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MIOSHA NEWS

THIRD QUARTER 1976

VOL. 2 NO. 3



BILL LOEWENSTEIN, EDITOR
JOE O'GRADY, GRAPHIC ARTS

HEARINGS DIVISION

The Hearings Division in the Bureau of Public Affairs, Michigan Department of Labor, is involved in numerous aspects of the Michigan Occupational Safety and Health Act (MIOSHA).

The division's staff consists of a Director, two Hearings Officers, four Court Reporters, and three clerical persons.

The Director of the Hearings Division, as Executive Secretary to the Board of Health and Safety Compliance

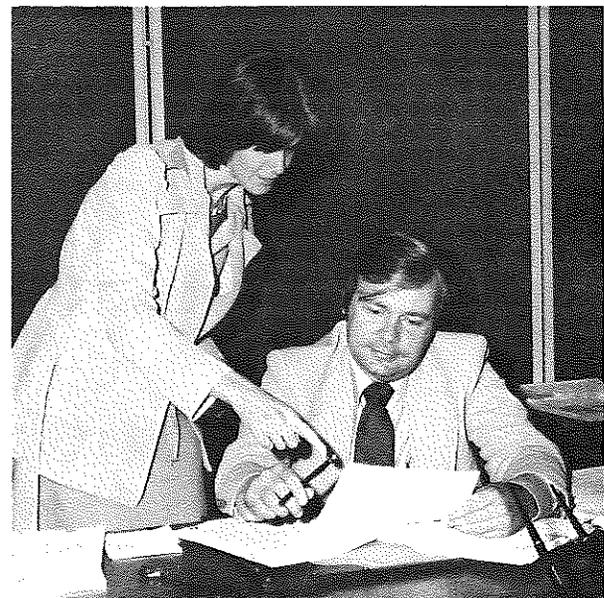


THE DIVISION has two Hearings Officers, Jane Radner and Andre Friedlis.

and Appeals (BHSCA), processes petitions for modification of abatement and assigns Hearings Officers and hearings reporters to contested cases. Hearings reporters are also assigned to record verbatim records and summary minutes of the meetings of the Occupational Safety Standards Commission, the Construction Safety Standards Commission, and the BHSCA.

In addition, Hearings Officers and reporters are assigned to conduct public hearings on the various substantive and procedural rules promulgated under MIOSHA by the Director, commissions, and Board.

The Hearings Division conducts all contested cases involving appeals of citations issued by the Departments of Public Health and Labor under MIOSHA. Hearings Officers also conduct hearings involving variance requests, under section 27 of MIOSHA, when a hearing is required under the variance procedures.



DOUG EARLE (pictured above), Director of the Hearings Division, confers with his secretary, Gayle Thomas.

ABATEMENT ALTERNATIVES

These are the latest abatement alternatives developed by the General Industry Safety Division.

Abatement Alternatives No. 14, 15, and 16 are new; Abatement Alternative No. 2 has an added third paragraph; Abatement Alternative No. 11 has some clarifying language changes.

When a Safety Officer discovers a violation of one of the applicable rules, and the alternative conditions are being met, the rule violation will not be recommended for citation.

On the other hand, when the violation is discovered and the alternative conditions are not being met, a citation will be recommended. The employer will be given a copy of the abatement alternative with an explanation that compliance with either the rule requirements or abatement alternative requirements will be considered as abatement of the citation.

ABATEMENT ALTERNATIVE NO. 14

Rule 2431(1) Presses using full revolution clutches shall incorporate a single stroke mechanism. In instances where Full Revolution Clutch Press Machine(s) do not incorporate a single stroke mechanism and used only continuous mode, Rule 2431(1) can be abated by complying with the following alternatives:

1. The machine(s) involved must be so equipped that a second action is required to initiate cycling after the machine(s) have been energized.
2. The machine(s) involved shall be barrier guarded on all four sides of the point of operation in accordance with Rule 2462(1)(a)(b)(c)(d)(e)(f)(2)(3). If interlocked press barrier guards are used, they shall enclose all four sides of the machine(s) in accordance with Rule 2462(4)(5)(6).

ABATEMENT ALTERNATIVE NO. 15

Rule 2431(1), presses using full revolution clutches shall incorporate a single stroke mechanism. In instances where full revolution clutch presses do not incorporate a single stroke mechanism and the press is used in single stroke mode, Rule 2431(1) can be abated by complying with the following alternative:

1. The machine(s) involved shall be barrier guarded on all four sides of the point of operation in accordance with Rule 2462(1)(a)(b)(c)(d)(e)(f)(2)(3). If interlocked press barrier guards are used, they shall enclose all four sides of the point of operation in accordance with Rule 2462(4)(5)(6).

ABATEMENT ALTERNATIVE NO. 16

Rule 1910.309 502-8(b) requires that motors, generators and other rotating electrical equipment be either dust-ignition proof or totally enclosed, pipe ventilated equipment in Class II Division II locations.

Compliance with the following alternative will be considered as acceptable as compliance with the terms of Rule 1910.309 502-8(b):

1. Totally enclosed fan-cooled equipment is acceptable as a substitute for totally enclosed pipe ventilated equipment.

ABATEMENT ALTERNATIVE NO. 2

Rule 34(3) requirements of the General Rules Standard that relates to required point of operation guards on brake presses can be abated by complying with the following alternatives:

1. Hand tools must be provided and used to hold stock or material when necessary to hold closer than 4" from the point of operation.
2. A conspicuous sign must be posted on the machine(s) stating, "Hand tools must be used when necessary to hold stock or material which would bring fingers closer than 4" from the point of operation".
3. This alternative will apply to brake presses used for bending operations only.

