

§ 1922(a)(1)

ISSUE

Did Employer violate section 1922(a)(1) by not providing at least one fire extinguisher for the building?

**FINDINGS AND REASONS
FOR
DECISION AFTER RECONSIDERATION**

Employer Violated Section 1922(a)(1) by Not Providing at Least One Fire Extinguisher for the Building.

Section 1922(a)(1) is in Article 36 [Fire Protection and Prevention] of the Construction Safety Orders and provides, in pertinent part, as follows:

A fire extinguisher, rated not less than 2A, shall be provided for each 3,000 square feet of the floor area, or fraction thereof. Where the floor area is less than 3,000 square feet at least one extinguisher shall be provided.

At the hearing, Compliance Officer Hughes testified that he looked for and found no fire extinguisher at the site and that Employer's foreman told him none was there. Employer did not refute this evidence but argued that the general contractor was responsible for providing fire extinguishers. The ALJ correctly rejected this argument. An employer cannot by contract divest itself of responsibility for safety order violations to which its employees are exposed. (Moran Constructors, Inc., OSHAB 74-381, Decision After Reconsideration (Jan. 28, 1975).) The unrefuted evidence that there was no fire extinguisher at the site and that employees were present amply supports the ALJ's determination that Employer violated section 1922(a)(1).

In its petition for reconsideration, Employer reiterates the argument that the general contractor was responsible for the violation and should have been cited instead of Employer. The Board rejects this as a ground for reconsideration for the reasons stated in the preceding paragraph.

Employer also alleges that it has discovered new, material evidence, which it ". . . could not, with reasonable diligence, have discovered and produced at the hearing." (Labor Code §6617(d); §390.1(a)(4).) The new evidence identified is that the building at the site had a floor area of 2,850 square feet. The claimed materiality of the evidence is that section 1922(a)(1) ". . . applies only to buildings over and above 3,000 square feet."

This ground for reconsideration must also be rejected for these reasons. First, Employer has not shown that it could not have discovered the square footage of the building it was framing and presented that evidence at the hearing. In fact, it is hard to imagine that the

framing sub-contractor did not have access to the building plans, which would disclose that information, at or before the time it began the job. Second, as stated above, section 1922(a)(1) provides, in part, that, "[w]here the floor area is less than 3,000 square feet at least one extinguisher shall be provided." Accordingly, since one fire extinguisher was not provided, the fact the floor area of the building was 150 square feet less than 3,000 square feet is immaterial.

The Board therefore finds that a general violation of section 1922(a)(1) was established and assesses a civil penalty of \$300.