

147 Heather Drive
Butler, PA 16001
November 29, 2002

Exhibit 40

Robert Szymanski, Area Director
Occupational Safety and Health Administration
Federal Building, Room 1428
1000 Liberty Avenue
Pittsburgh, PA 15222

RE: Letters dated November 6 and 18, 2002 from OSHA to me, and the November 12, 2002 response letter from Mr. Hesidenz (of AK Steel) to OSHA.

Dear Mr. Szymanski:

In response to the letter dated November 12, 2002 from Gerald W. Hesidenz (Director, Safety and Risk Management of AK Steel) to OSHA, I will respond to the crucial issues, according to points outlined in Hesidenz's response.

Overloading of coil hauling trucks AND Exception Approval:

Hesidenz claims the trucks are not overloaded. Hesidenz quoted sections of the AK Steel "Butler Works Safety, Health and Security Handbook" (his attachment #4), however *he failed to mention page 98*, under Operation and Care of Vehicles and Mobile Equipment. This paragraph states (without exception): "Those persons who operate company or personal vehicles on company property or on local, state, or federal highways for business purposes must comply with all State and Federal regulations, training, and license requirements. Operators are also required to comply with plant regulations and applicable department safety rules. State Motor Code rules and regulations pertaining to the vehicle itself and operation are also to be adhered to, i.e., seat belt use, inspections, etc."

According to the Pennsylvania Motor Vehicle Code, AK's trailers are only licensed at 73,280 pounds, yet are being operated daily at substantially higher weights. See Document #27 for a list of the trailers and licensing restrictions. See Document #5 for a notice that AK posted in each tractor-trailer, which gives guidelines for combination weights.

According to Hesidenz's own statement, AK has obtained a CRNO trailer and a Hilltop trailer with 130,000-pound and 90,000-pound capacities, respectively, with "requirements not to exceed that weight limit." These trucks clearly exceed PA State Motor Code regulations that the company requires employees to follow (as detailed in previous paragraphs).

Additionally, in his letter on page 2, Hesidenz *misquoted* SHSP-0035-28, "Qualifications for Mobile Equipment Operators," (his attachment #5). The actual directive states: "Operators shall operate their vehicles in strict conformance with all the provisions of the State Motor Code, both inside and outside the plant, paying particular attention to the regulations covering: (2.9.1) Seat belt use (required), (2.9.2) Stop signs, (2.9.3) Speeding, (2.9.4) Reckless driving, (2.9.5)

Overloading, (2.9.6) Condition of Vehicle.” Again this is a clear directive for truck operators to follow ONLY state motor vehicle code regulations, whether inside or outside the plant gates. I find it interesting that Hesidenz failed to provide the phrase “Operators shall operate their vehicles in strict conformance with all the provisions of the State Motor Code.” [Emphasis mine.]

Hesidenz submitted “The Job Safety and Health Analysis” (his attachment #2), as if it is also a directive on this matter. As titled, this document is presented as an analysis of the job as currently being performed. Yet, in conflict with 2 documents given above (his attachments #4, #5), the Job Safety and Health Analysis references the CRNO and Hilltop trailers with their increased load capacities (#1) and the statement that a “driver will haul one full box of coils [approximately 90,000 pounds] at a time...”, (#3). [Page 4, notes #1-3 at the bottom.]

This JSHA is in direct violation of two previous company directives (his attachments #4, #5), for employees to remain in strict conformance to the Pennsylvania Motor Vehicle Code, regardless of location inside or outside the plant.

In that same JSHA, page 1 under “Safe Job Procedure” says: “For each potential accident/illness, ask yourself what exactly should the employee do or not do to avoid the accident/illness.” Common sense AND the AK’s “Safety and Health Standard Procedure” dictate following the PA State Motor Vehicle Code not to haul trucks with substantial overloading, “in strict conformance with all the provisions of the State Motor Code, both inside and outside the plant...”

AK Steel has made it implicitly clear that employees are to obey all safety rules and laws, State and Federal, according to AK Steel Safety, Health and Security Handbook as well as Safety and Health Standard Procedure 0035-28.

Additionally, AK Steel Butler Works Safety, Health and Security Handbook (his attachment #4) acknowledges (on page 7) that AK’s written rules are “supplementary to applicable federal, state, and local laws and regulations. In the event of differences, the higher standard of safety shall apply.” ***In this case, the PA Motor Vehicle Code is the higher standard of safety.***

The AK “Safety, Health, and Security Handbook” is the primary document that AK used to discharge me (with the insubordination clause), yet this is the same document (on page 98) that gave me specific directives in operation of tractor trailers both inside and outside the plant.