ABATEMENT ALTERNATIVE NO. 11

Rule 34(3) of the General Rules Standard which requires the installation of a guard or device where necessary to protect an operator from a point of operation can be abated by complying with the following alternative:

1. A guard or other device for the point of operation of a non-productive arbor press or straightening press will not be required provided that the machine is equipped with a hand control such that when it is released the ram action stops or returns to the up position.

Freedom



Equality

VARIANCES GRANTED

The following are variances granted by the respective divisions during the period of July 1, 1976, through September 30, 1976.

GENERAL INDUSTRY SAFETY DIVISION

The companies listed below received a variance from **HAND AND PORTABLE POWERED TOOLS STANDARD, R3832(1)**, which prohibits the use of hand held air

blow guns with pressure in excess of 30 p.s.i. when dead-ended. The department permitted use of a maximum 80 to 90 p.s.i., provided that certified eye protection with side shields were provided and used and other alternative protection methods were implemented.

Gallmeyer & Livingston Company, Grand Rapids
Sharon Mfg. Company, Toledo, Ohio (plant in Michigan)

Watervliet Paper Company, Watervliet
Hoover Chemical Products Div., Whitmore Lake

The company listed below received a variance from **MECHANICAL POWER PRESSES STANDARD, R2443**, which requires that part revolution clutch presses be equipped with a means of selecting "Off," "Inch," "Single stroke" and "Continuous" when the continuous function is furnished. The department allowed use of presses not equipped with single stroke selection, provided that the presses be guarded in accordance with Rule 2462(1)(a)(b)(c)(d)(e) and (f)(2)(3) or if interlocked press barrier guards are used - Rule 2462(4)(5)(6).

Trans-Matic Mfg. Company, Holland

The company listed below received a variance from **FIRE EXITS STANDARD, R695(3)**, which requires an exterior stair or basket ladder type fire escape be provided from the roof of a working house of a grain storage elevator. The department allowed hinging and counterweighting the bottom 9 feet of the ladder to make it accessible for descent from above, but not accessible for ascent from the base for security reasons.

Croswell Milling Company, Croswell

The company listed below received a variance from **GUARDS FOR POWER TRANSMISSION STANDARD, R763(1)**, that relates to required power disconnects for each machine and identifying of each disconnects for the machine it serves. The department allowed use of twist plug connectors provided that the twist plugs be of such design as to contain any arcing that might occur on making or breaking contact within the plug body. Each twist plug is to have a bus box above the twist plug, and the bus boxes may not have circuitry exposure in any condition of use. Variance applied to existing equipment only.

American Coil Spring Company, Muskegon

The company listed below received a variance from **FLOOR AND WALL OPENINGS, STAIRWAYS AND**

SKYLIGHTS STANDARD, R215(2), which relates to required guarding of floor holes or opening into which persons can accidentally walk or material can fall. The department allowed complete enclosing or guarding of the pickle line in accordance with R215(a)(b)(c), with entry through barriers by self-closing gates, 3-inch yellow lines painted around coil cart floor opening and posting of signs forbidding employees to jump or step across coil cart floor openings.

Whittaker Steel Strip, Detroit

The company listed below received a variance from **PORTABLE FIRE EXTINGUISHERS STANDARD, R821, 823, 824**, requires that minimum 6 B C portable fire extinguisher be stationed within 50 feet of a gasoline pump. The department allowed extending the 50 foot requirement to 90, but to permit stationing the extinguisher inside a building for security reasons, provided that signs be posted at the pump and in the building telling where the extinguisher can be found.

Remke, Inc., Roseville

The company listed below received a variance from **FLOOR AND WALL OPENINGS, STAIRWAYS AND SKYLIGHTS STANDARD, R220(1)**, requires (a) flight of stairs; (b) fixed industrial stairs; (c) ramp, to gain access to another elevation of more than 16 inches. The department allowed use of a ships ladder provided the ladder be secured at top and bottom and have hand rails extending 42" above the landing or step off point.

Arms and Cole, Inc., Traverse City

The company listed below received a variance from **GENERAL RULES STANDARD, R34(1)**, requires anti-tie down, constant pressure two-hand controls on some machines to prevent entrapment in closing mechanisms such as powered doors. The department allowed a single constant pressure control to close powered doors on wheel-a-brators, provided the control was installed not less than 72 inches from the nearest door closure pinch point.

Westside Sand Blasting, Inc., Detroit

The company listed below received a variance from **CONVEYORS STANDARD, R1421(7)**, requires pan or screen type guards under and up the sides of conveyors that pass over walkways. Due to proposed re-routing of the conveyor on or before April 16, 1977, the department granted a temporary variance allowing continued use of the conveyor provided that parts be adequately secured in the racks and the racks be adequately secured to the conveyor. Also, signs posted stating caution: Un-guarded conveyor overhead.

Keeler Brass Company, Grand Rapids

The company listed below received a variance from **POWERED INDUSTRIAL TRUCK STANDARD, R2176**

Continued....

(1), requires blocking of two rear wheels on a trailer when being boarded by a powered industrial truck. Due to an approximate 7 degree down slope or dockward thrust of vehicles at the dock, the department allowed blocking of rear wheels on the tractor when the tractor is coupled, both rear duals on the tractors to be blocked if a tractor is not coupled.

U.S.M. Corporation, Mt. Clemens

The company listed below received a variance from POWERED INDUSTRIAL TRUCK STANDARD, R2174 (1), prohibits leaving a powered industrial truck unattended. The department allowed use of the load lift mechanism on vehicles without authorized operators in attendance provided that the vehicle be so equipped that all controls automatically neutralize, the brake automatically set, and all power except to the load lift mechanism disengaged when the operator stepped off the vehicle and other conditions are involved.

