



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1365 PEACHTREE STREET, N.E., SUITE 240
ATLANTA, GEORGIA 30309

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SECRETARY OF LABOR,)

Complainant,)

v.)

OSHRC Docket No. 79-5974

CINCINNATI GAS & ELECTRIC CO.,)

Respondent,)

and)

INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, IBEW,)
LOCAL 1347,)

Authorized Employee)
Representative.)

APPEARANCES:

William S. Kloepper, Esquire, Associate Regional Solicitor, U.S. Department of Labor, Cleveland, Ohio, by Bruce C. Heslop, Esquire, for complainant.

Kathleen M. Brinkman, Esquire, Cincinnati Gas & Electric Company, Cincinnati, Ohio, for respondent.

Robert Hauck, Business Manager, International Brotherhood of Electrical Workers, Cincinnati, Ohio, for the authorized employee representative.

DECISION AND ORDER

Cutler, Judge:

Following an inspection of its workplace, respondent, Cincinnati Gas and Electric Company, (hereinafter CG&E), was issued a willful citation on October 11, 1979, pursuant to section 9(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq., hereinafter the "Act").

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The citation is comprised of four items with a penalty of \$8,000 proposed for each. Under Item 1, respondent is charged with violating section 5(a)(1) of the Act, ^{1/} the general duty clause, as follows:

"The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or were likely to cause death or serious physical harm to employees, in that:

There was no safe work practices program to protect employees handling, storing and transferring line distribution capacitors which contained polychlorinated biphenyls (PCB's) in the basement of the material and repair building. The safe work practices program shall include, but not be limited to:

- a) Formulating and enforcing written safe operating procedures on the storage, handling and transferring of capacitors containing PCB's. These operating instructions shall include a description of the appropriate (sic) safe personal protective equipment to be worn by employees to prevent dermal, oral, inhalation and ocular exposures.
- b) Instructing present and newly hired employees on the chemical and physical properties of PCB's and training them in the health hazards associated with exposure to PCB's. The health hazard training shall include review of the acute and chronic toxic effects that could result from contact with PCB's.
- c) Regulating the access of the work areas where employees could come into contact with PCB's and posting warning signs to define such areas.
- d) Storing capacitors containing PCB's in tightly closed containers in an area provided with adequate fresh air ventilation and diking and inspecting the area daily for leaks and spills.

^{1/}

Under this provision 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 are likely to cause death or serious physical harm to his employees."

- e) Instructing present and newly hired employees to remove themselves from the work area if their personal protective clothing or devices become contaminated with PCB's and to remove the contaminated articles, disposing of them properly, washing contaminated parts of the body with soap and water for a minimum of 15 minutes. All employees working in regulated PCB areas shall shower on completion of work in the area(s).
- f) Establishing PCB emergency spill procedure and training employees in the procedures so that accidental spills and leaks can be safely handled. These procedures shall include provisions to evacuate all non-essential personnel from the area, furnishing the necessary personnel entering the spill area with appropriate personal protective equipment, adequately ventilating the contaminated area to prevent the accumulation of vapors, and collecting and disposing of the spillage."

Item 2 of the citation charges respondent with failure to comply with the provisions of 29 C.F.R. § 1910.132(a) ^{2/} as follows:

"Protective equipment was not used where it was necessary by reason of hazards encountered in a manner capable of causing injury or impairment of the function of any part of the body:

The employer did not require employees to wear impervious personal protective equipment, i.e., full body covering and gloves and shoe coverings, when personnel were working with capacitors containing polychlorinated biphenyls in the basement of the material and repair building."

2/

This section (29 C.F.R. § 1910.132(a)) reads:

"**Application.** Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact."

Under Item 3, two violations are alleged. Item 3a charges a failure to comply with the provisions of 29 C.F.R. § 1910.133(a)(1)^{3/} as follows:

"Protective eye and face equipment was not required where there was a reasonable probability of injury that could be prevented by such equipment:

The employer did not require employees to wear eye and face protection when personnel were handling and transferring capacitors containing polychlorinated biphenyls in the basement of the material and repair building."

Item 3b, citing 29 C.F.R. § 1910.151(c)^{4/} states:

"Where employees were exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body were not provided within the work area for immediate emergency use:

The employer did not provide an eye wash and body shower to employees handling and transferring capacitors containing PCB contaminated oil in the basement of the material and repair building."

