

CCASE:  
SOL (MSHA) V. WELLS QUARRY  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

Civil Penalty Proceeding

Docket No. WILK 79-33-PM  
A/O No. 43-00063-05001

v.

Websterville Quarry & Mill

WELLS-LAMSON QUARRY CO., INC.,  
RESPONDENT

DECISION

Appearances: John Casler, Esq., Office of the Solicitor, U.S.  
Department of Labor, Boston, Massachusetts, for  
Petitioner;  
Gary D. McQuesten, Esq., Richard E. Davis Associates,  
Barre, Vermont, for Respondent.

Before: Judge Stewart

PROCEDURAL BACKGROUND

The above-captioned case is a civil penalty proceeding brought pursuant to Section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), hereinafter referred to as the Act.

On November 28, 1978, Petitioner filed with the Mine Safety and Health Review Commission a petition for assessment of civil penalty for The seven violations included under this docket number. Respondent filed its answer to this petition on January 9, 1979. A hearing was held on April 11, 1979, in Montpelier, Vermont.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The violations alleged herein were observed by Federal Mine Inspector John Rouba in the course of a regular inspection of Respondent's Websterville Quarry and Mill. This inspection was conducted over a 3-day period in May, 1978.

The Websterville Quarry, an open-pit operation, is Respondent's only mine. Its 65 employees worked a total of 99,000 man-hours in

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1978. The quarry did not operate on a profitable basis in 1978. There is, however, no indication on the record that any penalty assessed in this proceeding will have an adverse effect on the Respondent's ability to remain in business. There is no applicable history of prior paid violations.

Citation No. 211911 was issued because the inspector observed that one of Respondent's Euclid haulage trucks had an inoperative backup alarm. The driver of the vehicle had parked it and was waiting to be called to haul waste materials. This condition was in violation of 30 CFR 56.9-2 which requires that equipment defects affecting safety be corrected before the equipment is used. It was abated as quickly as was possible.

The driver of the truck said that he had disconnected the alarm because he was tired of listening to it. Robert Stewart, Respondent's general manager testified that the company had no knowledge of the condition. Nevertheless, negligence existed on the part of Respondent because mine management should have known of the inoperative alarm. The absence of an operative alarm was obvious and the condition had existed for about 1 week, a long enough period of time to warrant its discovery.

When the violation was observed by the inspector there were no workers in the vicinity of the vehicle. However, any of a number of employees could be exposed in the danger in the areas where waste materials are loaded onto the truck. In a noisy area, a worker might be unaware that the truck was backing up. If an accident were to occur, it could result in a fatality.

Citation No. 211912 was issued because the inspector observed unguarded gears on the rope drum of the hoist. This condition was in violation 30 CFR 56.14-1, which requires that gears which may be contacted by persons, and which may cause injury to persons, shall be guarded. The condition was rapidly abated.

The operator was negligent in that it knew of the condition yet failed to take steps to abate it. The gears had been unguarded for approximately 1 month. Mr. Stewart testified that the operator had waited to guard the gears until it could obtain the opinion of an inspector. Mine management did not seek information concerning a proper guard from MSHA during this time.

An accident was probable. As an employee entered the hoist room, he could reach out and touch the exposed gears. There were, however, some non-moving machine parts between the walkway and the gears. If an accident were to occur, the likely result would be mangling or loss of fingers or arms.

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Citation No. 211913 was issued because the inspector observed unguarded resistor grids on a 220-volt hoist motor. It was impractical to insulate these grids and they were not protected by their location. This condition was in Violation of 30 CFR 56.12-23. The inspector testified that Respondent did everything in its power to abate the condition immediately.

The operator was negligent in that it knew or should have known of the condition yet failed to abate it. The condition had existed for approximately 1 month and other grids in the vicinity had been guarded.

It was probable that the condition would result in an accident. A walkway led to the exposed grids. An individual who contacted two of the wires simultaneously could be electrocuted.

Citation No. 211914 was issued because several splices in the lead wires to a portable pump were insufficiently insulated. This condition was in violation of 30 CFR 56.12-13(b) which requires that splices in power cables be insulated to a degree at least equal to that of the original, and sealed to exclude moisture. The condition was corrected within the time set by the inspector for abatement.

The operator was negligent in that it should have known of the insufficiently insulated splices. The condition of the wire was visually obvious and the wire was located in front of a walkway in an area where supervisory personnel can be found much of the time.

It was probable that the condition would result in an accident. The area in which the wire was located was frequently damp. In the inspector's judgement, the splices could have been wet enough to cause a person who stepped on the wire or grasped it to suffer electrical shock. This electrical shock could result in injury ranging from burns to electrocution.

Citation No. 211915 was issued because railings had not been provided to prevent persons from falling off an elevated walkway. This condition was in violation of 30 CFR 56.11-2. It was promptly abated.

The operator was negligent in that it should have known of the condition. It was visually obvious that the area was without guards. In fairness, it must be noted that the condition had existed for approximately 15 years. Moreover, Inspector Rouba had personally inspected the area on 4 or 5 prior occasions but had not issued a citation.

The inspector testified that an accident was less than probable. The probability that an accident would occur was reduced by the

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remoteness of the area and the fact that only a 4 foot section of the walkway was unguarded. If an accident were to occur a person could fall 6 feet into a pond of water which was below the walkway.

Citation No. 211916 was issued because a dry wooden platform or insulating mat had not been provided at the control panel for the roll lathe at the wire-saw mill. This condition was in violation of 30 CFR 56.12-20. It was immediately abated.

The operator was negligent in that it should have known of the condition. A mill foreman was in the area at all times.

The inspector testified that an accident would be probable if the panel became energized. The panel was equipped however, with ground fault indicator lights and circuit breakers. In the event that the panel became energized, the dampness of the area would increase the likelihood of accident and injury. The expected injury ranged from burns to electrocution.

Citation No. 211917 was issued because a shaft on the boiler make-up pump motor was unguarded. The shaft was located at floor level in the wire-saw mill boiler room. The inspector cited a violation of 30 CFR 56.14-1. This section requires that shafts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

Mr. Stewart testified that the boiler in question was used only during winter months. It had been shut down in April, 1978, and was to be used next in October. After the machine was shut down, maintenance was undertaken. The guard was taken off and left off to allow for adjustments upon completion of the maintenance. Because the machinery was not to be used until October, the shaft could not cause the injury contemplated in the regulation. The failure to guard the shaft on this boiler motor was, therefore, not in violation of section 56.14-1.

Citation No. 211918 was issued because access to the main mill plant control panel switches had not been kept clear of unnecessary materials. The walkway contained timber, boards and angle irons. This condition was in violation of 30 CFR 56.20-3(a). The inspector testified that the condition was corrected with an excellent degree of good faith.

The operator was negligent in that the condition was visually obvious. The operator knew or should have known of its existence.

It was probable that a tripping accident would occur because of the condition. Employees had to walk over these materials to get to the panel. The inspector observed Respondent's employees doing so. Minor injuries would be the expected result of a tripping accident in these circumstances.

ASSESSMENT

In consideration of the findings of fact and conclusions of law contained in this decision, the following assessments are appropriate under the criteria of section 110 of the Act.

Citation No.	Penalty
211911	\$72
211912	98
211913	72
211914	84
211915	84
211916	72
211918	72

ORDER

The civil penalty proceeding with respect to Citation No. 211917 is hereby DISMISSED.

The Respondent is hereby ORDERED to pay the sum of \$554 within 30 days of the date of this decision.

Forrest E. Stewart  
Administrative Law Judge