

L4B

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

DIRECTOR, DEPARTMENT OF LABOR,	)	CASE NO. AB 94-053(H)
AND INDUSTRIAL RELATIONS,	)	(OSCHO No. L4124)
Complainant,	)	(Report No. 120630694)
	)	
vs.	)	
	)	
PUNA GEOTHERMAL VENTURE,	)	
Respondent.	)	

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FILED  
LIR APPEALS BOARD  
STATE OF HAWAII

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DECISION AND ORDER

This occupational safety and health case is before the Board on a written Notice of Contest, filed by PUNA GEOTHERMAL VENTURE ("Respondent"), to contest a Citation and Notification of Penalty issued to it by the Director of Labor and Industrial Relations, via the Division of Occupational Safety Health ("Complainant").

The issues before the Board are:

(1) Whether Occupational Safety and Health Standard §12-103-10-(d)(1) applies to Respondent;

(2) If so, whether Respondent violated Occupational Safety and Health Standard §12-103-10-(d)(1) by not performing any inspections and tests on the following:

- a. pentane piping systems
- b. pentane pressure relief devices
- c. geothermal tubes in the pentane shell heat exchangers

(3) If so, is the characterization of the violation as "serious" appropriate; if not, what is the appropriate characterization; and



(4) If the violation was serious, was the imposition and amount of the proposed \$1,125.00 penalty appropriate.

For the reasons stated below, we vacate the Citation and Notification of Penalty for §12-103-10-(d)(1).

#### FINDINGS OF FACT

1. Respondent is a geothermal facility that uses pentane to generate electricity on the island of Hawaii.

2. Between April 16, 1993 and July 29, 1993, Complainant conducted inspections of Respondent's work site to determine if the latter was in compliance with the Hawaii Occupational Safety and Health Standards.

3. At the time of the inspections, Respondent was engaged in a process of generating electricity using pentane, a flammable liquid, on site, in a quantity of 10,000 pounds or more.

4. Following the inspections, Complainant issued, among other things, a Citation and Notification of Penalty to Respondent dated October 8, 1993, for a violation of §12-103-10-(d)(1).

5. Respondent was also cited for violations of §§12-103-3(a), -7(c), -8(b)(1), -9(b)(1), and -12(b)(1). The parties settled the citations for violations of §12-103-3(a), -7(c), -8(b)(1), and -12(b)(1) on or before October 2, 1995. Complainant withdrew the citation for violation of §12-103-9(b)(1) on November 21, 1995.

6. A hearing on the citation for §12-103-10-(d)(1) was heard on November 21, 1995.

7. It was Complainant's position that Respondent was required to perform both preventive and predictive inspections and testing on its pentane piping system, pressure relief devices, and shell heat exchangers, in order to fulfill the requirements of §12-103-10-(d)(1).

8. Complainant does not dispute that Respondent was, at the time of the inspections, performing preventive inspections and tests on the pentane piping system, the pressure relief devices, and the shell heat exchangers.

9. Complainant determined that Respondent, at the time of the inspections, was not performing any predictive inspections or tests on the pentane piping system, the pressure relief devices, and the shell heat exchangers. Complainant's determination was based upon the lack of documentation of any predictive tests performed by Respondent in its computerized maintenance management program at the time of the inspections and on the July 26, 1993 memorandum of George Moller, a corrosion engineer whom Respondent consulted. In the memorandum, Moller recommended that Respondent perform certain predictive tests on its pentane piping system, the pressure relief devices, and the shell heat exchangers. Relying on Moller's memo, Complainant concluded that Respondent was planning to perform predictive inspections and tests, as recommended by Moller, but had not in fact performed any predictive testing on the pentane piping

system, the pressure relief devices, and the shell heat exchangers at the time of the inspection.

10. David Berube was Respondent's site manager at the time of the inspections. Based on David Berube's trial testimony, we find that Respondent was performing predictive inspections and tests on the pentane piping system, the pentane pressure relief devices, and the shell heat exchangers at the time of the inspections.

11. Respondent did not have documentation of the predictive testing that was performed on the pentane piping system, the pressure relief devices, and the shell heat exchangers at the time of the inspections. The information that Complainant had requested at the time of the inspections had not yet been documented or inputted onto their computerized maintenance system.

12. Respondent was not cited for violation of Standard §12-103-10(d)(4), which requires employers to document each inspection and test that has been performed on process equipment.

13. Respondent consulted with Moller for advice on inspection methods and record keeping for corrosion control and monitoring for its facility. According to Respondent, Moller was retained to make sure that Respondent's existing maintenance program was sufficiently thorough and complete. Although Moller made various recommendations for inspections and testing to be done on the pentane piping system, the pressure relief devices, and the shell heat exchangers, his recommendations are not

evidence that Respondent was not performing predictive inspection or testing on its own at the time of the inspections.

14. Respondent did not present any evidence or argument that chapter 103, or more specifically, §12-103-10-(d) (1), did not apply to it in this case.

#### CONCLUSIONS OF LAW

1. Chapter 103 of the Occupational Safety and Health Standards refers to process safety management of highly hazardous chemicals. This chapter applies to any process that involves a flammable liquid or gas on site in one location, in a quantity of 10,000 pounds or more. See §12-103-1(b) (1) and -1(b) (2). Respondent was involved in such a process. Accordingly, we conclude that Respondent was subject to §12-103-10(d) (1).

2. Section 12-103-10(d) (1), requires inspections and tests to be performed on process equipment. According to §12-103-10(a), process equipment includes pressure vessels and storage tanks, piping systems (including piping components such as valves), relief and vent systems and devices, emergency shutdown systems, controls, and pumps.

We conclude that Respondent did not violate §12-103-10(d) (1). Our conclusion is based on our finding that Respondent did perform preventive and predictive inspections and tests on the pentane piping system, the pressure relief devices, and the shell heat exchangers, at the time of the inspections.

3. Having concluded that Respondent did not violate §12-103-10(d) (1), we do not reach issues 4 and 5.

ORDER

Complainant's Citation and Notification of Penalty for violation of §12-103-10(d)(1) is vacated.

Dated: Honolulu, Hawaii, JUN 24 1997.

  
FRANK YAP, JR., Chairman

  
CAROL K. YAMAMOTO, Member

EXCUSED  
VICENTE F. AQUINO, Member

Herbert B.K. Lau, Esq., for  
Complainant

Jeffrey S. Harris, Esq., for  
Respondent

NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.

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

  
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