3/ This (29 C.F.R. § 1910.133(a)(1)) states:

"General. (1) Protective eye and face equipment shall be required where there is a reasonable probability of injury that can be prevented by such equipment. In such cases, employers shall make conveniently available a type of protector suitable for the work to be performed, and employees shall use such protectors. No unprotected person shall knowingly be subjected to a hazardous environmental condition. Suitable eye protectors shall be provided where machines or operations present the hazard of flying objects, glare, liquids, injurious radiation, or a combination of these hazards."

4/ This section (29 C.F.R. § 1910.151(c)) reads:

"Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use."

Under Item 4 of the citation, respondent was charged with failure to comply with the provisions of 29 C.F.R. § 1910.134(a)(2) ^{5/} requiring certain procedures and practices in connection with use of respirators when such equipment was necessary to protect the health of employees. At the hearing, respondent moved to dismiss this item. The Government conceded that air levels measured on the date of the inspection did not exceed the limits set in 29 C.F.R. § 1910.1000, Table Z(l). The Government's position was that, even though respirators were not required to be worn, when respondent chose to provide them safe procedures must be followed (Tr. 8-10, 88-89).

The gravamen of the violation charged is that respiratory equipment was necessary to protect the health of employees. The Government conceded the air level measurements were within permissible limits. Thus, employees were not exposed to an inhalation hazard and protective equipment was not necessary. ^{6/}

The motion to dismiss Item 4 by respondent was granted. This also included the reference to inhalation protection set forth in Item 1a (Tr. 90-91).

5/ This (29 C.F.R. § 1910.134(a)(2)) states:

"Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protective program which shall include the requirements outlined in paragraph (b) of this section."

6/ Corbin Lavoy dba Empire Boring Co., 76 OSAHRC 57/A2, 4 BNA OSHC 1259, 1974-75 CCH OSHD ¶ 19,056 (No. 752, 1974); Dick Corp., 79 OSAHRC 101/E8, 1976-77 CCH OSHD ¶ 21,296 (No. 16193, 1976). In both cases, the Commission did not address this issue upon review.

Hearings were held in Cincinnati, Ohio, in this case on June 10 and 11, 1980, and July 29, 1980.

Having requested and been given party status, Robert Hauck, Business Manager, Local 1347, International Brotherhood of Electrical Workers, participated in the proceedings.

There is no issue as to jurisdiction in that respondent, in its answer, concedes it is an employer engaged in a business affecting interstate commerce.

I

Following an employee complaint, respondent's work facility at 2004 Dana Avenue, Cincinnati, Ohio, was the subject of an inspection from August 31 through September 17, 1979, by the Secretary. The specific complaint concerned the adequacy of procedures for handling equipment and materials containing polychlorinated biphenyls (PCB).

On the first day of the inspection, Timothy Grabenstein and Steve Messinger, industrial hygienists for the Secretary, inspected the basement of the Material and Repair (M & R) Building located at the Dana Avenue facility. In diked areas of the basement, line capacitors of varying sizes removed from service are stored pending disposal. Some of the capacitors are stored in 55-gallon drums or plastic bags. Others are stored without any type of container or cover. As required by the Environmental Protection Agency (EPA), the steel drums and capacitors are labeled with caution signs indicating that they contain PCB (Ex. C-1; Tr. 22-30).

According to the evidence, the handling operation of capacitors in preparation for disposal is performed one or two times a month, requires three to four hours to complete, and involves three or four employees (Tr. 330-331, 466-467). Employees would remove the capacitors from banks or racks, record the serial

number, place them in containers for disposal. Smaller units would be placed in 55-gallon drums while larger ones were put in four-foot square steel boxes (Ex. C-7; Tr. 22-23, 64-69, 329-332). Approximately 15% of the capacitors leaked oil (Tr. 465).

Sampling to determine the presence of PCB and the levels of employee exposure thereto was performed on August 31 and September 17. Although employees were not engaged in handling capacitors on the earlier date, Mr. Messinger took a wipe sample of oily material on the floor adjacent to a plastic bag containing a leaking capacitor in storage (Ex. C-1, p. 2, bottom photograph; Ex. C-2, sample sheet 3, Wipe #1; Tr. 138-140). Analysis of that sample by the OSHA Laboratory determined that it contained 77 milligrams (mg) of PCB (Ex. C-2, C-6; Tr. 141, 369-371).

