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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

v.

W. F. SAUNDERS & SONS,
RESPONDENT

Civil Penalty Proceeding

Docket No. YORK 79-58-M
A/O No. 30-00989-05002

Nedrow Plant

DECISION

Appearances: Jonathan Kay, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner
Sherman V. Saunders, Jr., Nedrow, New York, for Respondent

Before: Administrative Law Judge Melick

This case is before me upon a petition for assessment of civil penalty under section 110(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq., hereinafter referred to as the "Act"). On August 20, 1979, Petitioner filed a proposal for assessment of civil penalty, for an alleged violation on March 21, 1979, of mandatory safety standard 30 CFR 56.2-3(a), charging that Respondent's shop and adjacent storeroom were in a cluttered condition. In its notice of contest filed August 31, 1979, Respondent challenged the jurisdiction of Petitioner to inspect and to cite violations in this shop and storeroom. A hearing was held in Syracuse, New York, on November 21, 1979, at which the parties appeared and presented evidence.

The issues in this case are (1) whether Petitioner, the Mine Safety and Health Administration (MSHA), has jurisdiction under the Act to inspect and to cite violations in Respondent's truck shop and storeroom, and, if so, (2) whether Respondent has violated the provisions of the Act and implementing regulations as alleged in the petition for assessment of civil penalty filed herein, and, if so, (3) the appropriate civil penalty to be assessed for the alleged violation. Respondent concedes in this case that if MSHA had jurisdiction over his truck shop and storeroom then he was admittedly in violation of the cited standard.

I. Jurisdiction

The essential facts are not in dispute. Respondent operates a sand and gravel pit in Nedrow, New York, and, a few miles away, operates a preparation plant for the crushing, cleaning and sorting of the sand and gravel, a concrete plant where the sand is mixed with cement and the truck shop and storeroom at issue. The storeroom, about 30 feet wide and 100 feet long, is used primarily to store new replacement parts for the operator's trucks and conveyor systems. James Woods, plant superintendent, conceded that the truck parts stored therein could be, and were in fact, used for the belly dump trucks, the trucks used to haul sand and gravel from the pit area to the preparation plant. Woods also conceded that the rollers and electric motors stored therein could be, and were in fact, used on the conveyor system in the sand and gravel preparation plant. Woods did not deny that certain screens described by the inspector were in the storeroom at the time of the cited violation and admitted that such screens could only have been used in the sand and gravel preparation plant. Woods emphasized, however, that most of the parts in this storeroom were used in connection with the cement plant and for the "10 wheeler" trucks, not used in the pit operation.

The parties have stipulated that Respondent's operations affect interstate commerce and there is no disagreement that sand and gravel are "minerals" for purposes of the Act. MSHA's jurisdiction over the storeroom in question thus depends on whether that area comes within the definition of "mine" as set forth in the Act. Section 3(h)(1) of the Act, as relevant herein, provides as follows:

> "Coal or other mine" means (A) an area of land from which minerals are extracted in non-liquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads pertinent to such area, and (C) lands, excavations * * * and workings, structures, facilities, equipment, machines, tools, or other property * * * on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in non-liquid form * * * or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals * * *.

Commenting on this definition, the Senate Human Resources Committee in the report on Senate Bill 717, which was the basis for the 1977 Act, stated that:

> [I]t is the Committee's intention that what is considered to be a mine and to be regulated under this Act be given the broadest possibly [sic] interpretation, and it is the intent

> of this Committee that doubts be resolved in favor of inclusion of a facility within the coverage of the Act.(FOOTNOTE 1)

In this regard a preparation plant for the processing of sand and gravel has been found to be within the jurisdiction of the Act as a mineral preparation facility. Cf. Secretary of Labor v. Stoudt's Ferry Preparation Company, 602 F.2d 589 (1979).

In the case at bar, it is undisputed that at least some of the equipment and machinery kept in the storeroom was to be used in the belly trucks used to haul sand and gravel from the pit area, where it was extracted, to the preparation plant and that at least some of the rollers kept in the storeroom were to be used in the sand and gravel preparation plant. There can no question then that this equipment and machinery was to be used in the work of extracting sand and gravel from their natural deposits and to be used in the work of milling or preparing the sand and gravel in the preparation plant. I have no difficulty in finding therefore, that the "structure" and "facility" at issue herein, the storeroom in which such equipment and machinery was kept, similarly was "used in" and "resulted from" the work of extracting the sand and gravel from its natural deposits, and in the work of milling or preparing the sand and gravel in the preparation plant. It is immaterial that some of the equipment and machinery, or even most of it, may have been used in areas that may not have been under MSHA's jurisdiction. It is of course also immaterial for purposes of this decision that an MSHA inspector may have expressed an opinion that the subject storeroom was not within MSHA's jurisdiction. Under all the circumstances, I find that the storeroom in question is subject to MSHA's jurisdiction under the Act.

II. The Alleged Violation and Penalty

The citation at bar charged a violation of 30 CFR 56.2-3(a) which requires that work places, passageways, storerooms, and surface rooms be kept clean and orderly. Specifically, the uncontradicted evidence shows that when the citation was issued the storeroom was cluttered, with sundry equipment and machine parts strewn about the floor. The passageway was obstructed and a tripping hazard existed. MSHA inspector Robert Kinterknecht had previously warned Superintendent Woods of cluttered conditions in the storeroom and had asked him to clean it up. Woods admitted that he was aware of the problem but claimed that the person in charge of area maintenance had been absent from work. The inspector thought it probable that a man could trip over the objects on the floor, but that the potential injuries would not be serious or fatal, resulting in only 1 or 2 days of lost work. The evidence shows that the condition was corrected "well within" the specified time for abatement.

The operator in this case is small in size and had three previous unrelated violations (on September 13, 1978), with penalties totaling $90. As previously noted, Respondent does not take issue with the fact of the violation or the amount of the penalty assessed, assuming jurisdiction under the Act. Under all the circumstances and considering the evidence presented in light of the criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977, I find that the penalty of $84, originally assessed in this case, is appropriate.

Wherefore the Respondent is ordered to pay a penalty assessment of $84 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge

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1 Senate Report 181, 95th Cong., 1st Sess. 1, 14, reprinted in U.S. Code Cong. and Admin. News, 3401, 3414 (1977).