

CCASE:
SOL (MSHA) V. SIERRA READY MIX & CONTRACTING
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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judge

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

DOCKET NO. WEST 79-250-M

A/O NO. 02-01746-05003

Mine: Sand and Gravel Operation

v.

SIERRA READY MIX AND CONTRACTING
COMPANY,
RESPONDENT

DECISION

Before: Administrative Law Judge Vail

Statement of the Case

The proceeding arose upon the filing of a petition for the assessment of civil penalty (now called a proposal for a penalty, 29 CFR 2700.27) for five alleged violations of Mandatory Safety Standards contained in 30 CFR Part 56. The violations were charged in citations issued to Respondent following an inspection of the Sierra Ready Mix Sand and Gravel operation in Cochise County, Arizona on February 13 and 14, 1979.

Pursuant to notice, a hearing on the merits was held in Tuscon, Arizona, on February 8, 1980. Mildred L. Wheeler, Esq., Office of the Solicitor, United States Department of Labor, San Francisco, California appeared as Counsel for the Petitioner. Peter Ranke, Comptroller for the Respondent, attended the hearing solely for the purpose of requesting a continuance thereof stating the reason being that the Respondent had not received adequate notice of the date of hearing.

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The request for a continuance of the hearing was denied for the reason that two written notices of hearing had been mailed to the Respondent advising it of the date, time, and place of hearing as well as several telephone conversations held between Mr. Ranke and an employee of the Judge's office in Denver, Colorado. The original notice of jurisdiction dated January 2, 1980 was sent to the Respondent advising him that the case had been assigned to the undersigned in the Denver, Colorado office. A subsequent Notice of Hearing setting the date, time, and place was sent to the Respondent on January 18, 1980. An Amended Notice of Hearing was mailed to the Respondent on January 18, 1980 more specifically advising it of the room number where the hearing was to be held. Several telephone conversations were held with Mr. Ranke prior to the hearing and also with a representative of Congressman Udall's office regarding the hearing. Mr. Ranke maintains he did not receive the two notices of hearing and that he did not have time to secure an attorney or prepare his witnesses. These arguments are rejected as the two notices were mailed to the address stated on the Respondent's letterhead used in filing an Answer to the Petition. This is also the town where the plant is located. Further, the Petition was mailed to the Respondent on August 27, 1979 and Notice of Jurisdiction on January 2, 1980 affording the Respondent adequate time to secure an attorney and prepare his defense in this matter. On the date set for the hearing, the counsel for the Petitioner appeared with her witnesses ready to proceed with the hearing. For all of the above reasons the request for a continuance was denied and the Petitioner presented its case.

The record establishes that the area of Respondent's plant inspected on February 13 and 14, 1979 involved the wash plant located in the north part

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of Sierra Vista, Arizona. There were three employees located at that location and according to Exhibit "A" of the proposal for assessment of civil penalties, the size of the Respondent is determined to involve 63968 tons or man hours per year.

Findings of Fact

1. Citation No. 378663, issued on February 13, 1979, alleged a violation of mandatory standard 30 CFR 56.9-7 which requires emergency stop devices or cords along the full length of unguarded conveyors with walkways. Mine inspector Thomas Aldrete testified that he was the inspector who viewed the Respondent's premises on the dates involved herein and that regarding Citation No. 378663, he observed a walkway, approximately 10 feet long, next to the main feed conveyor belt which was not guarded or supplied with a stop cord. He issued the above citation. The violation was abated by having a stop cord installed.

2. Citation No. 378665, issued on February 13, 1979, alleged a violation of mandatory standard No. 30 CFR 56.12-32 which requires that inspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs. Inspector Aldrete testified that a vibrator motor junction box cover was missing on the main feed conveyor for the wash plant. This violation was abated by installing a cover on the junction box.

3. Citation No. 378667, issued on February 13, 1979, alleged a violation of mandatory safety standard 30 CFR 56.09-7 which requires emergency stop devices or cords along the full length of unguarded conveyor with walkways. Inspector Aldrete testified that in this situation the

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walkway along the conveyor to the scale shed was not equipped with an emergency stop cord. This citation was abated by installing a stop cord.

4. Citation No. 378669, issued February 13, 1979, alleged a violation of 56.12-28 which requires that continuity and resistance of grounding systems be tested immediately after installation, repair, and modification, and annually thereafter. A record of the resistance measured during the most recent test shall be made available on a request by the Secretary or his duly authorized representative. Inspector Aldrete testified that no records could be found by the Respondent at the time of his inspection of the electrical continuity checks. The violation was abated by a continuity and resistance of grounding check being performed on February 20, 1979 and record made thereof.

5. Citation No., 378672, issued on February 14, 1979, alleged a violation of mandatory standard 30 CFR 56.5-50 which restricts the noise level to which employees may be exposed. Inspector Aldrete testified that an employee operator of a tractor was exposed to 161.4 percent noise of the permissible time limit value allowable. This violation was abated by the installation of a lexan windshield, extension of the exhaust pipe of the fan loader on top of the cab of the tractor, and installation of acoustical material on the floorboards.

Appropriate Penalties

The Respondent, in its letter dated September 13, 1979, contested the above described citations and assessments. However, Respondent failed to submit evidence to refute the testimony of the Petitioner's witnesses. I find that the violations existed. In considering the amount of the penalty, I have determined that the operator is small in size (having only three

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employees at the site involved) that it has a history of one prior violation, and that the penalties would have no affect on its ability to remain in business. Each of the cited violations was promptly abated.

Citation Nos. 378663 and 378667 each charge one violation of 30 CFR 56.9-7 (requiring that unguarded conveyors with walkways be equipped with emergency stop devices along their full length).

I find that the likelihood of injury here was probable in that an employee could easily slip or fall against the conveyor and be caught in the rollers. Resulting injuries could be serious, involving potential disability. Negligence existed in that the operator should readily have seen the unguarded conveyor. A penalty of \$24.00 for Citation No. 378663 and \$34.00 for Citation No. 378667 is appropriate.

Citation No. 378665 charges one violation of 30 CFR 56.12-32 (requiring inspection and cover plates on electrical equipment and junction boxes be kept in place except during testing or repairs). A vibrator motor junction box cover was missing on the main feed conveyor exposing the electrical wires inside which could allow the wires to rub on the outer rim of the open junction box and possibly tear the insulation. This could eventually cause the junction box and frame work nearby to become energized, which could result in serious and possibly fatal injury due to electrical shock to an employee coming in contact with this. Negligence existed in that the operator should have seen that this cover was off. A penalty of \$30.00 is appropriate.

Citation No. 378669 charges one violation of 30 CFR 56.12-28 (requiring continuity and resistance test of the grounding system and a record kept thereof). The hazard involved here is that any modification, repair, or installation of a new electrical motor requires that the electrical system

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be checked for continuity of grounding and resistance for if it is improper, employees can be exposed to electrical shock and serious or fatal injury. Negligence existed in that the operator should have performed this function and kept proper records thereof. A penalty of \$30.00 is appropriate.

Citation No. 378672 charges one violation of 30 CFR 56.5-50 (relating to exposure of employees to noise in excess of specified amounts). I find that the employee checked for noise level on the front end loader was exposed to excessive noise levels. The operator abated this condition with appropriate modifications and the negligence was slight. A penalty of \$18.00 is appropriate.

ORDER

WHEREFORE, it is ordered that Respondent pay the penalty of \$136.00 within 30 days of the date of this decision.

Virgil E. Vail
Administrative Law Judge