On September 17 Mr. Grabenstein performed wipe sampling and air sampling of employees engaged in the capacitor handling operation (Ex. C-3, C-4; Tr. 31-51). Wipe samples to determine the amount of PCBs on a particular surface area were taken with Whatman filters which were then placed in a plastic vial, identified by a sample number, and employee sampled were recorded on a sampling data sheet (Ex. C-3; Tr. 43-46). Air sampling to determine the levels of employee exposure to airborne PCBs was performed with respect to four employees working in the basement area. The sampling was performed using personal sampling pumps which drew air at a specified flow rate through florisil tubes placed in the breathing zone of each employee (Tr. 32-33). To insure that the sampling pumps were drawing air at the proper flow rate, the pumps were calibrated by Mr. Grabenstein before and after sampling (Tr. 33-35). On completion of each sample, the florisil tubes were identified by a sample number and sealed (Tr. 52). Pertinent sampling data such as

the name and job description of the employee sampled, the sampling number, sampling time, volume sampled, and pump calibration data were recorded on sampling data sheets (Ex. C-4; Tr. 46-50).

Following the inspection, the air and wipe samples were forwarded to the OSHA Laboratory, Salt Lake City, Utah, for analysis to determine the levels of PCBs in each sample (Tr. 53-54). The samples were received by the lab with the seals intact and assigned to chemist John Lay for analysis (Tr. 361-364). The wipe and florissil samples were analyzed by gas chromatography (Ex. C-23, R-4; Tr. 359-366). The results of analysis for each sample were recorded on the sampling data sheets and thereby reported to the Cincinnati Area Office (Ex. C-4, C-4; Tr. 56, 366).

Sampling on September 17, and the analysis of those samples, revealed the following with respect to employees engaged in the handling and disposal of line capacitors:

a) Gary Smith, construction helper, was removing capacitors from a capacitor bank and attaching them to the fork lift sling for transport and placement in a container. Air sampling in his breathing zone revealed that he was exposed to airborne PCBs at levels of 0.02 milligrams per cubic meter (mg/m^3) over a period of 71 minutes and 0.04 mg/m^3 over a period of 102 minutes. A wipe sample of his arm during the work shift revealed 8.5 micrograms (μg) of PCBs and a wipe sample of his hands and arms at the end of the work shift revealed PCBs at a level of 17 μg . Furthermore, a wipe sample of oil on the side of a capacitor which he was working on revealed 32 milligrams of PCBs (Tr. 44, 64-65; Ex. C-3, wipe samples 2, 3, 6, Ex. C-4, samples GS-1, GS-2, Ex. C-7, page 1, Ex. C-6).

b) Ernie Hall, mechanic A, was removing capacitors from capacitor banks and placing a capacitor contained in a plastic bag into a steel container. Air sampling disclosed that Mr. Hall was exposed to airborne PCBs of 0.03 mg/M^3 over a period of 74 minutes and 0.03 mg/m^3 over a period of 102 minutes. A wipe sample of his hands at the end of the work shift revealed a PCB concentration of 2.7 ug. (Tr. 45-46, 67-69; Ex. C-3, wipe sample 1, Ex. C-4, samples EH-1, EH-2, Ex. C-7, p. 3 bottom photo, p. 4 bottom photo, p. 5 top photo, Ex. C-6).

c) Pat McWilliams, fork truck operator, was operating the fork truck to move large capacitors from the storage area to the disposal containers. Air sampling revealed that he was exposed to PCBs at a level of 0.02 mg/m^3 for 49 minutes and 0.03 mg/m^3 over a period of 97 minutes (Tr. 66, Ex. C-4, samples PMW-1, PMW-2, Ex. C-7, p. 3 middle photo, Ex. C-6).

d) Greg Timme, construction helper, was removing capacitors from a capacitor bank and attaching them to the fork lift sling. Air sampling disclosed that he was exposed to 0.03 mg/in^3 of PCBs over a period of 66 minutes and 0.04 mg/m^3 for a 102-minute period (Tr. 60, 64-65, 69; Ex. C-1 samples GT-1, GT-2, Ex. C-7 p. 1 bottom photo, p. 5 top photo, Ex. C-6).

