STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

J. C. WINGFIELD
CHAIRMAN
DONALD F. HOFF, JR.
LAWRENCE D. WEISS

ROBERT W. LANDAU
HEARING OFFICER

STATE OF ALASKA,
DEPARTMENT OF LABOR,

Complainant,

v.

STATE OF ALASKA,
DEPARTMENT OF CORRECTIONS,

Contestant.

Docket No. 91-870
Inspection No. Ca-7806-194-91

DECISION AND ORDER

This matter arises from an occupational safety and health inspection at the Fairbanks Correctional Center on January 26, 1991. As a result of the inspection, the Department of Labor (DOL) issued a citation to the Department of Corrections (DOC) alleging three "serious" violations of Alaska occupational safety and health codes.

Citation 1a alleges a violation of Hazard Communication Code 15.0101(e)(2) for failure to establish and maintain a comprehensive written hazard communication program for employees. Citation 1b alleges a violation of Hazard Communication Code 15.0101(i) for failure to provide employees with adequate training concerning hazardous materials used in the workplace. Citation 1c

alleges a violation of Hazard Communication Code 15.0101(g)(1) for failure to maintain material safety data sheets (MSDS) for hazardous and toxic substances used at the workplace. The three alleged violations were grouped into a single "serious" citation and a monetary penalty of $300 was assessed.

Upon DOC's contest of the alleged violations, a hearing was held before the Board in Fairbanks on October 17, 1991. Both parties submitted evidence and arguments to the Board. After review and consideration, the Board makes the following findings of fact, conclusions of law and order in this matter.

FINDINGS OF FACT

1. On January 26, 1991, DOL compliance officer Chuck Cain performed an occupational health inspection at the Fairbanks Correctional Center at 1931 Eagan Street, Fairbanks, Alaska.

2. During the inspection, Cain learned that employees at the correctional center were routinely exposed to a variety of hazardous and/or toxic substances, including paints, solvents, welding rods, motor oils and lubricants, and battery acids.

3. Cain asked to see a copy of DOC's written hazard communication program, but none of the employees he spoke to were aware of such a program or could provide a copy.

4. Cain also inquired about employee training concerning hazardous materials at the correctional center. He was not given any evidence that indicated such training was provided to employees.

5. Cain further asked to see material safety data sheets for each hazardous chemical or toxic substance used at the workplace. DOC employees were unable to locate or provide the requested MSDS information.

6. Cain believed that the various chemicals and toxic substances used at the correctional center exposed employees to a wide range of potential hazards ranging from simple respiratory, neurological and skin irritations to much more serious cancer-causing conditions. Cain noted that DOC had identified as many as 123 hazardous substances at the correctional center.

7. In Cain's opinion, DOC's inability to produce a written hazard communication program, evidence of employee training regarding hazardous substances, and MSDS information amounted to a "serious" violation since in the event of an accident, serious bodily harm or even death could result because of these violations.

8. Because the violations were classified as "serious," an automatic monetary penalty was imposed. The initial $1,000 penalty was reduced by 70 percent to $300 due to the employer's size, good faith in abating the violations, and absence of any prior history of occupational safety or health violations.

9. In its written response to the Department's citation, DOC contended that it did have a written hazard communication program in place, that employees had been provided with information and training concerning hazardous materials, and that an MSDS notebook was maintained in four locations. See DOC letter dated April 19, 1991.

10. At the hearing, DOC submitted several documents in support of its position that it had satisfactorily complied with the hazard communication requirements. See Exhibits A-D.

11. Exhibit A consists of DOC's policies and procedures concerning the following subjects: monitoring fire and emergency procedures; control of caustic, toxic and flammable substances; fire safety procedures, equipment, and evacuation plan; and control of tools, equipment and hazardous materials. Each of these policies and procedures was issued in February 1985 and provides general policy guidance and procedures regarding the above-described subjects.

12. Exhibit B consists of shift briefing notes from two one-hour briefings given to employees regarding hazardous materials in May 1990. The briefings consisted of 15 minutes of discussion regarding the nature of hazardous materials used at the correctional center and an additional 45 minutes of training in the proper and safe use and storage of such materials. Training was provided by Jack Barham, a DOC employee who had completed a hazardous waste/material program sponsored by the State of Alaska, Division of Emergency Services. The briefings were conducted approximately every week from May through July 1990 but were then discontinued.

13. Exhibit C is a memorandum dated October 15, 1991, revising DOC's policies and procedures to include a written hazard communication program.

14. Exhibit D is a sample written hazard communication program drafted by DOL and partly completed by DOC on or about October 15, 1991.

