
**APPEALS BOARD
UTAH LABOR COMMISSION**

**UTAH OCCUPATIONAL SAFETY
AND HEALTH DIVISION,**

Petitioner,

vs.

AUTOLIV ASP INC.,

Respondent.

**ORDER ON MOTION
FOR REVIEW**

Case No. 5304416092

Autoliv ASP Inc. asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Lima's decision upholding three “serious” citations issued by the Utah Occupational Safety and Health Division (“Utah OSHA”) against Autoliv for alleged violations of workplace safety standards established under § 34A-6-201 of the Utah Occupational Safety and Health Act (“the Act”).

The Appeals Board exercises jurisdiction over this motion for review pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-6-304 of the Utah Occupational Safety and Health Act.

BACKGROUND AND ISSUES PRESENTED

Utah OSHA initially cited Autoliv for six “serious” and three “other-than-serious” violations of workplace safety standards. Autoliv contested the citations and, in previous proceedings, Judge Eblen dismissed the first and second “serious” citations. Judge Lima then held an evidentiary hearing on the remaining citations. During that hearing, Autoliv withdrew its opposition to the three “other-than-serious” citations. Judge Lima then dismissed subpart A of the third “serious” citation and the fourth “serious” citation in its entirety. Judge Lima upheld the remaining subparts of the third “serious” citation as well as the fifth and sixth “serious” citations.

In requesting review of Judge Lima’s decision, Autoliv contends that the third “serious” citation, based on alleged violations of process safety management standards, should be dismissed because the Utah OSHA inspector who issued the citation was not qualified to conduct process safety management inspections. Autoliv contends that the fifth “serious” citation, based on alleged violations of lock-out/tag-out (“LOTO”) standards, should be dismissed because the activities that gave rise to the citation were not subject to LOTO standards. Autoliv contends that the sixth “serious” citation, for alleged failure to comply with instructions for use of equipment, is not supported by the evidence. Finally, Autoliv argues that Utah OSHA has failed to establish that any of the pending citations is properly classified as a “serious” violation.

FINDINGS OF FACT

Autoliv engages in research, development and production of igniters and pyrotechnics in various facilities at Promontory, Utah. During early 2002, Mark Vandover, a Utah OSHA compliance officer, inspected parts of the Promontory facility for compliance with workplace safety standards. He then issued the three “serious” citations against Autoliv that are the subject of this decision. The facts material to each citation are set forth below.

Citation 3—process safety management/piping and instrument diagrams. Mr. Vandover evaluated the accuracy of Autoliv’s piping and instrument diagrams by comparing diagrams for equipment located in Autoliv’s ASP 13 facility to the equipment as it was actually installed. Mr. Vandover identified the following instances in which the diagrams did not match the installation. (Because subpart A of this citation was dismissed by Judge Lima, the following index begins with subpart B.)

- Subpart B: Water line and nozzles in bag house shown on diagram not actually present;
- Subpart C: Incorrect source of air for two pneumatic lines into the powder hold-up hopper;
- Subpart D: Vent line and butterfly valve at product receiver not actually present;
- Subpart E: The hopper pneumatic instrument line shown on diagram not actually present;
- Subpart F: Instrumentation line regulator and dryer shown in reverse order on diagram;
- Subpart G: Diagram incorrectly shows one water line and no valves or gauges at the cooling water tank--two water lines and two valves actually present;
- Subpart H: Diagram incorrectly shows bypass line and four valves at colloid mill 2-A;
- Subpart I: Diagram fails to show bypass on output line between slurry pump and slurry mix tank;
- Subpart J: Diagram shows flow temperature gauge in wrong location on hot water line;
- Subpart K: Diagram shows bypass line and two valves not actually present on plant hot water line;
- Subpart L: Diagram shows temperature gauge and control arrangement in incorrect location on line existing slurry mix tank.