Evidence presented by respondent was to the effect that, since 1978 when EPA storage and disposal requirements became effective, the procedures for handling and storing capacitors was proper (Ex. C-14; Tr. 344-345, 468). At the time of the OSHA inspection, CG&E provided its employees handling the capacitors on a voluntary basis plastic aprons, leather work gloves, rubber gloves, masks, face

shields, safety goggles and respirators (Tr. 178, 469). Supervisory personnel discussed the health effects of PCBs with employees. Employees were advised to wear the personal protective equipment, to avoid getting PCB fluid on clothes or skin, to wash the skin if there was contact, and to change clothes if necessary. Employees were cautioned to wash before eating if they handled PCB and they were given the opportunity to shower and wash (Tr. 336-338A, 467-469).

Concerning the specific operation involved with the treatment of capacitors in the Dana Avenue facility, leaking capacitors were stored only in containers or in a diked area (Tr. 470). Spills of PCB fluid did not exceed a couple of tablespoons (Tr. 480) and were cleaned up promptly with Speedy Dry, solvent and rags (Tr. 472). No open vats or splashable amounts of the fluid were handled by employees (Tr. 472) and the practice of puncturing or cutting capacitors or breaking off bushings was ordered stopped in 1977-78 (Tr. 340, 470). A fork lift was used to move leaking capacitors from the diked area to containers and employees were not required to manually lift or grasp capacitors which showed evidence of leakage on their cases (Tr. 343). The only type of PCBs which were detected leaking during the inspection was 42% chlorine PCB (Ex. C-6; Tr. 124).

Respondent also challenged the accuracy of the sampling performed by Mr. Grabenstein. For example, Mr. Grabenstein failed to change gloves between taking samples of a capacitor and of employees (Tr. 100, 102, 482, 483). Mr. Messinger testified that changing gloves was good industrial hygiene practice to prevent contamination of a second sample by the first (Tr. 177). Also, the filters used by Mr. Grabenstein were moistened with water when hexane should have been used (Tr. 115, 374).

Other factors could have affected the testing. Pesticides and petroleum products which are chlorinated or contain sulfur could cloud the analysis for presence of PCBs (Tr. 374). Soap or other products used to clean the skin, if chlorinated, also might interfere with analysis (Tr. 412).

II

Item 1 of Citation 1 alleges a number of willful violations under section 5(a)(1) of the Act. In order to establish a violation of the general duty clause, the Secretary must prove that (1) the employer failed to render its workplace free of a hazard, (2) which was recognized, and (3) which was "causing or likely to cause death or serious physical harm." (National Realty & Construction Co., Inc., 489 F.2d 1257 (D.C. Cir. 1973).

Complainant's position is that PCBs are a suspected carcinogen presenting a serious human health hazard and that there is no safe level of exposure. Accordingly, the development of a safe work practices program to reduce employee exposure to the lowest extent feasible is required. This, the Secretary avers, respondent's failure to implement and enforce a safe work practices program, as specified in Item 1, constitutes a recognized hazard likely to cause death or serious physical harm.

According to complainant, the hazards presented by PCBs to the environment and human health have been widely recognized and publicized. By passage of Section 6e of the Toxic Substances Control Act of 1976 (TSCA), Congress regulated the manufacture, processing, distribution in commerce, and use of PCBs (Ex. C-13). Rules concerning the disposal and marking of PCBs were issued by EPA and published in the Federal Register (Ex. C-14, C-15, C-16). The Electric Power Research Institute, Inc., (EPRI), of which CG&E is a member, published a series of

reports concerning the disposal of PCBs and PCB-contaminated materials (Ex. C-17; Tr. 165). The National Institute for Occupational Safety and Health (NIOSH) issued various reports on the subject (Ex. C-8, C-11, C-12).

Dr. Renate D. Kimbrough, M.D., a toxicology expert, testified concerning extensive research on the effects of PCBs upon certain animal species (Ex. C-24; Tr. 490-501). Based upon these studies, Dr. Kimbrough determined that PCBs are a carcinogen in animals and, therefore, must be considered a suspected carcinogen in humans (Tr. 501-503).

Notwithstanding the reliance upon the NIOSH criteria document, the Toxic Substances Control Act, USEPA regulations, etc., the objective evidence does not sustain complainant. Dr. Kimbrough testified only that PCBs "'may' be a carcinogen in people" (Tr. 502). She was not asked whether the PCB exposure allegedly experienced by CG&E employees was "likely to produce death or serious physical harm." She was asked if it presented "a human health risk" and her reply was that "It would add to the body burden of PCBs and in that respect, it would increase the risk. On the other hand, it's difficult to determine from just those numbers how much PCB would actually be absorbed, since we don't have . . . the surface area" (Tr. 507).

