

ALASKA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD  
POST OFFICE BOX 21149  
JUNEAU, ALASKA 99802-1149

STATE OF ALASKA, )  
DEPARTMENT OF LABOR, )  
Complainant, )  
v. )  
COSTCO WHOLESALE, INC., )  
Contestant. )

**RECEIVED**  
Department of Labor

AUG 13 1990

Office of the Commissioner

Inspection No. Ru-2218-767-89  
Docket No. 89-811

DECISION AND ORDER

On October 26, 1989, the State of Alaska, Department of Labor ("Department") conducted an inspection of a workplace under the control of Costco Wholesale, Inc. ("Costco") at 330 West Dimond Boulevard, Anchorage, Alaska. As a result of the inspection, the Department issued five citations to Costco for violations of Alaska occupational safety and health codes.

Citation No. 1 alleges a violation of General Safety Code 01.0312(a)(6) for failure to provide easy access to the emergency eye wash station; the violation was classified as a "repeat" violation and a penalty of \$2,000 was assessed. Citation No. 2 alleges a violation of General Safety Code 01.0702(c)(1) for storing fuel in plastic and metal containers in and next to the electrical room; the violation was classified as "serious" and a penalty of \$800 was assessed. Citation No. 3 alleges a violation of General Safety Code 01.0701(b) for failure to store goods and materials so that they are stable and secure against sliding or

collapse; the violation was classified as "serious" and a penalty of \$800 was assessed. Citation No. 4 alleges a violation of General Safety Code 01.0401(b)(1) for failure to furnish or require safety footwear for employees working in the receiving and storage areas; the violation was classified as "serious" and a penalty of \$800 was assessed. Citation No. 5 alleges a violation of General Safety Code 01.0703(g)(2) for failure to establish proper controls for the removal of damaged batteries that were capable of venting excess gasses while charging and discharging; the violation was classified as "other than serious" and no monetary penalty was assessed.

Costco timely contested the citations, bringing the matter within the Board's jurisdiction. A hearing was held before the full Board in Anchorage on May 15, 1990. The hearing officer was Robert W. Landau, Esq. The Department was represented by Assistant Attorney General Toby N. Steinberger. Costco was represented by Manager Dave Fackler and Assistant Manager Wayne Harris. Both parties submitted evidence in the form of witness testimony and document exhibits. The record was deemed closed at the conclusion of the hearing. Following are the Board's finding of fact, conclusions of law, and order.

#### FINDINGS OF FACT

1. On October 26, 1989, Department compliance officer Michael Russell conducted an occupational safety and health inspection of Costco's wholesale location at 330 West Dimond Boulevard in Anchorage, Alaska. The inspection was prompted by a complaint from a Costco employee concerning the storage of leakin

and damaged batteries on the premises. Under the Department's inspection guidelines, compliance officers are authorized to investigate not only the condition complained of but also any other "plain view" safety or health violations.

2. During his inspection, Russell noted that access to the eye wash station near the battery service area was blocked by several large metal racks ("box racks") approximately 3 feet wide, 5½ feet long, and 5 feet high. Costco representatives acknowledged that the box racks were in the way of easy access to the eye wash station but maintained that the racks had been placed there inadvertently and were immediately removed as soon as the inspector pointed out the situation.

3. Costco had been cited previously by the Department for providing inadequate access to the eye wash area following an inspection on April 14, 1989, at the same workplace. For the initial violation Costco had been assessed a penalty of \$560; for the "repeat" violation (Citation No. 1) the assessed penalty was \$2,000 pursuant to the Department's penalty calculation guidelines.

4. Compliance Officer Russell also noticed that over 80 gallons of fuel were being stored in five-gallon plastic and metal containers in the electrical room. The fuel was intended for use in the backup generator located in the same room. Costco maintained that the fuel had been stored in that area for five years and that no other government agency, including the Fire Department, had ever said anything about it. Costco removed the fuel containers immediately after Russell pointed out the possible explosion hazard.

5. In the area where goods and materials were stored, Russell observed several instances where palleted goods were double and triple stacked. See Department Exhibit 6. In Russell's judgment, such stacking of goods was insecure and endangered employees as well as customers passing beneath the area.

6. In response, Costco denied that any goods were triple stacked and contended that in five years of operation not one employee or customer had been hurt on account of falling goods or materials. In addition, Costco pointed to its comprehensive safety program where Costco personnel conduct floor walks regularly each day to ensure that all stored goods are securely and safely tied down.

7. Russell additionally observed that employees working in the receiving and storage areas were not furnished or required to wear safety shoes. Russell noted that Costco's occupational safety records showed a relatively high rate of foot injuries in 1988-89 with six foot injuries during that period at that location.

8. Costco acknowledged that it did not furnish or require safety shoes for employees in the receiving or storage areas, but contended that occupational injury records showed that most of the employee foot injuries were not related to proper footwear. Costco further maintained that an analysis of its injury records shows very few foot injuries in relation to the large volume of goods handled and that most of the foot injuries were so minor that the company was not even required to notify the Department of Labor of their occurrence.

9. With respect to Citation Nos. 2, 3, and 4, Russell classified these violations as "serious" because of the probability of serious injury in the event of an accident. Under the Department's penalty guidelines, the initial penalty for each of these violations was \$1,000; Costco was given a 20% reduction for good faith and prior history, resulting in an adjusted penalty of \$800 for each violation.