Lear Siegler, Detroit

The company listed below received a variance from FIXED LADDERS STANDARD, R351(2), 355(1), requires safety devices or platforms on fixed ladders over 30 feet in unbroken length. The department allowed use of ladders over 30 feet in unbroken length provided that persons climbing the ladders be wearing safety harnesses attached to lifelines. The lifelines attended by two co-workers at all times. The operation under supervision the entire time persons were on the ladders.

Board of Water and Light, Lansing

The company listed below received a variance from FIXED FIRE EQUIPMENT STANDARD, R914(1)(a)(b) (2), requires installation of fixed fire equipment system in spray painting area. The department allowed stationing of two 250 lb. wheel type dry chemical portable units to cover an area approximately 80 feet long in a metal fabricating operation.

Planet Corporation, Lansing

The company listed below received a variance from PLASTIC MOLDING STANDARD, 6234(1), requires installation of safety gate point of operation protection. The department allowed installation of two-hand, constant pressure controls that could not be bridged and the controls requiring concurrent, constant pressure until the mold closes.

Nagle Industries, Roscommon

The company listed below received a variance from FIRE EXITS STANDARD, R632(2), requires that travel distance from an approved exit not exceed 75 feet from any point in a high hazard occupancy. The department allowed extending the travel distance to 125 feet into a dead storage corner and 100 feet in the center of the building provided that fully approved exits be installed to accommodate the extended distances.

Davis Products Company, Dowagiac

CONSTRUCTION INDUSTRY SAFETY DIVISION

The companies listed below received a variance from LIFTING & DIGGING STANDARD, R408.41012(2), Ref. ANSI B30.5-1968, Chap. 5-3.2.3 (e): To allow the use of a steel cage or skip box work platform for employees. Cage or skip is attached and moved with a crane under controlled conditions.

Herman Gundlach, Inc. (Cliffs Electric Service Co., Presque Isle Station - Units 7, 8 and 9)
Terre Haute Industries, Inc. (St. Clair Power Plant, St. Clair)
Thatcher Engineering Corp. (Bay City Pollution Abatement Program, Retention Treatment Structure)
Southkent Wrecking (Clipper Belt Lacer Company, Grand Rapids)
Charles J. Rogers Construction Co. (Pollution Abatement Program No. 1, Contract No. 4, Bay City)
Bechtel Corp. (Tilden Mine II Project, Ishpeming)
Morrison Construction Company (Detroit Edison River Rouge Power Plant)

The company listed below received a variance from EXCAVATION, TRENCHING & SHORING STANDARD, R408.40921(2): To allow the bottom of the trench sides to be cut 90 degrees from the vertical 18 inches. From this point, a trench box will be used with sides extending above existing top grade.

Rumsey Construction, Inc. (Kingsley Place Project, Lansing)

The companies listed below received a variance from EXCAVATION, TRENCHING & SHORING STANDARD, R408.40921(2): To allow the bottom of the trench sides to be cut 90 degrees from the vertical 24 inches. From this point, a trench box will be used with sides extending above existing top grade.

Katerberg Trenching, Inc. (Kalkaska)
T.A. Forsberg, Inc. (Ionia County Contract No. 4 Ionia)

The company listed below received a variance from LIFTING & DIGGING STANDARD, R408.41006(5): To allow the use of a hoist engine without the "deadman brake" control. Hoist engine used with rigging to hoist a concrete bucket.

Hough Brothers, Inc. (Various locations)

The company listed below received a variance from LADDERS STANDARD, R408.2205: To allow the use of a boatswains chair attached to the loadline of a crane to transport employee into manhole in lieu of a ladder.

Charles J. Rogers Construction Co. (Chevrolet Plant, Flint)

Continued.....

The company listed below received a variance from PERSONAL PROTECTIVE EQUIPMENT STANDARD, R408.40611(3): Employee working from an insulated platform must wear rubber gloves and sleeves where voltage between any two conductors is over 7500 volts, instead of 5000 volts.

Lake Superior District Power Co. (Various Locations)

The company listed below received a variance from LIFTING & DIGGING STANDARD, R408.41306: To allow the use of a case 350 loader without the rollover protection on "O" grades.

International Construction Co., Inc. (Various locations)

The company listed below received permanent variance for recognition of OSHA Scaffold Variance, 29 CFR 1926.451(a) (4) (5) and (10).

Chicago Bridge & Iron Company (Various locations)

The company listed below received a variance from TOOLS STANDARD, R408.41906(11): To allow the use of air pressure without the safety device at the source of supply for purposes of "jelling".

Clifton Engineering Company, Inc. (Various locations)

The companies listed below received a variance from GUARDRAILS, RUNWAYS & RAMPS STANDARD, R408.42107(1): To allow isolated areas to be exempt from the guardrail requirement.

Clark Construction Company (Waste Water Treatment Plant, Lansing)

Grand Rapids Tile & Mosaic Company (Waste Water Treatment Plant, Lansing)

The company listed below received a variance from MOBILE EQUIPMENT STANDARD, R408.41306: To allow the use of a tractor broom sweeper on level pavement without the rollover protection.

Ward and VanNuck, Inc. (Various locations)

The companies listed below received a variance from SCAFFOLDS STANDARD, R408.2101: To allow the use of stilts under controlled conditions.

Richey Drywall Company (Mary Street, Lansing)

Pung Plastering Company (Various locations)

Universal Ceiling & Partition Company (Livingston County Medical Care Facility, Howell)

The company listed below received a variance from GUARDRAILS, RUNWAYS & RAMPS STANDARD, R408.42113: To allow the handrail on stairways to be removed until after wall board and finishing of joints have been completed.

Richey Drywall Company (Mary Street, Lansing)

The company listed below received a variance from EXCAVATION, TRENCHING & SHORING STANDARD, R408.40921(2): To allow the bottom of the trench sides to be cut 90 degrees from the vertical 36 inches. From this point, a trench box will be used with sides extending above existing top grade.