At the evidentiary hearing in this matter, Alfred Walker, Autoliv’s manager for process engineering, facilities engineering and maintenance, confirmed that Autoliv’s diagrams did not match the actual installations in each of the foregoing instances.

Citation 5: “lock-out/tag-out.” Mr. Vandover’s inspection of Autoliv’s process safety management program included a review of its LOTO (lock-out/tag-out) procedures. In general, LOTO standards require that equipment be de-energized while personnel are working on the equipment. LOTO standards also generally require that locks, rather than tags, be used whenever possible to ensure that equipment remains de-energized. Mr. Vandover observed the following deficiencies in Autoliv’s LOTO procedures.

Citation 5, part A. In Autoliv's building ASP 37, material is fed in at the top level, goes through various processes, and is then deposited into two storage containers at the bottom level. When both storage containers are full, a worker must enter the bottom level to remove the full containers and replace them with empty containers. To protect the worker changing the containers, Autoliv requires that the electrical power switch on the building's outside wall be tagged off. It would have been feasible for Autoliv to use a lock, rather than a tag, to maintain the switch in an "off" position, thereby providing greater protection for the worker changing the containers inside the building.

Citation 5, part B. Autoliv's building ASP 5 contains a production facility designated as "bay 12." The evidentiary record does not identify the activities that take place in this location, but the record does establish that workers are required to occasionally enter the bay in the course of production activities. At such times, Autoliv requires the worker to lock off the electrical power switch. However, workers are prohibited from taking any metal items into the bay. For that reason, workers leave the key to the lock sitting next to the lock, which presented the possibility of other individuals using the key to turn on the switch while the workers were still inside the facility. Autoliv could use a combination lock, rather than a keyed lock, to prevent such an event from occurring.

Citation 5, part C. Autoliv's building ASP 41 contains extruding machinery that forms product into a particular shape. The machine is powered by electricity, pneumatic pressure and hydraulic pressure. From time to time, workers must stop and open the machinery, then reach inside to make adjustments, remove finished product, clean parts, and add raw materials. Autoliv had an appropriate process to lock out electrical energy at such times, but had no procedure to de-energize the pneumatic and hydraulic systems.

Citation 6—electrical supply violations. Also in connection with the inspection of Autoliv's facilities, Mr. Vandover observed the following three situations in building ASP 36 which he considered to be violations of electric supply safety standards.

Citation 6, part A: Use of an interior outlet box in conjunction with a flexible electrical cord in an exposed environment.

Citation 6, part B: Placement of a flexible electrical cord through a hole in a concrete wall, thereby exposing the cord to greater wear and tear than it was intended to handle.

Citation 6, part C: A flexible electrical cord was not connected to the outlet box so that tension would not be transmitted to joints or terminal screws.

DISCUSSION AND CONCLUSIONS OF LAW

Section § 34A-6-102 of the Utah Occupational Safety and Health Act defines the Act's purpose as preserving human resources by providing for the safety and health of workers. Section 34A-6-104(1) of the Act authorizes the Labor Commission to "make, establish, promulgate and enforce all necessary and reasonable rules and provisions to carry the Act into effect." Pursuant to this authority, the Utah Labor Commission has adopted many of the safety standards established by federal OSHA, including the following federal standards material to this proceeding:

- 29 CFR 1910.119--Process Safety Management;
- 29 CFR 1910.147 --Lock-out/tag-out;
- 29 CFR 1910.303 (b) (2)--Use of listed or labeled equipment.

The propriety of Utah OSHA's citations against Autoliv for violations of these standards is discussed below.

Citation 3, parts B through L--29 CFR 1910.119/Process safety management. As part of the standards for process safety management, 29 CFR 1910.119 (d) (3) (i) requires that employers maintain information pertaining to equipment, including piping and instrument diagrams. Citation 3, subparts B through L, cites Autoliv for a "serious" violation of this standard based on 11 instances in which Autoliv's diagrams failed to accurately portray piping or instrumentation actually in use at the Promontory facility.