In his letter, Hesidenz states in his own words (on page 2), “On non-public highways, (i.e., in-plant roads), we expect our drivers to follow the same requirements of the state code that apply.” Yet according to the SHSP-0035-28 (his attachment #5), section 2.9, ALL provisions of the state motor code apply to AK drivers “both inside and outside the plant, with particular attention to the regulations covering... Overloading [2.9.5].” The State Motor Vehicle Code does not contain a provision for loads exceeding 73,280 pounds without a permit.

AK Steel – with its conflicting written directives – has, in effect, created documentation to protect itself from legal liability in the event of a tragedy such as a tractor-trailer accident involving overloaded trucks, leaving its drivers fully unprotected from legal liability. In a phone

call to the PA Attorney General's office, I spoke with Mr. David Devries, who cautioned me of the legal liabilities of the operator in such an event.

Before my discharge, my attorney sent a letter to AK requesting indemnification and clarification of the issue. (See Document #9.) AK chose to disregard this letter. In fact, according to testimony by Mr. Bill Gonce (head of AK Safety) in my arbitration hearing, AK received my letter and the AK legal department told Gonce that there was no need to respond to my questions.

Hesidenz also failed to produce a "Daily Safety Contact" (my document #12) dated March 22, 2001, circulated for signature by all Transportation Department truck drivers. This document, yet another conflicting document sent out just 1 day before my discharge, said: "Contact #1, Do not overload trucks, haul within legal load limits. Contact #2, Secure all loads on all vehicles."

Coils are transported "unsecured":

Hesidenz states "Our electrical steel grade coils are susceptible to product damage from load binding," but he neglects to mention that these same coils are later trucked out of the plant with chains or strap bindings. According to one AK metallurgical engineer, *there is no structural or chemical difference in product composition at the end stage than when it is hauled in-plant on the V-trough trailers.*

Hesidenz submitted attachment 1e, which shows only a side view of the Hilltop truck. If the photo had been taken with an end view (like attachment 3a, the CRNO truck) it would reveal that the small coils on the Hilltop truck do not adequately span the V-trough – and the coils roll back and forth with any vehicle movement in transit.

This inadequacy was evident in an incident that happened to driver Dave Masartis on 6-10-01 (my Document # 21), in which a coil he was hauling rolled back and forth – and then rolled out of the V-trough. AK Steel subsequently acknowledged that this rocking occurs when loads are not secured; they suspended Masartis for 5 days; and documented this method of hauling as "unsafe."

Masartis had been hauling according to verbal orders not to secure loads, the same orders that had been given to me prior to my discharge. AK's suspension letter to Masartis said, "Once you noticed the coil rocking, you should have stopped immediately and taken steps to make sure the load was stationary." Because of the rocking effect in the V-trough, *the only way to ensure that the load is stationary is by chaining or strapping the loads.*

In another incident several years ago, driver Rick Morando had a coil roll completely off the V-trough trailer and off the truck during an in-plant haul. Yet another driver, Gary Namesnik, had a coil break a binding and roll off the truck during transport outside the plant. As evidenced, coils will roll off the V-trough trucks, even with binding. *However, binding the load is the more secure way to transport coils in the V-trough, whether inside or outside the plant.*

As for Hesidenz's claims regarding "eye to the sky" transport, he *mistakenly says* that the V-trough "allows the coils to ride in the depression of the trailer securely without binding."

However, that method doesn't fully utilize the V-trough because the coil does not actually sit within the V – it lies across and above the trough, removing the stability factor.

Hesidenz also mistakenly claims that the company has “laid quad coils down ‘eye to the sky’ for transit,” when in fact quad coils are hauled only in the V- trough as shown in his attachment 3a. Single coils are the only coils hauled “eye to the sky.” [I personally observed this practice for the 4+ years I was in transportation.]

The main reason AK's transport methods are unsafe is because the in-plant road up to the Hilltop processing has a very severe grade with a 90° bend in the road. In transporting up that hill with an overloaded and unsecured trailer, a power loss to a tractor could cause the combination tractor-trailer to freewheel backward, possibly jack-knifing, overturning, and losing the load, with coils rolling down the hill. Certainly this could result in death or injury to the driver, or anyone in the vicinity. [AK employees are not the only persons permitted within AK's gates; vendors and sales people enter daily – and even the general public can access the plant at any time to purchase slag at Heckett.]

