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SOL (MSHA) V. AMERICAN AND & GRAVEL  
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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 Proceedings Docket No. BARB 79-209-PM A.C. No. 22-00101-05001
v.	Docket No. BARB 79-210-PM A.C. No. 22-00101-05002
AMERICAN SAND & GRAVEL COMPANY, RESPONDENT	Glendale Operations Mine

DECISION

Appearances: Murray Battles, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner R. W. Heidelberg, Esq., Heidelberg, Sutherland & McKenzie, Hattiesburg, Mississippi, for Respondent

Before: Judge Charles C. Moore, Jr.

The two cases captioned above involve 26 alleged violations of the Federal Mine Safety and Health Act of 1977. Fourteen of those alleged violations involve a charge that Respondent failed to provide adequate guards as required by 30 C.F.R. 56.14-1 in its three sand and gravel plants. Nine of the alleged violations are concerned with 30 C.F.R. 56.11-1 which requires safe access to working areas and three involve isolated items such as lack of a handrail, lack of a cover over an open hole, and failure to provide an adequate means of locking out an electrical switchbox. The latter three allege violations of 30 C.F.R. 56.9-7, 56.11-12, and 56.12-16.

Inasmuch as I will find that some of the violations occurred as alleged, I make the following findings regarding the six statutory criteria that must be considered in assessing a civil penalty: Respondent is of moderate size and no penalty that I assess will affect its ability to continue in business. All violations were abated promptly and in good faith and, as a matter of fact, inasmuch as Respondent closed down its mines when the inspector came and did not reopen them until all violations had been abated, I do not see how any better faith could have been shown in abating the violations. Respondent has no prior history of violations and has received three certificates of achievement in safety from the Federal Government. Matters of negligence and gravity will be taken up with respect to each violation that is found to have occurred.

As to the guarding violations, which will be taken up first, it is my conviction that the standard was designed to prevent accidental injuries but was not intended to protect someone who deliberately reaches into a hazardous area. As to the allegations of a failure to provide safe access, it is my view that the standard requires that a respondent provide safe access to a working area but that the standard cannot be used as a catchall to cover actions prohibited by other standards. I do not therefore consider a failure to provide guards as required by 30 C.F.R. 56.14-1 to be, in addition, a failure to provide safe access.

GUARDING VIOLATIONS AT PLANT A

30 C.F.R. 56.14-1

Citation No. 081703, alleges that the main V-belt drive pulley on the 1-A dredge was not adequately guarded. The testimony establish that the V-belt drive in question was guarded on all sides except underneath the pulley. In order to get caught in the bottom part of the pulley, a person would have to reach under the guard and up, but it was the inspector's opinion, that because certain materials were stored under the pulley someone trying to get material from that area could become caught in an unguarded pinch point. It was in reality not an area which should be guarded but an area where materials should not be stored. I find that the Secretary of Labor has failed to carry his burden of proof with respect to this violation and accordingly the citation is vacated.

Citation No. 081704 alleges that the plant A shaker V-belt drive was not adequately guarded. The V-belt drive was 3 feet above the catwalk and the top part of the pulley was guarded but the bottom was not. It is difficult to ascertain the exact factual situation from the testimony but there was testimony that in order to reach the pinch point, an employee would have to reach around a motor and an electrical box. The pulley itself was 6 inches in diameter, but there was no testimony as to whether the pinch point was at the top of the pulley or the bottom of the pulley. The danger of a pulley 3 feet above the walkway not guarded at the bottom is that in slipping or falling a worker's hand or clothing might engage the pinch point. From the description given, I think it highly unlikely that a miner would accidentally contact the pinch point of the pulley. The citation is vacated.