15. For approximately four years, DOC has designated two employees to act as safety officers, performing weekly safety inspections, maintaining an inventory of hazardous materials, assuring proper storage of such materials, and communicating with other employees regarding procedures for the safe handling of toxic or hazardous substances. In addition, two DOC employees have completed hazardous materials training as "first responders" under EPA's hazardous materials program.

16. Furthermore, the correctional center has made an effort to limit its use of hazardous chemicals (such as cleaners and disinfectants) and has taken steps to ensure that hazardous materials are stored behind locked doors. DOC stated that very few employees, mainly kitchen, laundry and maintenance personnel, now have access to solvents, paints and other potentially toxic substances.

17. DOC witnesses stated that an MSDS notebook containing safety information regarding hazardous materials had been maintained for approximately seven years and was available for inspection by employees. However, DOC acknowledged that the MSDS notebook could not be located during the inspection.

CONCLUSIONS OF LAW

Hazard Communication Code 15.0101(e)(2) provides:

> Employers shall develop, implement and maintain at the workplace a written hazard communication program for their workplaces which at least describes how the criteria specified in (f), (g) and (i) of this section for labels and other forms of warning, material safety data sheets and employee information and training, will be met.

Hazard Communication Code 15.0101(i) provides:

> Employee information and training. Employers must provide employees with information and training on hazardous chemicals and physical agents in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area.

Hazard Communication Code 15.0101(g)(1) provides:

> Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet for each toxic or hazardous substance which they use.

The evidence leads us to conclude that at the time of the inspection, DOC did not have in place a fully comprehensive written hazard communication program. While DOC's policy and procedure statements address some of the required elements of a hazard communication program, they fall short of meeting the requirements of the Hazard Communication Code. For example, the policy and procedure statements fail to address some of the essential components of an HC program, such as labeling, MSDS and physical agents information, training procedures and placarding/posting requirements.

It is further apparent that the policy and procedure statements were not prepared with the hazard communication requirements in mind but rather were designed for other purposes. Much of DOC's effort appears to have been directed at training qualified "first responders" to deal with hazardous materials under EPA requirements. The OSHA hazard communication requirements are separate and distinct from EPA's hazardous materials program and serve different program goals. Employers are required to comply with the specific provisions of each program. Moreover, DOC's policies and procedures were adopted in 1985 and do not appear to have been updated or supplemented since that time. As illustrated by Exhibit D, a proper written hazard communication program would be considerably more comprehensive in scope and detail than the limited information provided in DOC's policy and procedure statements.

With respect to the alleged training violation, we conclude that DOC made a good faith, albeit limited, effort to provide information and training to employees regarding hazardous materials but that such efforts were incomplete and inadequate. The hazardous materials briefings were admittedly general in nature and were discontinued after only two months. Moreover, there is no evidence that a continuing effort was made to train all employees at the correctional center or to update hazardous materials information for any new or different substances used in the workplace. Even one employee left out of such ongoing training could result in a serious accident if that employee is required to

handle toxic substances in the course of employment. While we recognize that the correctional center has taken positive steps to limit the number of hazardous substances used at the workplace as well as employee access to such materials, it is apparent that a number of employees are still exposed to hazardous materials and therefore DOC's training and information efforts must be intensive and continuing at least for those employees.

Finally, with regard to the MSDS requirement, we also conclude that DOC has fallen short of the conduct required by the code. Even if DOC had maintained such a notebook, employees interviewed during the inspection were unaware of it or where to locate it. It goes without saying that critical safety information is of little use if employees are unaware of it or do not know how to find it. The MSDS information must be readily available and its availability must be well known to all employees.

Despite these criticisms, we believe that DOC is on the right track toward developing a comprehensive and adequate hazard communication program. The evidence compels us to uphold the citation issued by DOL but this does not prevent us from commending DOC on its efforts thus far to bring its hazard communication program into place. We hope and expect that DOC's continuing efforts to develop and maintain its program will eliminate any recurrence of these violations.

ORDER

Based on the foregoing findings of fact and conclusions of law, the violations and penalties issued by the Department of Labor are AFFIRMED as cited.

DATED this 12th day of December, 1991.

ALASKA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

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

By: Lawrence D. Weiss
Lawrence D. Weiss

OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD
P.O. BOX 21149
JUNEAU, ALASKA 99802-1149

NOTICE TO ALL PARTIES

A person affected by an Order of the OSH Review Board may obtain a review of the Order by filing a complaint challenging the Order in Superior Court. The affected person must file the complaint within 30 days from the date of the issuance of the Order by the OSH Review Board. After 30 days from the date of the issuance of the Order, the order becomes final and is not subject to review by any court. AS 18.60.097(a).

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of the Alaska Department of Labor vs. SOA-Department of Corrections, Docket No. 91-870S, filed in the office of the OSH Review Board at Juneau, Alaska, this 12th day of December, 1991.

Mary Jean Smith
OSH Review Board

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