

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

MAY 12 1997

Reply to the Attention of

MEMORANDUM FOR: **REGIONAL ADMINISTRATORS**

FROM: **JOHN B. MILES, JR., DIRECTOR**
DIRECTORATE OF COMPLIANCE PROGRAMS

Subject: **Coverage of Stared Flammables Under the Process Safety Management Standard**

In a recent decision¹, the judge ruled that coverage under OSHA's Process Safety Management Standard (1910.119) does not extend to stored flammables in "atmospheric tanks," even if they were connected to a "process" within the definition of the standard. This is contrary to consistent OSHA of the standard. However, the decision will not be appealed because it is based on problems in the text of the standard itself, which support the judge's decision. We have asked the Directorate of Safety Standards Programs to consider developing amendments to the standard which would clearly state our intention to cover flammables stored in atmospheric tanks when they are connected to a covered process, or when they are located such that there is a reasonable probability that they could be involved in the release of a covered highly hazardous chemical.

Until the standard is revised, however, OSHA will abide by the *Meer* decision, and will not cite 1910.119 under circumstances when coverage of the process would be based partly or solely on the quantity of flammable liquid in connected atmospheric storage tanks, that would otherwise qualify for the 1910.119(a)(1)(ii)(B) exemption. Citations under 1910-119 will continue to be issued when the quantity of flammables in the process, not counting atmospheric storage, exceeds 10,000 pounds, at where the quantities -in storage do not fall within the exemption for other reasons (i.e., storage not atmospheric, storage relies on refrigeration, quantities not actually in Storage).

Citations for 1910.106 may apply to situations where flammable liquids are stored. In other cases where stored flammable liquids subject to the exemption are connected to a process, and a hazard exists which involves a serious risk to workers, 5(a)(1) citations may be issued. Since such citations will in all likelihood be litigated, early involvement of the Solicitor in such mm is mandatory, to ensure that the basis for citation has legal clearance. Employers inquiring about coverage of stored flammables under PSM should be informed that OSHA is following the decision in *Meer*, pending possible revisions to the standard to resolve the ambiguity, but that citations my be issued under 5(a)(1) if circumstances warrant.

For further information, contact the Office of General Industry Compliance Assistance (Ray Donnelly or Alcmene Haloftis on 202-219-8041 or Mike Marshall on 202-219-9118, x 112).

This memorandum should be filed with CPL 2-2.45, Process Safety Management.

¹ Secretary of Labor v. Meer Corporation, OSHRC Docket No. 95-0341