Citation No. 081705 alleges that the plant A shaker balance wheel was not guarded. This particular balance wheel had spokes and was 5 feet above the work platform. At first there was testimony that it was not guarded, but this was later amended to state that it was guarded, but not adequately. A short set of steps made the wheel, which was 1 foot in diameter, accessible. A 5-foot high unguarded spoked wheel would be covered by the standard regardless of the ladder if it were such that someone walking along the catwalk could accidentally become injured by the moving wheel. I am discounting the ladder because the only

purpose of the ladder is to service the balance wheel and balance wheel is only serviced when it is not working. In

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my opinion the standard is intended to cover dangerous areas where a miner might be, but not up on a ladder or a set of steps where there would be no reason to climb were the wheel in motion. I am not convinced that this pulley was unguarded. The inspector changed his testimony because the pulley in front of the balance wheel was guarded. A miner would have to reach around that guarded pulley approximately 2 feet before coming in contact with the balance wheel. I cannot find that the condition was such that someone would accidentally come in contact with the wheel. A picture or diagram might have convinced me to the contrary, but the oral evidence was not sufficient to sustain the Secretary's burden of proof. The citation is vacated.

Citation No. 081710 alleges that the sand pump V-belt drive pulley was not adequately guarded. There was a guard on the V-belt drive pulley that was supplied by the manufacturer but it was the type that was designed to fit down over the drive shafts so there was a portion of the lower part of the guard that contained an opening through which a miner could reach the drive pulley. The notch in the lower part of the guard was approximately 8 by 12 inches and it was the testimony of the inspector that a miner might accidentally fall or reach into this area while shoveling. From the description, I find it was possible for a miner to accidentally engage the V-belt and be injured. I do not find the likelihood of such injury to be high nor do I find the negligence to be of a high order. The violation occurred, however, and a penalty of \$30 is assessed.

Citation No. 081711 alleges that the desand conveyor tail pulley was not adequately guarded. The pulley in question is bolted to the outer wall of the plant and normally it is about 10 feet above ground level. Gravel and sand, however, accumulate in the area under the pulley. At the time of the inspection, the accumulation had reached the point where the pulley was only 4 feet above the sand and gravel. The pulley, which was 16 inches in diameter, was covered by a guard which extended approximately 1 foot to the right of the pinch point and approximately 6 inches to the left of it. Court Exhibit No. 1 is a rough drawing of the pulley and guard and, as can be seen, the pinch point is at the bottom of the pulley and somewhat to the left of the center where the moving belt first makes contact with the pulley. The danger point is not the pulley itself, but the point where the belt and pulley meet to create a "wringer" effect which could draw a hand or a miner's clothing into the belt and pulley. As the drawing shows, the guard extended farther to the right than it did to the left, even though the pinch point was on the left side. While I do not think it very likely, I think it is possible for a miner to accidentally become enmeshed in this pinch point. Gravity and negligence are minimal, however. A penalty of \$30 is assessed.

#### GUARDING VIOLATIONS AT PLANT B

Citation No. 081713 alleges that the desand conveyor head pulley was not guarded. The head pulley in question was 3 to 3-1/2 feet above the catwalk next to the conveyor, was 24 inches in diameter, and was unguarded. The inspector saw a man walking

near the head pulley and was told that the man had to check the system while it was running. The inspector did not observe

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a chain guard that would prohibit someone from approaching the pulley. It was a clear violation, it was hazardous, and Respondent was negligent in allowing the condition to exist. A penalty of \$60 is assessed.

Citation No. 081715 alleges that the reclaim conveyor head pulley was not guarded. The head pulley in question was 26 inches in diameter, was located 3 feet above the catwalk and was attached to an I-beam framework which was between the catwalk and the pinch point of the pulley. The pinch point was only 7 inches inside the outer edge of the I-beam and in my opinion, a tripping or slipping miner trying to catch himself might well contact the pinch point. A hazard existed and the violation was established, but negligence was of a low degree because of the channel iron framework around the pulley. A penalty of \$30 is assessed.

Citation No. 081716 alleges that the desand pump V-belt drive was not adequately guarded. The unguarded V-belt drive mechanism is located in a framework supporting a tank. This cubicle area below the tank measured 4 feet wide on each of four sides and 6 feet tall. Three of the four sides were guarded with screen mesh. The fourth side was open but was partially blocked by a pump and its supports. It was testified that, while the screened area was not entered while the machinery was working, it would be possible to squeeze into the area beside the pump housing and contact the drive mechanism. (The unguarded drive can be seen at the center of the photograph labeled Respondent's Exhibit No. 1.) While someone could deliberately enter this screened area and become injured, it is not, in my opinion, probable that someone would accidentally fall into or otherwise enter this area. I therefore rule that no violation has been proved with respect to this citation and the citation is accordingly vacated.