Morelli Construction Company (Canton Sanitary Sewer - Phase III)

MICHIGAN DEPARTMENT OF PUBLIC HEALTH

DIVISION OF OCCUPATIONAL HEALTH

The company listed below received a variance from TUNNEL AND SHAFTS STANDARD, Ventilation In Pressure Tunnel, R6401(4) (g) (vi): Allow for use of an air circulation system with fan and ductwork at heading with compressed air supply at man lock as a substitute for supply air line to working face. Variance granted subject to four specific operating conditions.

Don Gargaro Company, Inc., Oak Park

VACANCY FILLED

Gov. William G. Milliken has appointed Dr. Donald J. Birmingham of Grosse Pointe Woods to the Occupational Health Standards Commission and has reappointed two other commission members.

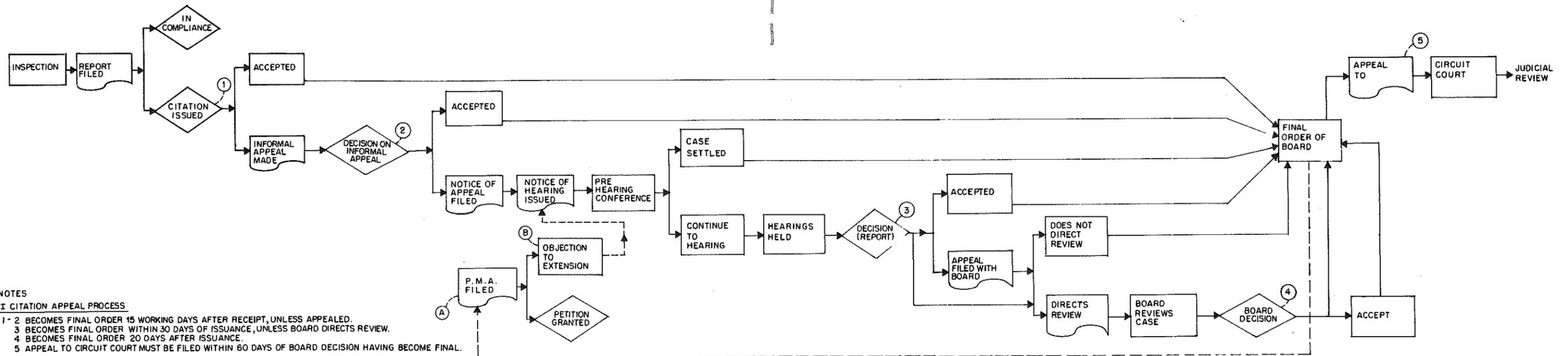
Dr. Donald J. Birmingham, 19811 Wedgewood Drive, Grosse Pointe Woods, Professor and Chairman of Wayne State University's Department of Dermatology and Syphilology, was appointed to the Occupational Health Standards Commission, succeeding the late Dr. William G. Fredrick of Farmington, and will serve the remainder of a term expiring August 5, 1977, as a public member. He is a former member of the board of directors of the American Academy of Dermatology, past president of the Detroit General Hospital Staff and past chairman of the American Medical Association's Committee on Occupational Dermatoses and Council on Industrial Health.

Dr. Ralph G. Smith, 24711 Tudor Lane, Franklin, Professor of Environmental and Industrial Health at the University of Michigan, will continue to serve as an employer representative for a term expiring August 5, 1979. Listed in the American Men of Science and Chemical Who's Who, he is a member of the Air Pollution Control Association, the American Conference of Governmental Industrial Hygienists and has served as past president of the Michigan Industrial Hygiene Society.

Dr. Lucile M. Portwood of Okemos, a public health specialist with the Michigan Department of Public Health, serves as an employee representative on the Commission. She has served as president of the Michigan State Employees Association, member of the Lansing Symphony Association Board of Directors, and as secretary of the Michigan Branch of the American Society of Microbiology. Her new term will expire August 5, 1979.

The appointment and reappointments are subject to Senate confirmation.