Autoliv does not challenge the underlying facts of this citation. To the contrary, Autoliv's own witness has confirmed the diagramming errors on which the citation is based. Instead, Autoliv argues that because Mr. Vandover, Utah OSHA's inspector, had not completed training on process safety management standards, his inspection and testimony should be disregarded.

While it is true that Mr. Vandover had not completed process safety management courses at the time he inspected Autoliv's Promontory facility, Mr. Vandover's education, training and work experience generally qualified him for the assignment. And although federal OSHA has issued "guidance" that inspectors should complete certain process safety management training courses before conducting inspections on that subject, Utah OSHA has not adopted such a policy. Consequently, Mr. Vandover was not precluded from conducting the subject inspection and then testifying about the results of the inspection. Furthermore, the testimony of Autoliv's witness not only corroborates Mr. Vandover's findings, but is sufficient in its own right to establish Autoliv's violation of applicable process safety management standards by failing to maintain accurate piping and instrument diagrams. In summary, based on all the evidence before it, the Appeals Board concludes that Autoliv failed to maintain accurate piping and instrument diagrams as required by the Commission's rule R614-1-4 and 29 CFR 1910.119 (d) (3) (i).

The Appeals Board now turns to the question of whether Autoliv's violation should be characterized as "serious" or "other than serious" under the Utah Occupational Safety and Health Act. Section 34A-6-307 of the Act imposes increasing civil and other penalties for a violation of a workplace safety standard, depending on whether the violation is classified as "other than serious," "serious," or "willful." Autoliv argues that its violation of process safety management standards, as reflected in Utah OSHA's citation three, cannot properly be characterized as "serious." Section 34A-6-307(1) (b) provides the following definition of a "serious" violation:

A violation is serious only if: (i) it arises from a condition, practice, method, operation, or process in the workplace of which the employer knows or should know through the exercise of reasonable diligence; and (ii) there is a substantial possibility that the condition, practice, method, operation, or process could result in death or serious physical harm.

Just as it is Utah OSHA's burden to present evidence sufficient to establish that a safety standard has been violated, it is also Utah OSHA's burden to prove that the violation satisfies each of the two elements of the foregoing statutory definition of a "serious" violation. With respect to the first element, Autoliv does not dispute that it knew or should have known of the diagramming errors identified in Citation 3, parts B through L. The Appeals Board therefore turns to the definition's second element—the requirement that the violation posed a substantial possibility of death or serious physical harm.

Utah OSHA relies on Mr. Vandover's testimony to establish that Autoliv's diagram errors posed a substantial possibility of death or serious physical harm. However, it appears that Mr. Vandover did not engage in any independent assessment of the actual risks involved in the diagram errors. Instead, Mr. Vandover relied on a blanket statement from federal OSHA that such errors should not "normally" be classified as "other than serious." The Appeals Board does not view this federal guidance as freeing Utah OSHA from its obligation under § 34A-6-307 (1) (b) of presenting at least some particularized analysis of the potential danger posed by the specific violations. Because Utah OSHA did not present any such analysis with respect to the violations of Citation 3, parts B through L, the Appeals Board cannot uphold Utah OSHA's characterization of those violations as "serious." The Appeals Board therefore modifies Citation 3, parts B through L, from "serious" to "other than serious." However, in light of the large number of violations and the fact that the penalty of \$1,050 is well-within the statutory range for such violations, the Appeals Board does not modify the penalty amount.

Citation 5, parts A through C--29 CFR 1910.147 /Lock-out/tag-out. 29 CFR 1910.147 generally requires employers to use lock-out or tag-out procedures to keep equipment de-energized during service and maintenance. Normal production operations are not subject to this lock-out/tag-out standard. However, 29 CFR 1910.147 (a) (2) (ii) provides that service and maintenance which takes place **during** normal production operations are subject to the standards if "[a]n employee is required to place any part of his or her body into an area on a machine or piece of equipment where

work is actually performed upon the material being processed (point of operation) or where an associated danger zone exists during a machine operating cycle.” Finally, 29 CFR 1910.147 (c) (2) (ii) specifies that lock-out procedures are preferred over tag-out procedures--tag-out is permitted only if the employer demonstrates that it will provide full employee protection. Utah OSHA’s fifth citation against Autoliv asserts three violations of the foregoing lock-out/tag-out standard.