Citation Nos. 081717 and 081718 charged respectively that the head pulleys on the long and short conveyors were not guarded. These citations are treated together as the testimony indicates almost identical conditions. Court Exhibit 2 is a drawing of the areas that were guarded. The inspector testified that the pulleys were not guarded, and it is true that there was not a separate guard on each pulley. But in each case there was a V-belt drive driving the head pulley and the V-belt drive was guarded. The pinch point for the head pulley was at the top of the pulley and directly behind the guard for the V-belt drive. Considering the drawing (Court Exh. 2) together with the testimony, I find it highly unlikely that any miner could accidentally be injured by the pinch point of the drive pulley which is some 16 inches behind the guard. The two citations are accordingly vacated.

#### GUARDING VIOLATIONS AT PLANT F

Citation Nos. 081720 and 81723 both allege that the tail pulley and feed trough areas were not adequately guarded on the concrete conveyor and sand conveyor respectively. The alleged violations are sufficiently similar to be treated together. In

both cases (see Respondent's Exh. 6), there is an unguarded pinch point on the troughing idlers which is created by the metal



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feed trough. The citations also allege that the tail pulleys themselves were not adequately guarded by the factory-mounted guard. The testimony regarding the pulley itself is not sufficiently clear to determine that a violation existed, but the pinch points in the troughing area were unguarded. As to whether or not the standard requires such guards, I hold that it does and I am attaching hereto my decision in Dravo Limestone Corporation v. MSHA, Docket No. IBMA 77-M-1, (October 28, 1977) which explains why I consider the standard to apply. The violations were serious, but I consider the negligence to be low as it is unlikely that a mine operator would realize that this standard covered idling pulleys in a trough area. A penalty of \$30 is assessed for each citation.

Citation No. 081726 alleges that the desand pump V-belt pulley was not adequately guarded. This pulley contained a factory-made guard with a notch measuring 8 by 12 inches, cut so that the guard could be slipped down over a drive shaft. Except for location, the factual situation is the same as that involved in Citation No. 081710 and my findings with respect to this citation are the same. A penalty of \$30 is assessed.

Citation No. 081729 alleges that the gravel shaker conveyor tail pulley and an extended shaft were not adequately guarded. The inspector testified that the factual situation, except for location, was the same as that involved in Citation No. 081711. My decision is the same and a penalty of \$30 is assessed.

#### SAFE ACCESS CITATIONS AT PLANT A

30 C.F.R. 56.11-1

Citation No. 081706 alleges that a safe means of access was not provided for the pea gravel conveyor. The head pulley at the end of the catwalk was unguarded and there was no railing in the area where maintenance was performed on the pulley. There was, however, a chain guard approximately 4 feet from the end of the catwalk where the pulley was located. In order to do maintenance work on the head pulley, it was necessary to cross the chain barrier, but at such times the pulley and belt were not in operation. I think the chain guard is adequate to keep out miners having no work to do in the area, but of course it was not sufficient to keep out maintenance men who needed access to the pulley to perform their jobs. Since the machinery did not operate while maintenance work was being done, these miners were not endangered by the pulley, but by a falling hazard. It is that falling hazard which, in my opinion, establishes the violation here. The negligence was very low, however, and MSHA has not convinced me that the falling hazard was great. A penalty of \$20 is assessed.

Citation No. 081707 alleges that a safe means of access was not provided at the oversize conveyor head pulley. This is the same factual situation as in Citation No. 081706, except for the location. I make the same findings and a penalty of \$20 is assessed.

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Citation No. 081708 alleges a safe means of access in the load-out conveyor head pulley area was not provided. This is the same situation as in the two previous citations, except for the location and I make the same findings. A penalty of \$20 is assessed.

Citation No. 081712 alleges a safe means of access was not provided in the desand conveyor head pulley area. Again, the factual situation, except for location, is the same as in Citation No. 081706 and the two alleged violations considered after that. My findings are the same and a penalty of \$20 is assessed.

