

ORAC appeared at and was represented at the hearing by Tim Hughes, as its authorized representative. Tim Hughes testified on behalf of ORAC. ORAC offered Exhibit O1 as its documentary evidence. ORAC's exhibit was admitted into the record.

On July 6, 2004, OAH issued a proposed order. The proposed order recommended that the director reverse ORAC's decision because (1) the employer does not distribute refined or "new" or "virgin" gasoline and oil, but instead picks up used "waste" oil and after it is reclaimed distributes it, (2) the employer's employees, called "generators," are specially trained to test the used oil, and spend more than 50 percent of their time testing the used oil, and (3) such testing is an essential and integral part of the overall reclaiming process.. The proposed order informed the employer and ORAC that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was served on the employer and insurer. On the same date, OAH mailed a copy of the proposed order to the employer and ORAC.

The director did not receive any exceptions from the employer or ORAC.

Therefore, the director now makes the following final decision in this proceeding.

Findings of Fact, Conclusions of Law and Opinion

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions of law, and opinion of proposed order as the facts, conclusions, and reasoning of this final order.

Order

ORAC's decision is reversed.

Notice of Right to Judicial Review

Each party may have the right to appeal this final order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may appeal the order by filing a written petition for judicial review with the Court of Appeals in accordance with the current Oregon Rules of Appellate Procedure. The Court of Appeals must receive the petition within 60 days from the date the order was served on the party. If the order was personally delivered to a party, then the date of service is the day the

party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day the party received the order. If a party does not file a petition within the 60-day time period, then the party will lose the right to appeal the order. If a party appeals the order, the party should also send a copy of the petition to the Insurance Division by delivering it to the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailing it to PO Box 14480, Salem, OR 97309-0405, or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated September 21, 2004

/s/ Joel Ario
Joel Ario
Administrator
Insurance Division
Department of Consumer and Business Services

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