

CCASE:
SOL (MSHA) V. LONE STAR
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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. VA 79-83-M
A.O. No. 44-02422-05002

v.

Curles Neck Pit Barge
and Dredge

LONE STAR INDUSTRIES, INC.,
RESPONDENT

DECISION

Appearances: Barbara Krause Kaufmann, Esq., Office of the
Solicitor, U.S. Department of Labor, Philadelphia,
Pennsylvania, for Petitioner David S. Smith, Esq.,
Kilcullen, Smith & Heenan, Washington, D.C.,
for Respondent

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

Two citations are involved in this proceeding. The parties
have agreed to settle one of them and have submitted a motion to
approve the settlement agreement. With respect to the other
citation, the parties have filed a joint stipulation of facts and
have submitted the matter for decision based upon those facts.
The stipulation was submitted to Administrative Law Judge
Michels. Upon his retirement, the case was assigned to me.

THE SETTLEMENT AGREEMENT

On April 21, 1980, Petitioner filed a motion to approve a
settlement agreement and dismiss the proceeding with reference to
Citation No. 301581 which charged a violation of 30 C.F.R.
56.14-1. The initial assessment was \$60 and the parties propose
to settle for \$20.

In support of the motion, Petitioner states that the
condition--alleged failure to guard a coupling for a crusher
drive motor--was not serious in that it was largely guarded by
location. It appeared

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highly unlikely that the coupling would contact any of the crusher mechanisms. The settlement agreement is in accordance with a decision of Judge Koutras in Docket No. VINC 79-21-PM. Having considered the statutory criteria in section 110(i) of the Act, I conclude that the settlement agreement should be approved.

STIPULATIONS

The parties have stipulated as follows:

1. Citation No. 301578 was issued to Respondent by Federal mine inspector Charles W. Quinn on February 13, 1979, charging a violation of 30 C.F.R. 56.11-2.

2. The citation states in part: "There was no handrail on the water side of the catwalk from land to the No. 12 plant. Employees entering this area are exposed to this unsafe condition."

3. Inspector Quinn's "Inspector's Statement" reads in part: "Handrail provided for one side of the catwalk but not the water side."

4. The structure characterized as a "catwalk" is made of wooden planks and is supported on both sides by dolphins or pilings.

5. The specific area where the inspector required handrails to be placed in the subject citation is about 45 feet long and is used by the company as a dock where persons and supplies are loaded and unloaded from Respondent's tug boats. This structure is utilized, on a daily basis, by Respondent's "puffer tugs" as the only available docking facility for such tugs, due to the placement of sand barges ("sand scows") around the dredge for loading purposes. At the time of the inspection, handrails existed at all areas other than those used for access to boats.

6. A photograph attached to the stipulation shows a tug boat approaching the area at low tide.

As may be observed from the water line on the dolphins or pilings, at high tide the bow of the tug boat rises to approximately the same height as the handrails which have been installed.

7. On at least one occasion subsequent to installation of the handrails pursuant to the inspector's citation, they have been knocked down by an approaching tug boat.

8. The part of the dock in question also serves as a walkway for persons who work on a dredge which is used as a preparation facility or plant.

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9. Persons who work in the vicinity routinely wear life preservers.

10. Respondent abated the condition in good faith although it expressed its position that the regulation cited is not applicable to the facility in question.

11. There is no history of prior safety violations at the operation.

12. A handrail was provided on the side of the dock away from the water.

13. The dock was icy at the time the citation was issued.

14. There is no history of any accident or injury at the area in question.

15. Five to six men use the dock as a walkway on a daily basis to get to and from the processing dredge. Cleanup and maintenance people use the dock as a walkway from time to time.

The stipulation is accepted and I find the facts set out therein.

REGULATION

30 C.F.R. 56.11-2 provides: "Crossovers, elevated walkways, elevated ramps, and stairways shall be of substantial construction provided with handrails and maintained in good condition. Where necessary, toeboards shall be provided."

ISSUES

1. Whether the facility involved herein is an elevated walkway within the meaning of the regulation.

2. If so, whether the facts show a violation of the regulation.

3. If so, what is the appropriate penalty for the violation.

CONCLUSIONS OF LAW

1. The area covered by the citation in question was an elevated walkway subject to the safety standard set out in 30 C.F.R. 56.11-2.

DISCUSSION

Part 56 contains health and safety standards for sand, gravel and crushed stone operations. Section 56.11 applies to travelways,

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and section 56.11-2 applies to, among other things, elevated walkways. A walkway is a passage for pedestrians. The stipulations and findings of fact state that the area in question "serves as a walkway for persons who work on a dredge which is used as a preparation facility or plant" and "cleanup and maintenance people also use the dock as a walkway from time to time." The fact that the area is also used as a dock for loading and unloading tugboats does not negate its character as a walkway.

The photograph showing the area at low tide clearly indicates that the walkway is higher than the water level. The stipulation states that at high tide, the bow of the tugboat rises to approximately the same height as the handrails. It is clear that during at least some of the time the area is used as a walkway, it is elevated. The hazard which the standard seeks to address is the hazard of falling from a walkway. This hazard exists even if the water level is at or near the height of the walkway. The use of the facility for loading and unloading does not lessen the hazard for those using it as a walkway. The fact that boats are apt to knock down the rail does not excuse its absence.

2. The parties agree that a handrail was not provided for the area in question on February 13, 1979. Therefore, a violation of 30 C.F.R. 56.11-2 was shown.

3. The violation was moderately serious. The facts do not show that Respondent was negligent.

4. Based on my finding that a violation occurred and on a consideration of the criteria set out in section 110(i) of the Act, an appropriate penalty for the violation is \$90.

ORDER

Therefore, IT IS ORDERED that Respondent pay the following penalties within 30 days of the date of this decision:

Citation No. 301581 -	\$ 20
Citation No. 301578 -	\$ 90
Total	\$110

James A. Broderick
Chief Administrative Law Judge