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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. DENV 78-579-PM

AC No. 02-01035-05001

El Mirage Plant No. 6

v.

UNION ROCK AND MATERIALS CORPORATION,
RESPONDENT

DECISION

Appearances: Malcolm R. Trifon, Esq., Trial Attorney, Office
of the Solicitor, U.S. Department of Labor, San
Francisco, California, for Petitioner
Gary Houston, Esq., Phoenix, Arizona, for Respondent

Before: Judge Fauver

Findings of Fact

This case was brought by the Secretary of Labor under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., for assessment of civil penalties for alleged violations of mandatory safety standards. The case was heard at Rapid City, South Dakota, on August 13, 1979. Both sides were represented by counsel. Only the Respondent has submitted proposed findings, conclusions and a brief.

Having considered the record as a whole, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

1. At all pertinent times, Respondent, Union Rock and Materials Corporation, operated a sand and gravel plant, known as the El Mirage Plant No. 6, in Maricopa County, Arizona, which produced sand and gravel for sales in or affecting interstate commerce.

2. Respondent's sand and gravel plant processed material that would eventually be used as fill by its customers. The material would be removed from a riverbed, screened or sized, and stockpiled for pick up. The plant's equipment included about 15 conveyor belts that were arranged in various

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alignments (plans) depending on processing requirements. The length of time a plant would use any one alignment plan varied with the particular job.

3. Some of the conveyors transported sand; others carried gravel. One of the conveyors at Respondent's wash plant was a sand reject conveyor that ran beneath the wash plant and caught sand as it was separated from the gravel passing above.

4. The sand reject conveyor would normally be energized by conductors housed in the motor junction box ("J-Box") that was located on top of the conveyor, about 10 feet off the ground. The J-Box protected splices in the power conductors from dust, water and other foreign objects. The wires inside the box were well taped to prevent a short. Deterioration of the insulation was unlikely.

5. Before a plant could become fully operational, a testing phase was required to test the belts' rotation and alignment. During normal production, the plant would run 180 to 200 tons per hour but much less material (about 1 ton) would be used to test a new alignment plan. Testing one belt would take from 15 minutes to 1 hour, however the testing phase for the whole plant varied with the number of conveyor belts. Testing would not begin until all the belts had been set up.

6. Except for purposes of testing, the conveyors would normally not be operated without guards around the tail pulleys and belt drives. When the belts were being aligned, the guards would normally be removed to allow adjustments to be made more easily.

7. On March 16, 1978, federal inspectors Daryl McPherson and Clarence Ellis, accompanied by the plant superintendent, Ralph Watson, inspected Respondent's wash plant. Inspector McPherson observed that the V-belt drive on the sand reject conveyor was unguarded, and issued a citation charging a violation of 30 C.F.R. 56.14-6. The citation read in part: "A guard was not provided for the V-belt drive of the sand reject belt first stage. Sand wash plant." Only the V-belt drive on the sand reject conveyor was unguarded.

8. The cited condition was abated in 1-2 hours by installing a guard.

9. Six to 7 days before the inspection, the plant's component parts, including the conveyor belts, had been moved from another area in the plant and were still in the process of being set up at the new location at the time of the inspection. The sand reject conveyor was installed about 3 days prior to the inspection. When the inspectors arrived, most of the conveyor belts had been running for about 1 hour to check their rotation and alignment. The inspector observed that material coming off the end of the belt was creating a small stockpile. Although this might have indicated the plant was in operation, he concluded that the belt was only run for test purposes. The

plant became fully operational the following day.

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10. Inspector McPherson also observed that the cover to the J-Box was missing, and issued a citation charging a violation of 30 C.F.R. 56.12-32. The citation read in part: "The motor junction box on the first stage of the sand reject belt was not provided with a cover." The cited condition was abated in 1-2 days.

11. The condition in Finding 10 created the possibility that one of the power conductors could have loosened, touched the frame of the conveyor, energized the whole conveyor system, and endangered anyone coming into contact with the system.

12. The inspector also observed that the tail pulley of the sand belt was not guarded, and issued a citation charging a violation of 30 C.F.R. 56.14-1. The citation read in part: "The tail of the first stage of the sand belt was not provided with a guard to prevent persons from coming in contact with the tail pulley. Tail pulley is app. 4-1/2 ft. above surface level." The condition was abated in 1-2 days.

13. The condition in Finding 12 created a hazard that a man might be caught in, or fall into, the tail pulley. This area was traveled frequently by clean-up men and maintenance personnel.

14. The inspector also charged Respondent with a violation of 30 C.F.R. 56.12-8. The citation read in part: "The strain relief fitting for the power conductor feeding the screens was not being used properly. J-Box was mounted on the first belt feeding the dry plant." The inspector observed that the large insulation with strain relief clamps around it was about 5 feet long and hanging loosely, leaving three insulated wires hanging in the strain relief.

15. The inspector believed the relief cable had been slackened to allow the conveyor to match up with the wash plant. The inspector's statement read in part: "The plant was installed recently and the electrician pulled the wire out of the relief clamp. A proper check should have been made before energizing the equipment."

16. The inspector believed that vibrations in the plant could have caused the cable retention to loosen allowing one of the power conductors to become jarred loose in the junction box. This could have caused the splices on the power conductors to separate, resulting in energizing the conveyor system and endangering anyone coming into contact with it.