The first such violation (citation 5, part A) relates to Autoliv’s use of a tag-out procedure rather than a lockout procedure to protect employees entering a production facility for the purpose of removing containers full of product and replacing them with empty containers. Utah OSHA argues that this constitutes “setting up” the equipment and therefore falls within the definition of “service or maintenance” that is subject to the lock-out/tag-out standard.¹ For its part, Autoliv contends that the foregoing process is a “normal production operation” and as such is not subject to the “lock-out/tag-out standard.

The question of whether machinery is being used for “normal production operations” or is being “serviced or maintained” depends upon the precise facts of the machinery’s use and the operation being performed. With respect to Citation 5, Part A, insufficient evidence has been provided to allow the Appeals Board to conclude that replacement of full product bins with empty bins constitutes “service or maintenance” so as to justify application of the LOTO standard. The Appeals Board therefore sets aside Citation 5, Part A.

The second alleged “lock-out/tag-out” violation involves what Utah OSHA considered to be an ineffective lockout procedure when employees entered a production facility designated as “bay 12” in the course of production activities. However, the evidentiary record fails to disclose the nature of the activities occurring at this location. In light of Utah OSHA’s failure to establish that service or maintenance was occurring at this location, and the lack of any information that would otherwise subject the activity to the “lock-out/tag-out” standard, the Appeals Board sets aside Citation 5, part B.

¹ 29 CFR 1910.147 a) (2) (iii) (A) provides the following definition of terms:

Normal production operations. The utilization of a machine or equipment to perform its intended production function.

Servicing and/or maintenance. Workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment. These activities include lubrication, cleaning or unjamming of machines or equipment and making adjustments or tool changes, where the employee may be exposed to the **unexpected** energization or startup of the equipment or release of hazardous energy.

Setting up. Any work performed to prepare a machine or equipment to perform its normal production operation.

The third and final alleged “lock-out/tag-out” violation involved an extruding machine that forms product into a particular shape. The machine was powered by electricity, air pressure and hydraulic pressure. From time to time, it was necessary for Autoliv employees to stop the machine, open it, and then reach inside to make adjustments, remove finished product, clean parts and add raw materials. Although Autoliv had implemented an appropriate process to lock-out the machine’s electrical supply, no steps were taken to de-energize the machine’s pneumatic and hydraulic systems.

As with the two previous “lock-out/tag-out” violations, Autoliv argues that this machine was engaged in normal production operations and, as such, exempt from the “lock-out/tag-out” standard. However, this argument overlooks the caveat contained in 1910.147 (a) (2) (ii) (2) (B) that servicing and maintenance occurring during normal production operations is covered by LOTO standards if “[a]n employee is required to place any part of his or her body into an area on a machine or piece of equipment where work is actually performed upon the material being processed (point of operation) or where an associated danger zone exists during a machine operating cycle.” The evidence presented by Utah OSHA in support of Citation 5, subpart C, establishes that Autoliv’s employees were required to reach inside the machine’s “danger zone” without first de-energizing the machine’s pneumatic and hydraulic energy sources. The Appeals Board therefore concludes that Autoliv failed to comply with LOTO standards with respect to the subject extruding machine.

As to the proper characterization of the above-described violation, the Appeals Board’s discussion of Citation 3, above, notes that the statutory requirements for a serious violation are: 1) it arises from a condition or practice that the employer knew of or should have known of; and 2) the condition or practice poses a substantial possibility of death or serious physical harm. Autoliv does not dispute that it knew or should have know of the violation referenced in Citation 5, part C. And, as already discussed, the violation involved employees reaching into the interior working areas of the machine where they were exposed to injury as a result of activation of the machine’s pneumatic or hydraulic energy sources. The Appeals Board therefore concludes that this violation is properly characterized as serious.