Dr. Kimbrough's research with PCBs consisted of animal feeding studies involving 54% and 60% PCBs (Tr. 499-500). She could not determine if the effects of 42% PCBs would be different from the effects of 54% and 60% PCBs because it is not known which isomers are responsible for the toxic effects (Tr. 503).

Dr. R. Emmet Kelly, a medical doctor with 35 years' experience evaluating employees exposed to PCBs in an occupational setting, testified to a reasonable medical certainty that exposure to PCBs in a capacitor-handling operation, even as

frequently as two or three times a week, with skin contact of 17 micrograms, would not create a substantial probability that death or serious physical harm could result (Tr. 534-539). The only harm which could result might be eye irritation from eye contact from splash or PCB-contaminated gloves and this would be only "de minimis" (Tr. 531, 539). Dr. Kelly performed tests in which PCBs were put into the eyes of rabbits. The effect of 100% PCB solution after two minutes in the eye were found by him to be equivalent to the effect of a 20% Ivory soap solution in the eye (Tr. 531). Dr. Kelly's experience was with employees of Monsanto Chemical who were "at a magnitude of ten or 100 times more seriously exposed" (Tr. 538).

With respect to Dr. Kimbrough's findings, Dr. Kelly testified that he had evaluated her studies and disagreed with her conclusions. Her slides were reviewed by Dr. Pavis Paou, a pathologist at the Epply Institute for Cancer, University of Nebraska, and he disagreed with her findings of liver carcinoma (Ex. R-7; Tr. 540-541). And, according to Dr. Kelly, Monsanto's own animal PCB feeding studies of rats and dogs at three levels revealed no tumors (Ex. R-8; Tr. 540). Finally, subsequent to Dr. Kimbrough's report, the National Cancer Institute performed a rat feeding study with 54% PCBs and found PCBs were not carcinogenic (Ex. R-9; Tr. 548).

Considering the overall evidence, complainant has not established that employees of CG&E, at the times and places here in question, were exposed to a hazard likely to produce death or serious physical harm as required under section 5(a)(1) of the Act so as to mandate the work practices set forth in Item 1 of the citation.

Although unnecessary to resolve in view of the foregoing, respondent aptly points out that there is a specific standard for 42% PCB exposure set forth in 29

C.F.R. § 1910.1000(e) Table Z-1 (listed under chlorodiphenyls 42%). CG&E was in compliance with both the inhalation and dermal standards for 42% PCBs (Secretary's Response #4 to Request for Admissions). Chairman Cleary pointed out the well settled doctrine in Tolar Construction Co., (74 OSAHRC 85/F4, 2 BNA OSHC 1385, 1974-75 CCH OSHD ¶ 19,078 (No. 1329, 1974)): "Citing a respondent under the general duty requirement of the Act is not appropriate where there exists a specific occupational safety and health standard covering the conduct at issue."

III

Under Item 2, respondent is charged with a willful violation of 29 C.F.R. § 1910.132(a) in that CG&E did not require its employees to wear certain protective equipment, i.e., full body covering and gloves and shoe coverings. CG&E did not require the use of employees of the personal protective equipment, but it was provided on a voluntary bases.

As previously discussed in connection with Item 1, the Secretary has not established that a hazard exists from dermal contact with PCBs for the amount of exposure given in this case. CG&E was in compliance with the dermal standard for 42% PCBs. And, there is no evidence of record that any CG&E employee suffered any injury for dermal contact with PCBs.

Considering all of the evidence, I do not find the respondent in violation of 29 C.F.R. § 1910.132(a).

In view of the above finding, it is unnecessary to address respondent's arguments that the cited section was improperly promulgated or that the term "provide" does not mean "require the use of."

IV

Item 3a charges respondent with failing to comply with the provisions of 29 C.F.R. § 1910.133(a)(1) relating to protective eye and face equipment.

In view of the previous findings, the issue of eye protection need only be addressed here. According to Dr. Kelly, the only harm which could result from eye contact with PCB would be irritation which he described as de minimis. He did not consider the substance corrosive (Tr. 531) and Dr. Kimbrough admitted it was not in the sense that it would cause severe ulceration (Tr. 510). A violation is properly characterized as de minimis when it has only a negligible relationship to safety and health and where it is inappropriate to require that the violation be abated or to assess a penalty. National Rolling Mills Co., 76 OSAHRC 121/D7, 4 BNA OSHC 1719, 1976-77 CCH OSHD ¶ 21,114 (No. 7987, 1976); Hood Sailmakers, Inc., 77 OSAHRC 212/C12, 6 BNA OSHC 1206, 1977-78 CCH OSHD ¶ 22,422 (No. 13996, 1977).