10. Regarding Citation No. 5, Russell observed that several forklift batteries in the battery service area had cracked cases, creating the potential for leakage and venting of excess gasses while charging and discharging. See Department Exhibit 9. However, he was not able to establish that any of the damaged batteries were in fact venting excess gasses; and so the violation was classified as "other than serious" and no monetary penalty was assessed.

11. According to Costco, it had placed purchase orders for new forklift batteries but, through no fault of its own, there was a delay in delivery of the batteries and therefore Costco had been still using the old cracked batteries. Because the delay was out of its control, Costco did not feel this citation was justified.

#### CONCLUSIONS OF LAW

After carefully considering the testimony and documents submitted by both parties in this matter, we conclude that the Department has established by a preponderance of the evidence the existence of each of the five code violations cited, and that employees were exposed to the resulting hazards. Furthermore, we

find that the explanations given by Costco for each of the violations, while understandable, are not legally sufficient to excuse or justify the hazards created.<sup>1</sup>

Citation No. 1: It is undisputed that several box racks temporarily impeded employee emergency access to the eye wash station near the battery servicing area. This was the second time in six months at the same location that Costco had been cited for blocked access to the eye wash station. Even though the obstruction may have been temporary in duration and was immediately corrected by Costco, it nonetheless posed a hazard to employees and has the potential for occurring again. In the event of an eye accident in the battery servicing area, there is little time to clear obstructions out of the way. Costco should take steps to assure that ready access to the eye wash station remains unblocked at all times. (

Citation No. 2: The evidence establishes that over 80 gallons of fuel were stored in and next to the electrical room near the generator. In our view, this created a serious explosion hazard that should have been obvious to Costco. The fact that the Fire Department never said or did anything about this condition is legally irrelevant and in no way excuses or justifies the hazard created.

Citation No. 3: While the General Safety Code does not specify a maximum number of tiers of goods that may be stacked, we

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<sup>1</sup> Despite our conclusion in this case, we commend Costco representatives Fackler and Harris for their thorough presentation at the hearing. Our ruling is not intended to cast doubt on the sincerity of their testimony. (

believe that the compliance officer's testimony, illustrated by the Department Exhibit 6, establishes that goods were stacked by Costco in an unstable, insecure and unsafe manner. In particular, Exhibit 6 shows that different-sized goods were stacked in multiple tiers and that larger items were sometimes stacked on top of smaller items. The pallet loads do not appear to be tied down or secured in any way. In the event of even a single collapse, the potential for serious injuries to employees working below is plain. The fact that Costco personnel perform regular floor walks throughout the day does not lessen or mitigate the seriousness of the hazard created by unsafe stacking of goods.

Citation No. 4: From the documentation provided by Costco, it is evident that thousands of pallet loads of goods are handled by Costco employees each year, yet safety footwear is neither required nor furnished by the company. Moreover, Costco employee injury records show a number of foot injuries in the preceding two years as a result of items falling on the feet or toes of employees. We are unpersuaded by Costco's contention that the rate of foot injuries as a percentage of pallet loads handled is not excessive. Even a single foot injury that could have been prevented by requiring or providing safety shoes is one occupational injury too many.

Citation No. 5: The photographs and testimony supplied by the Department leave little doubt that the damaged batteries in the battery servicing area created a safety hazard for nearby employees. While the replacement of these batteries may have been delayed for reasons beyond Costco's control, it is still Costco's

responsibility as an employer to make sure that employees are not exposed to potentially dangerous hazards in the workplace. In our opinion Costco should have taken alternative means to prevent employee exposure to the hazard, such as by removing the damaged batteries to a storage area away from employees, or not using its forklifts until new batteries had arrived.

Penalties: The monetary penalties assessed by the Department were calculated in accordance with the guidelines set forth in the Department's compliance manual. As to Citation Nos. 2, 3, and 4, we note that the Department reduced the proposed penalty by 20% for Costco's good faith in promptly abating the violations as well as the fact that Costco had not previously violated the same code provisions. As to Citation No. 1, no reduction was given as this was a second violation and the previous violation had occurred only six months before at the same location. Given the size of Costco's operation and the number of its employees, we do not believe that the Department abused its discretion in calculating these penalties and can find no reason to further adjust any of the penalty amounts. We commend Costco on its prompt abatement of the hazards cited, but we believe that the Department has already given the maximum allowable credit for such prompt abatement.

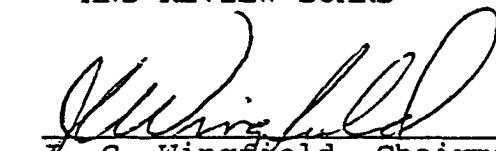



ORDER

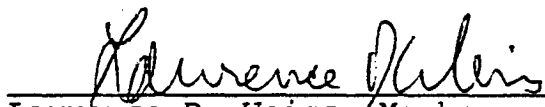
Based on the foregoing findings of fact and conclusions of law, each of the citations and penalties issued by the Department in this matter is hereby AFFIRMED as cited.

Dated this 21<sup>ST</sup> day of August, 1990.

ALASKA OCCUPATIONAL SAFETY  
AND REVIEW BOARD

  
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J. E. Wingfield, Chairman

  
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Donald F. Hoff, Jr., Member

  
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Lawrence D. Weiss, Member