MIOSHA INSPECTION CITATION APPEAL PROCESS



NOTES

I CITATION APPEAL PROCESS

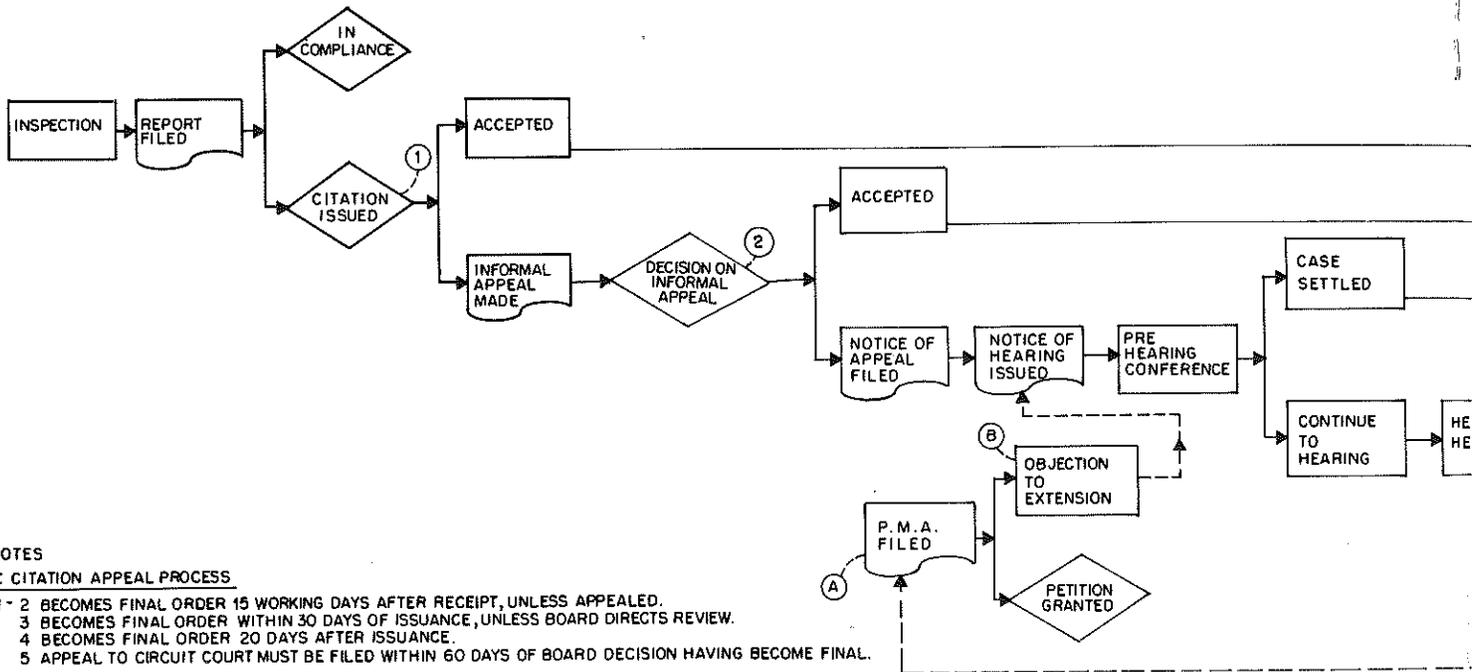
- 1- 2 BECOMES FINAL ORDER 15 WORKING DAYS AFTER RECEIPT, UNLESS APPEALED.
- 3 BECOMES FINAL ORDER WITHIN 30 DAYS OF ISSUANCE, UNLESS BOARD DIRECTS REVIEW.
- 4 BECOMES FINAL ORDER 20 DAYS AFTER ISSUANCE.
- 5 APPEAL TO CIRCUIT COURT MUST BE FILED WITHIN 60 DAYS OF BOARD DECISION HAVING BECOME FINAL.

II P. M. A. PROCESS

- A. PETITION FOR MODIFICATION OF ABATEMENT (P.M.A.) CAN BE FILED AT ANY TIME IN THE PROCESS AFTER CITATION HAS BECOME FINAL ORDER, AS LONG AS IT IS FILED BEFORE OR AT LEAST WITHIN ONE DAY OF THE EXPIRATION OF THE ABATEMENT PERIOD FOR WHICH AN EXTENSION IS BEING SOUGHT.
- B. OBJECTION TO P.M.A. REQUEST MAY BE FILED BY AFFECTED EMPLOYEES OR DEPARTMENT.



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PROCESS

DOCUMENT

DECISION (DOCUMENT)

SUMMARY OF HEARINGS RESULTS

The following is a summary of hearings results under the MIOSHA appeal process as of September 30, 1976:

J.E. HOETGER & COMPANY - NOA 75-131 AA

The employer did not file a petition for review pursuant to section 41 of Act 154 of the Public Acts of 1974, as amended, within 15 working days after its receipt of the citation issued by the Department of Labor. Notwithstanding the employer's late petition for review, the Department of Labor issued a decision in response to the employer's petition affirming the citation previously issued. The employer filed an "appeal" from this decision.

The Hearings Officer held that the Board had no jurisdiction to hear the employer's "appeal" from the Department's decision. The citation became a final order of the Board under section 41 of the act at the end of the 15th working day after the employer's receipt thereof, there not having been filed a petition for review during this period of time. The fact that the Department of Labor gratuitously issued a decision in response to the employer's petition and the employer then filed a timely "appeal" from this decision to the Board did not confer jurisdiction on the Board.

CHRYSLER CORPORATION - NOA 75-30 AA - HUBER FOUNDRY

Three issues were presented in this appeal. The first concerned whether the complainant stated with sufficient particularity the violations alleged concerning R408.10015(2) relating to housekeeping requirements. It was held that section 33 of the Act does not require specificity of the location of an alleged violation. The citation must describe with "particularity" the "nature" of the violation. It was not necessary in the case for the Department of Labor to specify each pile of sand alleged to be a tripping hazard throughout the employer's plant. A general statement that the employer failed to maintain floor and work areas free of slip and trip hazards was sufficient.

The second issue concerned the question of whether Part 72 entitled "Automotive Service Operations" of the Occupational Safety Standards has application to violations alleged in the truck repair department of the Huber Foundry, a manufacturing facility. It was held that "manufacturing" was not being carried on in the truck repair department of the Huber Foundry. In this department where high-lo trucks were being repaired, Part 72 of the Occupational Safety Standards could be applied.

The third issue concerned the question of whether the Board lacked jurisdiction concerning an item on appeal due to the fact that the Department of Labor did not issue its decision on this item within 15 working days after receipt of the employer's petition for review. It was held that the language of section 41 of the Act places a mandatory requirement on the Department of Labor to issue its decision in response to an employer's petition for review within 15 working days after the Department's receipt of said petition. Failure of the Department to issue its substantive decision concerning the item protested by the employer must result in a dismissal of the item under contest.

NELSON-MILL COMPANY-NOA 75-178 AA

The issue in this case concerned the jurisdictional issue presented in the third issue of the Huber Foundry case referred to above. The citation on appeal was dismissed for lack of jurisdiction due to the fact that the Department of Labor failed to respond to the petition for review of the employer within 15 working days from the Department's receipt of the employer's petition.

