

CCASE:
SOL (MSHA) V. ALLIED CHEMICAL
DDATE:
19800424
TTEXT:

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. WILK 79-109-PM
A/O No. 30-01291-05002

v.

Boonville Quarry Mine

ALLIED CHEMICAL CORPORATION,
RESPONDENT

Docket No. WILK 79-110-PM
A/O No. 30-00060-05002

Jamesville Quarry & Mill Mine

Docket No. WILK 79-125-PM
A/O No. 30-00009-05002

Norwood Plant Mine

DECISION

Appearances: Jonathan M. Kay, Esq., U.S. Department of Labor,
New York, New York, for Petitioner David M. Cohen,
Esq., Allied Chemical Corporation, Morristown,
New Jersey, for Respondent

Before: Judge Stewart

PROCEDURAL BACKGROUND

The above-captioned cases are civil penalty proceedings brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), hereinafter referred to as the Act.

A total of 12 violations was alleged within these proceedings. All but one of these alleged violations were settled by the parties or withdrawn by Petitioner because they had been issued in error.

In a decision issued on October 17, 1979, the proceedings with respect to the following citations were dismissed:

Docket No.	Citation No.	Date	30 C.F.R.
WILK 79-109-PM	210217	09/26/78	56.9-2
WILK 79-125-PM	210153	08/30/78	56.9-11

~951

In the same decision, settlement was approved in three additional citations. These citations and settlement amounts were as follows:

Citation No.	Date	30 C.F.R.	Proposed Penalty	Settlement
210164	09/13/78	56.9-3	\$122	\$ 84
210129	08/29/78	56.3-5	305	305
210140	08/29/78	56.3-8	98	98

Counsel for Petitioner asserted at the hearing that six additional citations should be withdrawn because they had been issued erroneously. Petitioner thereafter submitted notices of subsequent action which stated that the respective citations had been withdrawn. These citations and the mandatory standard which was allegedly violated in each instance are as follows:

Citation No.	Date	30 C.F.R.
210210	09/26/78	56.9-2
210212	09/26/78	56.4-23
210215	09/26/78	56.4-23
210162	09/12/78	56.19-75
210166	09/03/78	56.14-29
210154	08/30/78	56.4-23

In issuing Citation No. 210210, the inspector cited 30 C.F.R. 56.9-2 and wrote that the backup alarm on a Trojan loader was disconnected. In its answer, Respondent admitted that the backup alarm was disconnected, but asserted that the vehicle was being repaired and could not be operated at the time of the inspection.

Citation Nos. 210212, 210215 and 210154 were issued because two loaders and a truck were not equipped with a fire extinguisher. The standard cited, however, requires in pertinent part that firefighting equipment which is provided on the mine property shall be strategically located, readily accessible, plainly marked, properly maintained, and inspected periodically. There is no requirement therein that each of the vehicles in question be equipped with a fire extinguisher. Respondent asserted that other firefighting equipment was maintained at the cite.

Citation No. 210162 was issued because the hook on a crane in Respondent's crushing plant did not have any type of safety latch to prevent the accidental discharge of an object being moved or hoisted. On the other hand, the mandatory standard cited, 30 C.F.R. 56.19-75, requires only that open hooks not be used to hoist buckets or other conveyances. The crane cited in this instance was used to hoist castings, not buckets or other conveyances.

Citation No. 210166 was issued because the inspector observed the operator of a Caterpillar standing outside of the cab of the vehicle while its engine was running. The inspector

cited 30 C.F.R. 56.14-29 which

~952

requires that repairs or maintenance shall not be performed on machinery until the power is off and the machinery has been blocked. In its answer, the Respondent asserted that the operator of the vehicle stepped out onto the track when the inspector arrived. No repairs or maintenance were being performed at the time.

In view of the above, Petitioner's motion to withdraw, Citation Nos. 210210, 210212, 210215, 210162, 210166, and 210154 is granted.

Citation No. 210224

Citation No. 210224 was issued by inspector Steve Mitchell on September 27, 1978, pursuant to section 104(a) of the Act. He cited 30 C.F.R. 56.11-1 which requires that safe means of access shall be provided and maintained to all working places.

The inspector issued the citation after observing a cone-shaped accumulation of "muck" on a platform. He did not actually go into the platform, but observed the accumulation from the ground. The "muck" was comprised of broken rock and other finely-ground material which had spilled from a feeder at the point where it dumped into a crusher. The material was dry at the time, and firmly packed. It ranged in height to a maximum of 12 inches. The inspector estimated that it had taken at least a week to accumulate.

The platform in question was located alongside a feeder. It was 15 feet long, approximately 24 inches wide and 7-1/2 to 10 feet above the ground. At the time the citation was issued, the platform had been provided with a 3-foot high handrail of light angle iron. The only means of access to the platform was provided by a ladder.

The platform was used when Respondent found it necessary to adjust the speed of the feeder to the size of the rock being conveyed. To effect this adjustment in speed, certain sheaves on the feeder had to be changed. Because orders for different sizes of rock were placed at irregular intervals, the sheaves were changed only at irregular intervals. Winston Henson, Respondent's safety supervisor, testified that the platform might be used three times in one week and not again for 6 weeks thereafter.

Mr. Henson testified that he had no knowledge of any use of the platform other than for changing sheaves. The inspector believed, however, that the platform was used for general maintenance of the feeder. This belief was inferred from the fact that the platform provided the only means of access to the feeder. This inference is supported by the location of the sheaves--some 18 inches from the access ladder. There would be little point to constructing 15 feet of platform if its only use was to allow the changing of sheaves. The inspector testified that he had no idea how frequently the feeder required maintenance but that such maintenance was necessary "at least

seasonally."

~953

Mr. Henson also testified that the feeder operator was responsible for changing the sheaves and that he cleaned the platform before doing so.

Petitioner did not establish that the cited condition was in violation of section 56.11-1. As noted above, the mandatory standard requires that a safe means of access be provided and maintained to all working places. "Working place" is defined in section 56.2 to mean "any place in or about a mine where work is being performed." The record does not support a finding that work was being performed, had ever been performed in the past or would be performed in the future, while the accumulation was present. At best, the record establishes only that the platform was used on an irregular basis for changing of sheaves and seasonally for general maintenance. The inspector did not observe anybody on the platform. Petitioner presented no evidence which would support an inference that the platform had been used or would be used by any of Respondent's employees while the accumulation existed. Rather, the uncontradicted testimony of Mr. Henson established that the feeder operator cleaned the platform before using it to change the sheaves. This use was infrequent and no showing was made that work was performed on the platform or on the feeder at a time when the accumulation was present. The regulation is not a housekeeping standard, but one requiring safe access to places where work is being performed. The condition, therefore, did not violate section 56.11-1.

ORDER

It is ORDERED that the above-captioned civil penalty proceedings are hereby DISMISSED.

Forrest E. Stewart
Administrative Law Judge