See Document #26, the Operator's Manual for the tractors built by International Tractors, which cautions, “...Exceeding these [weight] ratings by overloading can cause component failure resulting in property damage, personal injury or death.”

In an incident on 6-20-98, I was driving a stake truck in-plant with a pinion gear on board. When the load shifted, it caused the truck to overturn. The company issued me a warning for not securing a load, stating: “continued behavior of this nature may lead to more severe disciplinary action, up to and including discharge.” The company subjected me to a breathalyzer, blood alcohol, and urine testing, according to PA State Motor Code guidelines. (All the test results came back negative, of course.) Because AK had issued me a written warning for not securing a load, I was wary of their verbal instructions to haul overloaded and unsecured loads. I feared injury to myself and others, and a subsequent discharge in the event of an accident.

Summary

Your letter to me, dated 11-18-02, says, “The employer states that they have taken the necessary steps to correct the hazardous conditions.” In fact, Butler AK Steel has not corrected the hazardous conditions, as stated by Mr. Hesidenz. His letter only explained to OSHA why AK drivers are ordered to haul overloaded trucks with unsecured loads. Hesidenz clearly detailed the exact transport methods that have been used for years and, indeed, that are still being utilized. [This is substantiated by the testimony of company officials in my arbitration hearing. The transcript is available at your request.]

NOTHING has changed at the AK Steel plant. AK drivers are still forced to haul overloaded trucks with unsecured loads throughout the plant, jeopardizing their personal safety and that of their co-workers and the public within the plant.

Action Against Me

Your letter to me dated 11-6-02 states that on page 1 Section 11(c) of the OSH Act, "If you believe you are being treated differently or action is being taken against you because of your safety and health activity, you may file a complaint with OSHA." AK Steel, in fact, did take action against me for attempting to file a complaint in the years 2000 and 2001. I was discharged on March 23, 2001 for attempting to comply with company safety directives on several issues, only one of which is addressed in this letter.

I attempted to file complaints in 2000 and 2001 with Jim Connell of OSHA, who was very helpful, and he even contacted me via telephone on a couple of occasions. However, he told me that his superiors claimed that my issues did not fall under OSHA jurisdiction. (At that time, my complaint involved 2 defective mobile cranes, as well as this overloaded and unsecured truck issue.) I spoke recently with Frank Liebrick on 11-6-02, and he informed me that my complaints did indeed fall under OSHA's jurisdiction. Unfortunately, it took the recent fatality at Butler AK before action was taken.

Thank you for your attention to this matter. I look forward to hearing from you in the near future. I remain willing and eager to provide you with any pertinent documentation on this or any other issue with AK.

In the next several days, I plan to provide you with an extensive list of other OSHA violations that have occurred or are occurring at Butler AK Steel. Just two of these include an incident in which Silicon Maintenance workers were forced to work in an asbestos-contaminated area for several shifts; and an incident of unsafe AK safety procedures which resulted in the death of Keith Eckenrode just weeks ago.

Sincerely,

Joe Myers

Enclosures

Enclosures

Please note: the enclosures I have supplied are numbered as such because they've been previously numbered and copied for submission to other agencies.

Document #3

This document is the warning I received for not securing a load inside the plant on July 9, 1998.

Document #4

This is Armco's Safety and Security Handbook, issued March 1999, that was in force at the time of my employment, but is the same as the AK Steel version (issued June 2002) except for page numbers (note underlined portions). I include it for your reference only. For purposes of rebuttal to Mr. Hesidenz, I quote from his attachment #4, the AK Steel Butler Works Safety, Health, and Security Handbook, which is the same as the Armco version.

Document #5

An advisory notice to drivers for vehicle and registered combined weights, which had been posted on 7-12-99 in the tractors.

Document #9

Letter dated 3-1-01 from my attorney Dennis M. Moskal to AK officials.

Document #12

This document was the safety contact given on 3-22-01 to all drivers the day before my discharge.

Document # 21

This document is the suspension letter to Dave Masartis. Reference the underlined portions.

Document # 26

This document is the operator's manual for the tractors involved. Reference underlined portions.

Document # 27

This document verifies that the trailers are licensed at 73,280 pounds.

Document # 33

AK Steel Butler Works Safety, Health, and Security Handbook, copies of supporting pages. [Same as Hesidenz attachment #4.] See Document #4.