MICHIGAN STATE UNIVERSITY-NOA 75-103 AA

The employer was cited for violation of Part 1, R408.10034(3) relating to the providing of a point of operation guard on a garbage disposal machine. A guard was prepared by the employer and placed on the garbage disposal device after the inspection. It was held that the facts presented in the record established a violation of the standard by the employer with respect to operation of the garbage disposal device. It was held that it was not a defense for the employer to allege that the particular industry involved did not produce a guard for the particular device in question. If such argument was followed, enforcement of occupational safety standards would be predicated upon the recognition and manufacture by the industry being regulated of guarding devices. This would place the industry and not the Department of Labor in a position to control enforcement of occupational safety standards.

BROWNE MORSE COMPANY-NOA 75-111 AA

The employer was cited for violation of Part 2 of the Occupational Safety Standards, R408.10241 dealing with the maintenance of floors. It was established that the employer failed to maintain the second floor of the plant facility free of broken and worn areas. The facts were clear that the employer was in violation of the cited standard. Numerous areas of the second floor had become splintered and damaged causing extreme differences in height which could easily present tripping hazards to employees. Moreover, pieces of wood from the decaying floor had been left lying about.

CLARK EQUIPMENT COMPANY-NOA 75-33 AA

The employer filed a motion to withdraw its appeal concerning Occupational Safety Standard Part 1, R408.10034(3) relating to providing a point of operation guard for certain press brakes in use at the employer's place of business. This request to withdraw was granted by the Hearings Officer.

CITY OF GROSSE POINTE FARMS-NOA 75-104 AA

The Department of Labor filed a motion to dismiss the citation on appeal. This motion to dismiss was granted by the Hearings Officer.

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ALLIED SUPERMARKETS, INC.—NOA 75-155 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the item on appeal. The Hearings Officer approved the Settlement Agreement of the parties.

SCHEMA ROOFING AND SHEET METAL COMPANY—NOA 75-126 AA

The employer filed a motion to withdraw its appeal concerning Construction Safety Standard R408.42104(1) relating to the guarding of a floor opening. This request to withdraw was granted by the Hearings Officer.

THUMB ELECTRIC COOPERATIVE—NOA 75-125 AA

The employer filed a motion to withdraw its appeal concerning Construction Safety Standard Part 6, R408.40611(4)(b) relating to the enforcement of the wearing of insulated gloves and sleeves. This motion to withdraw was granted by the Hearings Officer.

METAL SPECIALTIES, INC.—NOA 75-133 AA

The employer filed a motion to withdraw its appeal concerning Occupational Safety Standard Part 23, R408.12373(16) relating to the reporting of injuries. This request to withdraw was granted by the Hearings Officer.

EDRICK M. OWEN, INC.—NOA 75-114 AA

The employer filed a motion on June 17, 1976 to withdraw its appeal dated June 30, 1975. This motion to withdraw was granted by the Hearings Officer.

NORRIS INDUSTRIES—PMA 76-573 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the extensions of abatement time at issue. The Hearings Officer approved the Settlement Agreement of the parties.

CHAMPION SPARK PLUG COMPANY—PMA 76-561 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the extensions of abatement period at issue. The Hearings Officer approved the Settlement Agreement of the parties.

NICKLYN BUILDERS—NOA 76-192 AA

The employer appealed three items on one citation but failed to attend the hearing and prehearing conference scheduled on this appeal. In the employer's absence, the Department of Labor moved the Hearings Officer to dismiss items 2 and 3 of the subject citation as being improperly cited. The Department of Labor also petitioned the Hearings Officer to order a full refund of the fines previously paid by the employer since after dismissing two of the items on the citation, the amount of the proposed

penalty would be below \$20. It was the Department's policy not to assess any fines against an employer when the amount of the citation as a whole was below \$20.

Accordingly, based on the failure of the employer to appear and prosecute its appeal and upon consideration of the petition of the Department of Labor, items 2 and 3 of the subject citation were dismissed as being improperly cited. Item 1 on the subject citation was affirmed as to the alleged violation contained therein concerning a violation of Part 6, R408.40602(1).

BROOKES PRINTING COMPANY—NOA 76-212 AA

The employer appealed the proposed penalties assessed concerning two items but failed to attend the prehearing conference and hearing scheduled on this appeal. The appeal was therefore dismissed for lack of prosecution by the appellate employer.

CHRYSLER CORPORATION-ELDON AXLE PLANT—NOA 75-83 AA

The Department of Labor filed a motion to dismiss the citations on appeal. This motion to dismiss was granted by the Hearings Officer.

TOM RYAN DISTRIBUTING COMPANY—NOA 75-135 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the item on appeal. The employer filed a motion to withdraw its appeal concerning the item itself. The parties agreed to an extended abatement date for correction of the alleged violation. The item at issue concerned a violation of the Occupational Safety Standards, Part 21, R2143(2) concerning overhead guards and lift trucks. The Hearings Officer granted the employer's motion to withdraw its appeal and approved of the abatement date extension agreed to by the parties.

LAKE SHORE INC.—NOA 75-119 AA

The employer filed a motion dated July 22, 1976 to withdraw its appeal filed on June 25, 1975 with respect to two items on a citation. This request to withdraw was granted by the Hearings Officer.

SANDERS, INC. —NOA 76-200 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the item on appeal. The Hearings Officer approved the Settlement Agreement of the parties.

FEDDERS REFRIGERATION COMPANY—NOA 75-144 AA

The Department of Labor filed a motion to dismiss the citation on appeal. This motion to dismiss was granted by the Hearings Officer.

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ASBESTOS SERVICE COMPANY—NOA 75-120 AA

The employer failed to file a timely appeal with the Board of Health Safety Compliance and Appeals within 15 working days after its receipt of the Department of Labor's decision. The decision was sent only to the employer involved and not to the Attorney for the employer. The Attorney had filed a petition for review after the employer's receipt of the citation but the Department neglected to send the Attorney a copy of the decision. Evidence of the employer's receipt of the Department's decision was in the Board file in the form of a post office return receipt. The employer argued that MCLA 600.1968, being a portion of the Revised Judicature Act of 1961, as amended, requires service to be made on an Attorney when a party is represented by counsel.

