shed within five feet of an acetylene cylinder with no fire barrier; f) a bench grinder in the parts shed did not have a tongue guard; g) the same bench grinder did not have sideplate on the abrasive wheel; h) the circuit breaker switches in the panel box inside the parts shed were not legibly marked to indicate their purpose; and i) the walkway between the edger and the resaw was not sufficiently wide to provide adequate passage for employees.

16. The "serious" violations cited by Oldring carried initial unadjusted penalties of \$3,500 or \$2,500 each, depending upon the probability of an accident and the likelihood of serious injury. Each of the penalties was reduced by 85% as follows: 60% for employer size, 10% for no history of prior violations, and 15% for partial good faith because Saxman did have regular safety meetings and did provide certain safety equipment to its employees. After the penalty reductions were applied, the total proposed penalty for Docket No. 94-1091 was \$750 and for Docket No. 94-1092 was \$4,950.

17. The Department's citations and penalties were sent by certified mail to Saxman at its business address at 2868 South Tongass #5, Ketchikan, Alaska. Saxman received and signed for the three separate citations on October 17, December 1 and December 2, 1994, respectively.

18. Upon receipt of the citations, Saxman made a written request for an informal conference to review the alleged violations and reserved the right to contest the citations. The informal conference was held by telephone on December 9, 1994 between Dwayne Houck, OSHA assistant chief of enforcement, and Charles Pluid, Saxman's operation manager. The parties were unable to informally resolve the citations and penalties and the matter was then processed to the OSHA Review Board for a hearing.

19. The Board sent a notice of hearing to Saxman by certified mail at its business address on May 25, 1995. On June 16, 1995, the Board received the returned certified mail with a notation that Saxman Sawmill had moved and left no forwarding address. The company's telephone number had been disconnected and it was no longer listed in the telephone directory.

20. Subsequently the Board received information that Saxman had closed its business and that the company's owner, Jim Burr, was believed to be residing in Utah. On June 22, 1995, the Board attempted to telephone Mr. Burr in Utah and reached his answering machine (801-376-8051). A message was left stating the date, time and location of the hearing scheduled on July 17, 1995.

21. Saxman failed to appear at the hearing on July 17, 1995, and did not provide any explanation for its failure to attend the hearing.

22. Pursuant to AS 18.60.093(f), the amount of the Board's reasonable expenses incurred for the hearing is \$ 656.29.

CONCLUSIONS OF LAW

A. Saxman's Failure to Appear

Saxman failed to appear at the scheduled hearing in Ketchikan on July 17, 1995. The record reflects that the Board's hearing notice was duly sent to Saxman's business address and that additional notification of the hearing was left with Saxman's owner who apparently had closed the business and moved to Utah. Under these circumstances, we find that a reasonable effort was made to give Saxman proper notice of the hearing. Additionally, we find no good cause to excuse Saxman's failure to appear at the hearing. Under AS 18.60.093(f), therefore, we find it appropriate to order Saxman to pay the reasonable expenses incurred by the Board for the hearing including travel expenses and per diem.

B. OSHA's Prima Facie Case

OSHA has the burden of proof in contested cases. In the event an employer fails to appear at a contest hearing, OSHA must present sufficient evidence to establish a prima facie case with respect to the contested violations and penalties. To establish a prima facie case of violation, OSHA must demonstrate that 1) the employer failed to comply with an applicable standard; 2) one or more employees were exposed to the violative condition; and 3) the employer knew, or with the exercise of reasonable diligence, could have known of the violative condition. See Mark A. Rothstein, *Occupational Safety and Health Law* § 102, at 138-39 (3d ed. 1990).

In this case, we conclude that OSHA presented sufficient evidence, through the testimony of compliance officers Markiewicz and Oldring, to establish that Saxman was not in compliance with the cited code provisions; that one or more of its employees were exposed to the violative conditions; and that Saxman knew of or with reasonable diligence could have known of each of the violative conditions. Furthermore, we find no basis to modify OSHA's classification of the cited violations or the amount of the penalties assessed.

ORDER

1. The violations alleged in Docket No. 94-1070 and the total penalty of \$2,100 are AFFIRMED.
2. The violations alleged in Docket No. 94-1091 and the total penalty of \$750 are AFFIRMED.
3. The violations alleged in Docket No. 94-1092 and the total penalty of \$4,950 are AFFIRMED.
4. Under A.S. 18.60.093(f), Saxman shall pay reasonable expenses incurred by the Board for the hearing in the amount of \$ 656.29.

DATED this 19th day of January, ^{Ans} 1995 1996

ALASKA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

By: NOT PARTICIPATING
Wayne A. Gregory, Chairman

By: Donald F. Hoff, Jr.
Donald F. Hoff, Jr., Member

By: James J. Ginnaty
James J. Ginnaty, Member

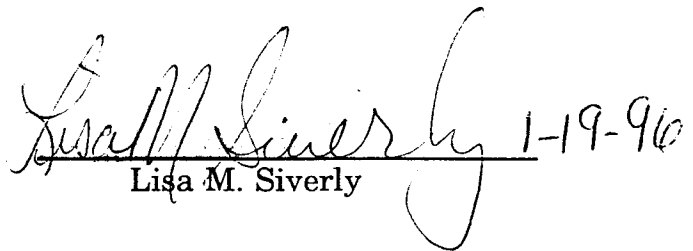
**OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD
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APPEAL PROCEDURES

A person affected by an order of the OSH Review Board may obtain judicial review by filing a notice of appeal in the Superior Court as provided in the Alaska Rules of Appellate Procedure. The notice of appeal must be filed within 30 days from the date of filing of the order as certified below. After 30 days from the date of filing of the order, the order becomes final and is not subject to review by any court. AS 18.60.097.

CERTIFICATION

I hereby certify that on the 19th day of January, 1996, the foregoing Decision and Order in the matter of the Alaska Department of Labor vs. Saxman Sawmill, Inc., Docket No. 94-1070, 94-1091 and 94-1092, was filed in the office of the OSH Review Board at Juneau, Alaska and that on the same date a true and correct copy was mailed to each party at its address of record.

 1-19-96
Lisa M. Siverly