#### SAFE ACCESS CITATIONS AT PLANT F

Citation No. 081721 alleges a safe means to perform maintenance was not provided at the concrete sand conveyor head pulley drive. This conveyor had no catwalks or handrailings and the inspector was told "we walk the belt" (Tr. 128) to maintain the conveyor. No safety belts were used and the conveyor is 15 feet above ground. The defense witness indicated that maintenance was performed from the bucket of a front-end loader and that other inspectors had not objected, but I think the defense witness was confused as to which citation he was being questioned about. I find that the violation occurred, that Respondent was negligent, and that a falling hazard existed. A penalty of \$40 is assessed.

Citation No. 081722 alleges a safe means of access was not provided to perform maintenance on the mason sand conveyor head pulley drive. The factual situation, except for location is the same with respect to this violation as in Citation No. 081721. I make the same findings and a penalty of \$40 is assessed.

Citation No. 081724 alleges that a safe means of access to perform maintenance to the track cross-conveyor was not provided. Maintenance was performed on the track cross-conveyor by having employees work from a front-end loader bucket that is raised to the level of the conveyor. The inspector testified that maintaining machinery from loader buckets is a common cause of accidents throughout the industry. I think this is the citation that the defense witness was talking about when he stated that other inspectors had known of the practice and not disapproved. Be that as it may, the bucket could fall with the men in it or it could be moved unintentionally and I am convinced it is a hazardous situation. I find the violation occurred, that Respondent was negligent, and that a hazard existed. A penalty of \$40 is assessed.

Citation No. 081727 alleges a safe means of access was not provided to the desand conveyor head pulley drive. This is the same type of factual situation presented in previous citations where a chain barrier is located approximately 4 feet from an unguarded pulley drive, and there is no end railing at the pulley drive end of the elevated catwalk. I make the same findings as I did with respect to Citation No. 081706 and others. A penalty of

\$20 is assessed.

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Citation No. 081730 alleges a safe means to perform maintenance was not provided at the gravel shaker conveyor head pulley drive. In order to grease the head pulley, miners were required to stand on the conveyor belt and no safety belts were provided. A fall of 10 feet could result. While the factual situation was not described in sufficient detail for me to make a finding of extreme hazard, I do find there was sufficient hazard to constitute a violation and that Respondent was negligent. A penalty of \$40 is assessed.

CITATIONS NOT INVOLVING GUARDING OR SAFE ACCESS

Citation No. 081709 alleges a violation of 30 C.F.R. 56.9-7 in that there was a missing piece of handrailing in the guard for the load-out conveyor. The piece of handrailing missing was 42 inches in length. The railing itself totaled about 400 feet. The standard cited does not require a guard rail, but it requires that an unguarded conveyor be equipped with a stop cord. It may seem unreasonable that a stop cord should be provided on this conveyor because of the 42-inch gap in the railing, but that, nevertheless, is what the regulations require. I find the hazard of falling onto the belt through this 42-inch gap of a low order and I also find the negligence of a low order. But a violation did exist. A penalty of \$30 is assessed.

Citation No. 081725 alleges a violation of 30 C.F.R. 56.11-12 in that a cover was not provided over an open hole, at the top gravel-loading platform. The platform in question was 20 feet above ground level and the two planks that had been removed left an opening measuring 6 feet by 20 inches. The danger was to "stick pickers" who might fall through the hole. The defense was that this platform was not a work area, had been used four times in 6-1/2 years and that before any stick pickers performed this rare chore, all holes in the platform were covered. Under the circumstances, I find that this was not the type of area contemplated by the standard cited, and the citation is accordingly vacated.

Citation No. 081728 involves an alleged violation of 30 C.F.R. 56.12-16 in that an adequate means of locking out an electrical switchbox was not provided. After the inspector's testimony, the attorney for the Secretary realized that the evidence did not establish a violation of the safety standard and withdrew the citation from his petition. The citation is accordingly vacated.

ORDER

It is therefore ORDERED that Respondent pay to MSHA, a civil penalty in the total amount of \$560 within 30 days of the entry of this order.

Charles C. Moore, Jr.  
Administrative Law Judge