It was held by the Hearings Officer that the first stage of review at the Department level, provided for in section 41 of the act, (prior to the Board acquiring jurisdiction) is intended to be informal in nature. The Revised Judicature Act has no applicability to this level of review. Therefore, it was not held that the provision of the Revised Judicature Act cited by the employer required service by the Department of its decision upon the Attorney for the employer.

Moreover, section 41 of MIOSHA specifically requires the Department to notify the employer of the Department's decision within 15 working days after the receipt of the petition for review. In this case the decision was served upon the employer as required. The employer failed to file a timely appeal with the Board of Health Safety Compliance and Appeals and therefore the Board lacked jurisdiction to hear the employer's late appeal. The decision of the complainant therefore, became a final decision of the Board by operation of law under section 41 of the Act.

ADVANCED STAMPING COMPANY—NOA 75-108 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the issues on appeal. The Hearings Officer approved all of the provisions of said Settlement Agreement except those pertaining to items where the Department of Labor had not issued its decision in response to the employer's petition within 15 working days after the Department's receipt of the employer's petition for review. For two items on appeal the Department of Labor had not issued its decision concerning these items within 15 working days after receipt from the employer of a petition of review. Accordingly, these items were dismissed pursuant to the holdings of the Hearings Officer in Director of Labor v Chrysler Corp-Huber Foundry, Appeal Docket No. NOA 75-30 AA and Director of Labor v Nelson-Mill Co, Appeal Docket No. NOA 75-178 AA.

FEDERAL AWNING CORPORATION—NOA 75-134 AA

The employer appealed item 5 on the subject citation alleging a repeat violation of Part 27, R2730(1) of the Occupational Safety Standards relating to the guarding of three radial arm saws. The appeal was dismissed for lack of prosecution by the appellant employer who failed to appear at the scheduled prehearing conference and hearing.

AMERICAN BRIDGE DIVISION NOA 75-1 AA
U.S. STEEL CORPORATION — NOA 75-160 AA
NOA 75-161 AA

The issue presented in this case concerned the question of whether the employer violated Construction Safety Standards, Part 6, R408.40603(1) concerning the use of safety nets for "connectors". It was held that safety nets were required to be used by the employer. Related issues were presented concerning whether the citation adequately informed the employer of the nature of the violations alleged, whether the department abused its discretion in issuing the citations, and whether installation of the nets would have been more hazardous than not using nets.

ESSEX INTERNATIONAL, INC. —NOA 76-199 AA

The appeal of the employer was dismissed by the Hearings Officer because it was filed beyond the 15 working day period permitted for appeals to the Board under Section 41 of MIOSHA.

MOLD EX-RUBBER, INC. — NOA 75-159 AA

The issue presented in this case was whether 13 press machines in use by the respondent were required to be guarded by Occupational Safety Standards, Part 1, R34(3). The Hearings Officer held that such guarding was required even though the upward traveling ram moved at speeds of 5 to 30 seconds.

SHERRILL ELECTRIC CORPORATION, INC. —
NOA 76-241 AA

The employer appealed citation CS 011224 alleging violation of various Construction Safety Standards. The appeal was dismissed for lack of prosecution by the appellant employer who failed to appear at the scheduled prehearing conference and hearing.

ESSEX INTERNATIONAL—NOA 75-184 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the item on appeal. The Hearings Officer approved the Settlement Agreement of the parties.

THE CHRISTMAN CORPORATION—NOA 76-298
NOA 75-130 AA

The employer filed a Motion dated August 3, 1976 to withdraw its appeals dated September 11, 1975 and September 16, 1975 with respect to all items on citations CS 006727, CS 006778 and item 2 on citation CS 006777. The department filed a Motion to dismiss item 1 on citation CS 006777. These Motions were granted by the Hearings Officer.

WYANDOTTE PAINT PRODUCTS CORPORATION—
PMA 76-809 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the extension of abatement time at issue. The Hearings Officer approved the Settlement Agreement of the parties.

ESSEX INTERNATIONAL—NOA 75-142 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the items on appeal. The Hearings Officer approved the Settlement Agreement of the parties.

PRODUCTION DIE & STAMPING COMPANY, INC.—PMA 76-769 AA

The employer and the Department of Labor entered into a Settlement Agreement concerning the extensions of abatement time at issue. The Hearings Officer approved the Settlement Agreement of the parties.

BECHTEL POWER CORPORATION—NOA 76-247 AA

The employer filed a Motion dated September 15, 1976, to withdraw its appeal filed on April 22, 1976, with respect to two items on a citation. This request to withdraw was granted by the Hearings Officer.

GATEWAY TRANSPORTATION CORPORATION, INC.—NOA 76-233 AA

The issue presented in this case was whether Occupational Safety Standards, Part 21, R2176(1) required the employer to use 2 blocks for the wheels of a trailer or whether a single block was sufficient. It was held by the Hearings Officer that 2 blocks were required.

