

OSHA File

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	
)	CASE NO. OSAB 81-8
Director, Dept. of Labor and)	(109-81)
Industrial Relations, Complainant,)	
)	
vs)	
)	
ROBERT McMULLAN AND SON, INC.,)	
RESPONDENT.)	
_____)	

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DECISION AND ORDER

This occupational safety and health case is before the Board on a written contest by ROBERT McMULLAN AND SON, INC., of the Director's Amended Citation and Notification of Proposed Penalty issued on June 24, 1981. The Citation charges that on May 22, 1981, Respondent violated Section 304.5-3 D (2)(d)(i) of the State Occupational Safety and Health Standards, Rules and Regulations. Section 304.5-3 of the Rules and Regulations covers protection from asbestos dust.

Section 304.5-3 D (2)(d)(i) reads in relevant part:

- (d) Establishment of a Respirator Program.
 - (1) The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2-1980, which is incorporated by reference herein.

* * *

The sole issue is whether Respondent violated Section 304.5-3 D (2)(d)(i) by failing to provide a respirator program which met the minimal requirements of ANSI Z88.2-1980, specifically, the requirements, as outlined, in Sections 3.3.3, 3.5.6, 3.5.7, 6.11, and 6.12.

Section 3.3.3 reads as follows:

The employer shall be responsible for the establishment and maintenance of a respiratory protection program which shall include the general requirements outlined in 3.5.

Section 3.5.6 requires that each respirator wearer be given training that includes explanations and discussions of the respiratory hazard, the controls being used and the need for the respirators, the reason for selecting the particular respirator, the function, capabilities, and limitations of the selected respirator, the method of donning and checking the fit and operation of the respirator, the proper wearing of the respirator, respirator maintenance, and recognizing and handling emergency situations.

Section 3.5.7 requires that each respirator wearer be provided with a respirator fitted in accordance with 6.11.

Section 6.11 outlines respirator-fitting tests that may be used, and Section 6.12 requires that records of respirator-fitting tests be kept for the duration of employment.

FINDINGS OF FACT

1. On May 22, 1981, an inspector for the Department of Labor and Industrial Relations, Occupational Safety and Health Division, Health Branch, conducted an inspection at Bachman Hall, University of Hawaii, where Respondent's employees were removing asbestos from the ceiling.

2. The asbestos level at the time of inspection was found to be 12 fibers per cubic centimeter, far over the acceptable level of 2.5 fibers per cubic centimeter for persons without protection. It was determined that respirators were needed.

3. Respondent's employees were wearing respirators, but in speaking with Respondent's management employees, the foreman and the superintendent, the inspector learned that the contractor had no respiratory protection program. The inspector was informed that the employees had received no training in the wearing of the respirators, and there had never been any fit-testing of the respirators being used. The foreman and superintendent were unable to produce any written standard operating procedures covering a respiratory program.

4. An informal conference was called and held on June 19, 1981, at which time Respondent was unable to produce a written respiratory program.

5. On June 23, 1981, a set of instructions entitled "Respiratory Program for Robert McMullan and Son, Inc.," was received by the Occupational Safety and Health Division.

The instructions outlined, allegedly to be read to employees by the foreman, do not meet the minimal requirements of Sections 3.5.6, 3.5.7, 6.11, and 6.12. No training of the employees in accordance with Section 3.5.6 is provided. Fit-testing, pursuant to Sections 3.5.7 and 6.11, is lacking. Further, no provision is made for record-keeping, pursuant to Section 6.12.

6. On June 24, 1981, the Director issued the Amended Citation and Notification of Proposed Penalty.

7. When asked at the hearing whether the company had a program whereby employees were regularly instructed and trained in the proper use and fit of the respirators and its limitations, Leland M. Wiscombe, manager of the Pacific Islands Division for Respondent, replied that the company used disposable 3M dust masks which were self-fitting and, therefore, required no instructions.

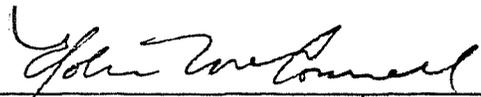
CONCLUSION OF LAW

Employer ROBERT McMULLAN AND SON, INC., violated Section 304.5-3 D (2) (d) (i) of the State Occupational Safety and Health Standards.

ORDER

The Amended Citation and Proposed Penalty issued on June 24, 1981, relative to violation of Section 304.5-3 D(2) (d) (i) is hereby affirmed. ROBERT McMULLAN AND SON, INC., is hereby ordered to pay the sum of one hundred fifty dollars(\$150.00).

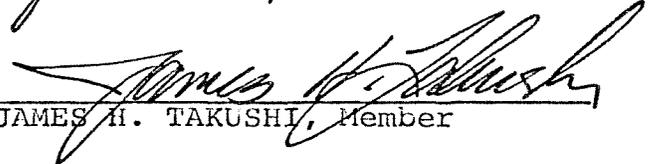
Dated: Honolulu, Hawaii, June 1, 1982.



E. JOHN McCONNELL, Chairman



YUKIO TAKEMOTO, Member



JAMES H. TAKUSHI, Member

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

