

Process Safety Violations Not Time-Barred, Occupational Safety and Health Review Commission Rules

Article By:

Bradford T. Hammock

Henry Chajet

In a decision that drew dissent from one commissioner, the ***Occupational Safety and Health Review Commission*** has ruled that process safety violations are continual and thus are not subject to the same statute of limitations period as record-keeping infractions.

Delek Refining, Ltd. had sought to vacate two process safety citations the Occupational Safety and Health Administration wrote following OSHA's inspection of a Delek oil refinery in Tyler, Texas, which the company had recently acquired. The agency had cited Delek for a violation of 29 C.F.R. 1910.119(e)(5), which requires the employer to assemble a team of experts to conduct a process hazard analysis, and 29 C.F.R. 1910.119(o)(4), which requires the employer to certify at least every three years that it has evaluated its compliance with the process safety management standard.

Regarding the first alleged violation, OSHA alleged the employer had not addressed findings and recommendations from several process hazard analyses undertaken by the prior owner. As for the second, the government contended Delek had failed to respond to the prior owner's process safety management audit.

The company countered that the citations were time-barred because they were based on inadequate record-keeping that had preceded the OSHA citations by several years. In support, Delek cited a 2012 appeals court decision throwing out a record-keeping citation on timeliness grounds.

The Commission disagreed. It noted that the D.C. Circuit's AKM decision, which Delek had cited, addressed keeping records of injuries under Part 1904. The AKM court held that the failure to record is a distinct event, not a continuing violation, and that the statute of limitations period begins to run when the employer fails to record the injury. However, according to the Commission majority, the AKM court drew a distinction between an occurrence that triggers a statute of limitations and one in which the employer continues to expose employees to unsafe situations. The latter example is a continuing violation, and such violations were the ones that occurred in the Delek case, the majority said.

The commissioners also dismissed Delek's argument that, because the prior owner had conducted

the analyses, it was the prior owner's responsibility to address them. Such a conclusion, the commission majority held, would “lead to the absurd result” of allowing deficiencies detected by a previous owner to go unaddressed until the current owner was required by the process safety standard to conduct its own analyses. The majority also noted that OSHA’s process safety management (PSM) standard sets a schedule for auditing and abating potential process hazards and PSM compliance issues.

“[T]here is nothing in the standard to suggest that this schedule is reset or altered by the sale of the facility in which the process takes place,” the majority wrote.

In her dissent to these interpretations, Commissioner Heather L. MacDougall argued that the majority's reading of AKM as applying only to record-keeping violations was too narrow. She added that she believed the plain language of the standard did not extend liability to a subsequent employer such as Delek.

“I am concerned that the majority's holding here has increased the compliance burdens and costs for employers—particularly those acquiring new facilities,” she concluded.

In addition to the process safety infractions, OSHA had cited Delek for four other alleged violations during the same inspection. The commissioners affirmed citations for failing to adequately inspect and test a positive pressurization unit for the refinery’s fluid catalytic cracking unit and for inadequate labeling of hazardous chemical containers.

However, they vacated a citation for Delek’s alleged failure to document a change in procedure when the company used a piece of equipment that was actually part of its regular arsenal of tools. The tribunal also threw out a citation for allegedly failing to guard a rotating shaft after Delek successfully argued OSHA had not demonstrated workers were exposed to a danger. Delek’s total penalty thus came to \$21,150, down from \$30,600.

Jackson Lewis P.C. © 2025

National Law Review, Volume V, Number 146

Source URL: <https://natlawreview.com/article/process-safety-violations-not-time-barred-occupational-safety-and-health-review-comm>