Citation 6—electrical supply violations: 29 CFR 1910.303 (b) (2)/Use of listed or labeled equipment. 29 CFR 1910.303 (b) (2) requires that “[l]isted or labeled equipment shall be used or installed in accordance with any instructions included in the listing or labeling.” The three subparts of Citation 6 represent Utah OSHA’s determination that, in each of the three subject installations, Autoliv failed to follow instructions for proper installation or use of flexible electrical cords.

Autoliv does not assert that the electrical cords in question are not subject to the standard established by 29 CFR 1910.303 (b) (2), nor does Autoliv assert that it complied with that standard by installing and using the electrical cords according to instructions. Instead, Autoliv argues that the Appeals Board should set aside Citation 6 because the inspector did not observe any actual damage to the electrical cords. However, nothing in 29 CFR 1910.303 (b) (2) requires actual damage in order to constitute a violation of the standard--all that is required is a failure to comply with

instructions for installation or use. Since Autoliv has, in effect, conceded its failure to comply with the applicable instructions, the Appeals Board affirms Citation 6, Parts A through C.

In considering whether the foregoing violations are properly characterized as “serious,” the Appeals Board again notes that Utah OSHA must prove, among other things, that the violations posed a substantial possibility of death or serious physical harm. While Mr. Vandover’s testimony addresses the potential risks arising from Autoliv’s failure to follow instructions for installation and use of the subject electrical cords, the Appeals Board is unpersuaded that such potential risks rise to the level of a “substantial” possibility as required by § 34A-6-307 (1) (b) of Utah’s Occupational Safety and Health Act. The Appeals Board therefore modifies Citation 6, parts A through C, from “serious” to “other than serious.” However, in light of the number of separate violations and the fact that the penalty of \$1, 050 is well-within the statutory range for such violations, the Appeals Board does not modify the penalty amount.

ORDER

It is hereby ordered that the violations included in Citation 3, parts B through L, are affirmed, but the characterization of those violations is modified from “serious” to “other than serious. The penalty of \$1,050 assessed by Utah OSHA against Autoliv for this Citation is affirmed.

It is further ordered that the violations included in Citation 5, parts A and B, are set aside. The violation included in Citation 5, Part C, characterized as “serious,” is affirmed. The penalty of \$1,050 assessed by Utah OSHA against Autoliv for this Citation is affirmed.

It is further ordered that the violations included in Citation 6, parts A through C, are affirmed, but the characterization of those violations is modified from “serious” to “other than serious. The penalty of \$1,050 assessed by Utah OSHA against Autoliv for this Citation is affirmed.

Dated this 30th day of October , 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

OPINION CONCURRING IN PART AND DISSENTING IN PART

I concur with the Majority Opinion in regards to Citation 5. I also concur with the Majority Opinion regarding the holdings on Citations 3 and 6 that Autoliv violated certain safety standards. However, I would have affirmed the Administrative Law Judge's finding that Autoliv's violations found in Citations 3 and 6 were "serious" within the meaning of U.C.A. §34A-6-307, and on that basis, I respectfully dissent from the Majority Opinion.

My reason for dissenting on Citation 3 has been articulated in my previous dissent in the matter of Utah Division of Occupational Safety and Health v. Autoliv, Case No. 5301165544. Therefore, I will not restate that argument. In regards to Citation 6, I believe that it could reasonably be inferred from the evidence that Autoliv manufactures highly explosive chemicals; that such chemicals may be ignited when exposed to electrical sparks; that a resulting explosion could cause serious bodily injury including death; and that inappropriately installed electrical circuits and wiring may result in electric sparks. There is no evidence in the record to contradict these reasonable inferences. Therefore, I would have affirmed the Administrative Law Judge's findings that the safety violations were serious.

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.