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SOL (MSHA) V. L. E. MURPHY CONSTRUCTION
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. VINC 79-38-PM
A.O. No. 47-02201-05001

v.

Peterson Pit Mine

L. E. MURPHY CONSTRUCTION,
RESPONDENT

DECISION

Appearances: Eddie Jenkins, Esq., Office of the Solicitor, U.S.
Department of Labor, for Petitioner
Larry R. Murphy, Windsor, Wisconsin, for Respondent

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

This proceeding was commenced by the filing of a petition for the assessment of civil penalties, charging five violations of mandatory safety standards promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. Pursuant to notice, the case was called for hearing on April 23, 1979, in Milwaukee, Wisconsin. John R. Davidson, and Robert C. Goins, Federal mine inspectors, testified on behalf of Petitioner. Lawrence Murphy and Larry R. Murphy testified on behalf of Respondent. At the conclusion of the hearing, the parties orally stated their respective positions on the issues before me and each waived its right to file written proposed findings and conclusions. All proposed findings and conclusions not incorporated in this decision are rejected.

STIPULATIONS

The parties stipulated on the record that:

1. The undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding.
2. The five violations charged in the petition occurred.
3. Respondent's business affects interstate commerce.

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4. There is no prior history of violations in Respondent's operation.

5. The payment of penalties will not cause Respondent to discontinue in business.

6. Each of the violations was abated in good faith.

ISSUE

What is the appropriate penalty for each of the violations?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In view of the stipulations listed above, only three of the statutory criteria set out in section 110(i) of the Act need be discussed: the size of the business of Respondent, and, for each violation, the gravity of the violation, and whether Respondent was negligent.

SIZE OF RESPONDENT'S BUSINESS

Respondent's business is seasonal, operating on an average of 6 months of the year. Six to eight people are employed during that time. I find that Respondent's business is a small one, and penalties assessed herein will take that fact into consideration.

CITATION NO. 287228, CHARGING A VIOLATION OF 30 CFR 56.15-3

(All persons shall wear suitable protective footwear when in or around an area of a mine or plant where a hazard exists which could cause an injury to the feet.) On May 22, 1978, three of Respondent's employees were working in the crushing plant setting up the conveyor without wearing protective footwear. These employees were exposed to possible injury if a piece of rock should fall on their feet. The pieces of rock could weigh up to approximately 3 pounds. The violation was moderately serious. Respondent was aware of its failure to supply protective footwear, and, therefore, the violation resulted from its negligence.

CITATION NO. 287227, CHARGING A VIOLATION OF 30 CFR 56.14-1

(Gears, sprockets, chains, pulleys, and similar exposed moving parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.) On May 18, 1978, the drive belts for the feeder conveyor in Respondent's operation were not provided with guards. One man, the owner of Respondent, was exposed to potential injury if he or his clothing were caught in the conveyor. The conveyor had just been moved and was being adjusted. The guard which was available had not been reinstalled. The violation was moderately serious and was caused by Respondent's negligence.

CITATION NO. 287438, CHARGING A VIOLATION OF 30 CFR 56.9-87

(Heavy duty mobile equipment shall, when the operator has an obstructed view to the rear, have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.) On May 22, 1978, Respondent's Cat 966-B front-end loader did not have a reverse warning alarm. The loader was approximately 8 feet wide and 9 or 10 feet high. The vehicle operator could not see directly behind him. Three employees were working in the area of the loader. The violation was moderately serious. Respondent had had an audible alarm on the loader which was stolen. An order was in for a replacement at the time the citation was written. Respondent's negligence was minimal.

CITATION NO. 287439, CHARGING A VIOLATION OF 30 CFR 56.9-87

On May 22, 1978, Respondent failed to have an audible reverse warning device for its tandem-wheeled dump truck. Although there were rearview mirrors on the truck, the driver could not see directly behind him. For the reasons given in the discussion on the prior violation, the condition was moderately serious. As in the previous violation, Respondent had ordered an alarm. Negligence was minimal.

CITATION NO. 287440, CHARGING A VIOLATION OF 30 CFR 56.4-2

(Signs warning against smoking and open flames shall be posted so they can readily be seen in areas or places where fire or explosion hazards exist.) On May 8, 1978, Respondent's gasoline storage tank near the dump truck parking area was not posted with a sign forbidding smoking or open flames. The tank had a 375-gallon capacity and usually carried from 100 to 150 gallons of gasoline. The tank had a steel cap with a padlock on it. The gas was dispensed through a flexible rubber hose attached to the bottom of the tank. There were employees in the area, but they were aware of the nature and contents of the tank. The violation was not serious. It was caused by Respondent's negligence.

PENALTIES

On the basis of the above findings and conclusions, and taking into consideration the criteria set out in section 110(i) of the Act, I conclude that the following penalties are appropriate for the violations charged:

CITATION	DATE	30 CFR STANDARD	PENALTY
287228	May 22, 1978	56.15-3	\$ 50
287227	May 18, 1978	56.14-1	100
287438	May 22, 1978	56.9-87	75
287439	May 22, 1978	56.9-87	75
287440	May 8, 1978	56.4-2	25

Total \$325

ORDER

Wherefore, IT IS ORDERED that Respondent shall pay civil penalties in the amount of \$325 within 30 days of the date of this decision.

James A. Broderick
Chief Administrative Law Judge