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SOL (MSHA) V. ACME CONCRETE
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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 Proceedings

Docket No. DENV 79-123-PM
A/O No. 45-00572-05001

v.

Acme Pit & Plant Mine

ACME CONCRETE COMPANY,
RESPONDENT

Docket No. DENV 79-124-PM
A/O No. 45-00659-05001

Matheson Pit Mine

DECISION

Appearances: Marshall Salzman, Esq., Office of the Solicitor, U.S.
Department of Labor, for Petitioner
Monte Geiger, Director, Governmental Services & Safety,
Inland Empire Chapter of General Contractors, Spokane,
Washington, for Respondent

Before: Judge Charles C. Moore, Jr.

It was stipulated at the outset that Respondent has no prior history of violation, and that any penalty will not impair its ability to continue in business. I find the operator is medium in size and that all violations found to have occurred were abated promptly and in good faith. Matters of negligence and gravity will be considered with respect to each individual citation.

DOCKET NO. DENV 79-124-PM

The citation here was not introduced into evidence, but a copy was attached to the petition. It is Citation No. 346027 and alleges a violation of 30 CFR 56.9-11 in that there were radial cracks in the windshield of a front-end loader. The principal impact area was in the right upper corner of the windshield, but the radial cracks extended to the area in front of the driver and at that point were about 2 inches apart. The standard does not specifically prohibit cracked windshields, but it does require that windshields be maintained in good condition and inasmuch as these cracks impaired the driver visibility, the window was not being maintained in good condition. It was conceded that the cracks were caused by children throwing rocks down into the pit and hitting the windshield.

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The abatement consisted of removing the broken windshield, installing a large metal grill work in front of the window space and then replacing the glass window. Respondent's Exhibit No. 1 contains two photographs of the grill work designed to protect the windshield. While this grill work is considered as satisfactory abatement by MSHA, it is conceded that the grill restricts the drivers visibility more than the cracked windshield which was considered a violation. In other words, the situation is more hazardous now that the citation has been abated than it was at the time the citation was issued. In the circumstances, I have to consider negligence and gravity as extremely small. A nominal penalty of \$1 is assessed.

DOCKET NO. DENV 79-123-PM

At the outset of the hearing with respect to this docket number, the Solicitor's attorney withdrew the following citations: 346017, 346019, 346021, 346022, and 346023. Those citations are accordingly VACATED.

Citation No. 346016 alleges a violation of 30 CFR 56.9-22 in that a berm was not provided on an outer bank of the elevated roadway to the crushing plant feed hopper. The evidence establishes that the road is used for hauling stone to the crusher and that on one side it is elevated about 4 feet above the surrounding terrain. On the elevated side, the angle of the bank at the edge of the road is approximately 32 degrees from the horizontal. While a 4 foot elevation with a 32 degree angle does not seem like a condition a frontend loader would have difficulty in negotiating, these were wheeled loaders and it was the inspector's opinion that one could possibly turn over if one wheel went over the edge. No witness appeared to dispute the inspector's testimony, and I will accordingly find that there was a possibility of an injury, in view of the angle and elevation, however, together with the fact that the front-end loaders contained roll over protection and seatbelts I think the gravity of the violation was very low. I also find a low order of negligence and assess a penalty of \$25.

Citation No. 346018 alleges a violation of 30 CFR 56.9-7 in that an unguarded surge conveyor with a walkway alongside was not equipped with an emergency stop device. While the regulations define "travelway" there is no definition of "walkway" in the regulations. Inasmuch as it is the purpose of the regulations to protect the miners, I am going to consider a walkway to mean, a place where a miner could reasonably be expected to walk even if he has no job related reason for going to the area in question. I believe the area involved in this surge tunnel was a walkway, and for that reason, either a guard or a stop cord was required on the conveyor. I find there was very little negligence and in the absence of any testimony concerning a pinch point I find the gravity was not high. A penalty of \$25 will be assessed.

Citation No. 346020 alleges a violation of 30 CFR 56.14-1 in that a tail pulley was unguarded. The inspector testified that a person could be injured at the pinch point, but that the

structure of the conveyer itself guarded three-fourths of the area in question. He seemed to think it unlikely that someone would be injured. It was nevertheless a violation to leave a part of the pulley unguarded even though the negligence and gravity are of a low order. A penalty of \$25 is assessed.

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Citation Nos. 346024 and 346025 both involve radial cracks in winding of equipment as did Citation No. 346027. The facts are similar and the same penalty is accordingly assessed, \$1 for each citation.

ORDER

It is therefore ORDERED that Respondent pay to MSHA, within 30 days, a civil penalty in a total amount of \$78.

Charles C. Moore, Jr.
Administrative Law Judge