



INTER-OFFICE CORRESPONDENCE

Date: February 16, 1977

From: I. C. Klimas

Location: 19 East

Subject:

D. B. Dailey
G. J. Lambillotte
A. T. Raetzsch
G. C. Strickler

Please note the attached correspondence from Hugh Finneran giving his interpretation of the OSHA Act dealing with Section 17.

Please be sure that the supervision in your plant understand this obligation which we have under the Act and that we conduct ourselves accordingly.

If you have any questions, do not hesitate to contact Hugh directly for further clarification of his interpretation.

ICK:jb

Attachments

cc: W. R. Harris
R. E. Widing

SL 048712

February 14, 1977

Dr. F. C. Dehn
Director, Environmental Affairs
10 West

Re: OSHA Penalties

OSHA imposes two distinct duties upon employers. One is the general duty obligation and states that each employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to employees." The second duty requires employers to comply with specific safety and health standards.

Thus, the first inquiry in the trial of an OSHA case is whether there is a violation of either the general duty clause or a specific standard. If there is a finding of violation, the court must then determine whether the violation is serious, non-serious or wilful.

Section 17 of the Act defines a serious violation as follows:

"a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."

With reference to wilful violations, a violation is wilful if it is intentional and deliberate as distinguished from accidental. The employer's motivation is not a factor if he is aware of the hazardous condition in his workplace and makes no reasonable effort to correct it. It is sufficient for a wilful violation if his failure to eliminate the hazard is deliberate, voluntary or intentional. Other factors considered in determining wilfulness are the nature of the business and the safety and health measures commonly recognized and applied in that industry.

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Dr. F. C. Dehn
February 14, 1977
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If you have any questions concerning these general rules and definitions,
please contact me.

Hugh M. Finneran
Hugh M. Finneran
Labor Counsel

HMF/mf

cc: Messrs. Z. B. Bell
R. G. Corley
J. M. Davis
A. G. DeMarco
C. R. Dilmora
D. M. Jones

I. C. Klimas ✓
W. P. Lawrence
K. R. Mesloh
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SL 048714