Under the circumstances, the failure to require employees to use eye protection was, at most, a de minimis violation.

Under Item 3b, respondent is charged under 29 C.F.R. § 1910.151(c) with failing to provide eye wash and body shower facilities in the work area for quick flushing or drenching of eyes and body. CG&E did provide eye wash and shower facilities within one minute's walking distance of the basement capacitor handling area (Tr. 472-473).

Since the evidence was not established that a hazard from PCB dermal contact existed under the facts here and that eye contact would cause more than minor irritation, no necessity appears to require that such facilities be made available right in the work site. Accordingly, the citation must fall.

V

I reach the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent is a utility company doing business in the Cincinnati, Ohio, area. In the basement of its Material and Repair Building at Dana Avenue,

Cincinnati, line capacitors removed from service are stored pending disposal. The capacitors of varying sizes, containing polychlorinated biphenyls (PCBs), are stored in diked areas. Some capacitors are contained in 55-gallon drums or plastic bags and some are stored without any type of container or cover.

2. The handling operation of capacitors in preparation of disposal is performed one or two times a month, requires three to four hours to complete, and involves three or four employees. On one occasion during the inspection, 15% were found by the compliance officer to be leaking oil.

3. Sampling to determine the presence of PCBs and the levels of employee exposure to PCBs was performed on August 31 and September 17, 1979.

4. Air levels measured during the inspection did not exceed the limits set forth in 29 C.F.R. § 1910.1000, Table Z(i).

5. Wipe samples were taken from capacitors in the area and from two employees which upon testing revealed presence of 42% PCB. Results of wipe samples from two other employees showed no PCB contact. The dermal exposure of the employees with positive tests did not exceed the limits set forth in 29 C.F.R. § 1910.1000(e) Table Z-1 (listed under chlorodiphenyls 42%).

6. At the time of the inspection, CG&E provided its employees on a voluntary basis plastic aprons, leather work gloves, rubber gloves, masks, face shields, safety goggles and respirators. Employees were advised to wear personal protective equipment, avoid getting PCB on clothes or skin, to wash the skin if there was contact, and to change clothes if necessary. Employees were cautioned to wash before eating if they handled PCBs and they were given the opportunity to shower and wash. Eye wash and shower facilities were provided which were within one minute's walking distance from the work area.

7. The probative evidence of record does not establish that the exposure of CG&E employees to the levels of 42% PCBs reflected by tests in this case would create a hazard likely to produce death or serious physical harm.

8. The probative evidence does not establish that impervious personal protective equipment, i.e., full body covering and gloves and shoe coverings, should be required to be used by employees when handling capacitors containing PCBs.

9. The probative evidence does not establish that protective eye and face equipment should be required to be used by employees when handling capacitors containing PCBs.

10. The probative evidence does not establish that eye wash and body shower facilities be provided in the immediate work area for employees handling capacitors containing PCBs.

11. There existed a remote possibility of employees having eye contact with PCBs from splashes or gloves, but such contact would result only in minor eye irritation.

CONCLUSIONS OF LAW

1. Respondent is engaged in a business affecting commerce within the meaning of the Act and this Commission has jurisdiction over the subject matter and parties to this action.

2. Respondent at the times and place in question was not in violation of section 5(a)(1) of the Act.

3. Respondent at the time and place in question was not in violation of section 5(a)(2) of the Act by failing to comply with the provisions of 29 C.F.R. § 1910.132(a), 29 C.F.R. § 1910.133(a)(1) (relating to face equipment), 29 C.F.R. § 1910.151(c), and 29 C.F.R. § 1910.134(a)(2).

4. The respondent failed to comply with the provisions of 29 C.F.R. § 1910.133(a)(1) as to eye protection; however, the violation was de minimis.

ORDER

Based upon the foregoing findings of fact and conclusions of law, Citation 1 is vacated except as to Item 3a relating to eye protection which is affirmed as a de minimis violation only.

SO ORDERED.

Dated this 12th day of November, 1980.

/s/ Cecil L. Cutler, Jr.

CECIL L. CUTLER, JR.
Judge