17. At the time of the inspection, the wire was not energized and served no function; instead of power going from the generator to the motor by way of the junction box, it came directly from the generator van switch box to the motor. This was considered a more efficient and practical way of providing power. The alternative was to string an extra wire, about 60 feet long, to the J-Box.

18. The electrician, Lee Graybill, abated the condition by

placing the power conductor into the strain relief clamp.

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19. The company's safety program had been in existence since 1962. That program consisted of having monthly supervisors' safety meetings; annual safety meetings; safety committee meetings twice a month; and safety talks at least once per week by the safety foreman. There was also two-way radio communication when radio safety bulletins were put on at least two or three times a day.

20. The last accident resulting in lost man-hours was in July, 1974. Prior to the citations, the company had gone 3 million hours straight without a mishap.

DISCUSSION

Citation Nos. 371141 and 371142

On March 16, 1978, Inspector McPherson charged Respondent with a violation of 30 C.F.R. 56.14-6, which provides: "Mandatory. Except when testing the machinery, guards shall be securely in place while machinery is being operated." The inspector observed that a guard was not provided on the V-belt drive of the sand reject conveyor in Respondent's wash plant.

The inspector also charged Respondent with a violation of 30 C.F.R. 56.12-32, which provides: "Mandatory. Inspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs." He observed that the motor junction box cover on the first stage of the sand reject conveyor was missing.

The basic issue as to both of these citations is whether the testing exceptions to the mandatory requirements of each of the cited standards apply in this case.

The Respondent contends that at the time of the inspection, the plant was in a testing phase. Only 6 to 7 days earlier, the plant's 15 conveyor belts were moved from another location at the plant and were still in the process of being set up. Respondent states that when the inspectors arrived, most of the conveyor belts had been operating only about 1 hour just to test their rotation and alignment. No material had been processed during the testing phase, although some material had been run for purposes of testing.

Although the Secretary has not responded to these contentions, the inspector did state that he had reason to believe the plant was processing material. His conclusion is supported only by the small amount of material he saw stockpiled at the end of one of the belts and by his opinion that it would be uneconomical to test for more than 3 days.

I find that the plain meaning of the provision in section 56.14-5, "[e]xcept when testing machinery," refers to the testing or repairing of the equipment's mechanical parts due to a malfunction. Respondent asserts that the exception to the requirement for guards applies when a whole plant is in a testing

phase designed to align the conveyor belts and to check their

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rotation. I conclude that "testing machinery" is not synonymous with a "testing phase," because the first situation involves curing a mechanical malfunction while the second involves assuring the smooth running of the complete operation. In the latter instance, which could last as long as 6 to 7 days, the moving parts of the conveyor would be in operation creating a hazard which the safety standard is designed to prevent. However, when a piece of equipment is malfunctioning, the guards would have to be removed only for short periods of time while making the repairs.

I reach the same conclusion as to the part of section 56.12-32 that reads "except during testing or repairs." "Testing or repairs" does not refer to the testing phase of setting up a plant, but to testing the electrical connections or to splicing the wires.

Citation No. 371143

During the same inspection, Inspector McPherson charged Respondent with a violation of 30 C.F.R. 56.14-1, which provides: "Mandatory. Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts, sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded." The inspector observed that the tail pulley of the first stage of the sand belt conveyor was not provided with a guard.

Respondent asserts that since 30 C.F.R. 56.14-1 contains an exception for "testing," and since both section 56.14-6 and section 56.14-1 fall under the same heading, "Use of Equipment," the exception also applies to the latter safety standard which is the subject citation. I conclude that the exception is neither expressly included nor implied in section 56.14-1.

Citation No. 371144

Inspector McPherson also charged Respondent with a violation of 30 C.F.R. 56.12-8, which provides:

Mandatory. Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

The inspector observed that the strain relief fitting for the power conductor feeding the screens was not being used properly.

Respondent contends that the loose power conductor observed by the inspector was neither energized nor intended to become energized; and that since the conveyors were relocated, the conductor served no function.

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Respondent contends that the safety standards included under section 56.12 are only applicable when the cables are subject to being energized or are in fact energized.

I conclude that a reasonable interpretation of section 56.12-8 requires a finding that the power conductors be capable of conducting electricity before the standard can apply. Respondent demonstrated that an alternative method of energizing the screens was being used, making the loose wire observed by the inspector nonfunctional. Under these circumstances, I find that Respondent did not violate section 56.12-8 as alleged in the citation.

CONCLUSIONS OF LAW

1. The undersigned judge has jurisdiction over the parties and the subject matter of the above proceeding.

2. Respondent violated 30 C.F.R. 56.14-6 by failing to provide guards on the V-belt as alleged in Citation No. 371141. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$28 for this violation.

3. Respondent violated 30 C.F.R. 56.12-32 by failing to provide a cover on the motor junction box as alleged in Citation No. 371142. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$30 for this violation.

4. Respondent violated 30 C.F.R. 56.14-1 by failing to provide a guard around the tail pulley as alleged in Citation No. 371143. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$90 for this violation.

5. Petitioner did not meet its burden of proving a violation as alleged in Citation No. 371144.

ORDER

WHEREFORE IT IS ORDERED that (1) the charge based on Citation No. 371144 is DISMISSED, and (2) Union Rock and Materials Corporation shall pay the Secretary of Labor the above-assessed civil penalties, in the total amount of \$148 within 30 days from the date of this decision.

WILLIAM FAUVER
JUDGE