BOARD ROLE EXPLAINED

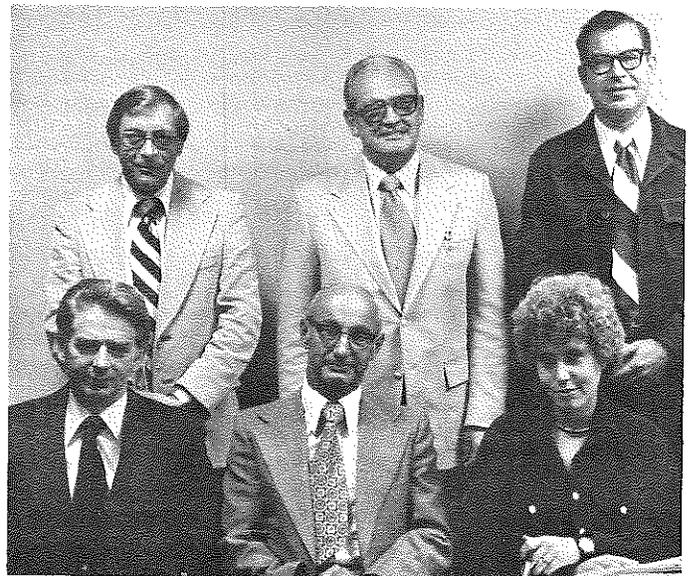
The Board of Health and Safety Compliance and Appeals (BHSCA) consists, by statute, of seven members appointed by the Governor with the advice and consent of the Senate to serve in a quasi-judicial capacity. The membership of the Board stands evenly divided between Labor and Management with a seventh member representing the public and serving as chairperson.

The Board is established, for administrative purposes, in the Department of Labor's Bureau of Public Affairs, Hearings Division, but is designed to have jurisdiction over both the Department of Labor and the Department of Public Health with respect to appeals regarding citations issued for violations of standards, rules or provisions of MIOSHA.

The Board's authority applies to all safety and health citations, orders and appeals. It may uphold, modify, or dismiss citations or penalties issued by the Departments. The Board also has a more limited authority to grant, modify, or deny petitions for modification of abatement dates contained in citations that have already become final orders of the Board. It may order testimony to be taken at a hearing or by deposition, may compel witnesses to appear and depose, and may order the production of books, papers or documents for use in any proceeding before it.

The Board must promulgate rules of procedure for the conduct of hearings or in response to appeals, and the rules must provide for a hearings officer to make a determination upon a proceeding before the Board. The hearings officer's proposed decision may become the final decision of the Board without change, unless a member directs review of the decision within 30 days of the issuance of the hearings officer's proposed decision. In which case, the Board in reviewing the matter may affirm, modify, or reverse the proposed decision.

The Board, as an administrative body, is bound by certain constitutional requirements to provide due process and fair hearing in the conduct of its quasi-judicial proceedings.



MEMBERS OF the Board of Health and Safety Compliance and Appeals are pictured above. Back row, left to right: William E. Stewart, Associated General Contractors, management representative (construction industry); George M. Van Peurse, Michigan Manufacturers Association, management representative (general industry); Paul F. Woolrich, Upjohn Company, management representative (health industry).

Front row, left to right: James P. Malley, International Brotherhood of Electrical Workers, Local 58, labor representative (construction industry); Dr. Richard G. Pfister, Michigan State University, chairman, public representative; Vicki Kennedy, UAW, Labor representative, (General Industry). Not pictured: Edward J. McNamera, United Steelworkers of America, District 29, AFL-CIO, labor representative (health industry).

In order to meet its constitutional and statutory obligations, the Board's rules and procedures must meet the test of due process and fair hearing. Under the State Plan agreement, such rules must also be similar to the Rules of Procedure for the Federal OSHA, Occupational Safety and Health Review Commission.

BOARD ACTIONS LISTED

During the third quarter of 1976, the Board of Health and Safety Compliance and Appeals has decided no new cases. Tishman Construction Company-vs-Director of Labor, NOC 75-9 AA and Whitehead and Kales-vs-Director of Labor, NOA 75-18 AA are still pending, as is the Detroit Edison-vs-Director of Labor, NOC 75-11 AA.

The Board has directed review in Mold Ex-Rubber Company-vs-Director of Labor, NOA 75-159 AA. The issue concerns the application of the power press guarding requirements to the employer's equipment.

In three cases involving requests made by the parties to review the Hearings Officer's decision, the Board affirmed the Hearings Officer's proposed decision by failing to direct review within the 30 day period provided for such directions. One of the cases, Huber, Foundry, Division of Chrysler Corp.-vs-Director of Labor, NOA 75-30 AA, has been appealed to the Wayne County Circuit Court and is pending. The other two cases, Michigan State University-vs-Director of Labor, NOA 75-103 AA and American Bridge, Division of U.S. Steel Corp.-vs-Director of Labor, NOC 75-1 AA, NOA 75-160 AA and NOA 75-161 AA (cases were consolidated for hearing), at this time, have not been appealed to the circuit court level.

NEW PHONE NUMBER FOR REPORTING FATALITIES AND CATASTROPHES

The phone number for reporting work fatalities or catastrophes has been changed to 517/322-0333. This is the number of the Michigan Department of Labor's 24-hour automatic telephone answering service.

Section 61(1) of Act 154 requires that "the employer shall notify the department of Labor within 48 hours of a fatality or any hospitalization of 5 or more employees suffering injury from the same accident or illness from exposure to the same health hazard associated with their employment."



SOURCES OF HELP OR INFORMATION ON MIOSHA

Michigan Department of Labor, Bureau of Safety & Regulation, State Secondary Complex, 7150 Harris Drive, P.O. Box 30015, Lansing, Michigan 48909.

Write for Occupational Standards

Standards Division, Michigan Department of Labor, Bureau of Safety & Regulation, State Secondary Complex, 7150 Harris Drive, P.O. Box 30015, Lansing, Michigan 48909.

For Safety Consultative and Training Services Contact:

Safety Education & Training Division at the above address or call:

Lansing Office -- 517/373-9160

Detroit Office -- 313/256-3620

For Industrial Hygiene

Michigan Department of Public Health, Division of Occupational Health, 3500 North Logan, Lansing, Michigan 48906.

Phone: 517/373-1410

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Bureau of Safety and Regulation
Safety Education and Training Division
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