

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE  
DENVER, COLORADO 80204

SECRETARY OF LABOR,	)	
MINE SAFETY AND	)	
HEALTH ADMINISTRATION	)	
(MSHA),	)	
	)	3 JUN 1980
	)	CIVIL PENALTY PROCEEDING
Petitioner,	)	DOCKET NO. WEST 79-168-M
	)	A/O NO. 48-00152-05007
v.	)	
	)	Mine : FMC Mine
FMC CORPORATION,	)	
	)	
Respondent.	)	

APPEARANCES :

James H. Barkley, Esq., Office of the Regional Solicitor,  
United States Department of Labor, 1585 Federal Building,  
1961 Stout Street, Denver, Colorado 80294,  
for the Petitioner ,

Clayton J. Parr, Esq., Martineau, Rooker, Larsen and  
Kimball, 1800 Beneficial Life Tower, 36 South State  
Street , Salt Lake City, Utah 84111,  
for the Respondent.

DECISION AND ORDER

Before: Judge Jon D. Boltz

Statement of the Case

Petitioner seeks an order assessing civil monetary penalties  
against Respondent for violations alleged in 8 citations. The standards  
allegedly violated were promulgated under the authority of the Federal Mine  
Safety and Health Act of 1977. (30 U.S.C. § 801 et seq.).

The Respondent, in its answer, denies that any of the regulations cited  
were violated. Pursuant to notice, a hearing was held on the merits in Salt  
Lake City, Utah, commencing on February 20, 1980. During the course of the  
hearing two citations were withdrawn by the Petitioner. I received  
Respondent's post hearing brief on April 7, 1980, and, by letter, the  
Petitioner waved filing a post hearing brief.

In this Decision each citation will be discussed separately and in the same order which it was dealt with at the hearing.

Findings of Fact

1. In the course of its business, Respondent operates a coal mine, known as the **FMC** Mine, in Sweetwater County, Wyoming.

2. During the course of an inspection of Respondent's mine, a duly authorized representative of the Petitioner issued to the Respondent four citations alleging violations on February 5, 1979, and four citations alleging violations on February 7, 1979, all of which are the subject of this proceeding.

3. The Respondent has a history of 41 assessed violations in 76 inspection days.

4. The Respondent is a large operator having 1380 underground mine employees who worked 647,641 man hours in the calendar quarter prior to the issuance of these citations.

5. The imposition of the civil monetary penalties requested by Petitioner will not effect Respondent's ability to continue business.

Citation 336461

This citation alleges a violation of 30 CFK §57.9-37<sup>1</sup>. The evidence is conflicting, and I find the following facts are established:

6. A flatbed service truck, used for purposes of field lubrication (Tr. 96) and to haul tools and parts (Tr. 12), was observed parked with the front part of the truck resting on a steep grade (Tr.10) which continued to downgrade for approximately 20 to 25 feet.

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<sup>1/</sup> "Mandatory. Mobile equipment shall not be left unattended unless the brakes are set. Mobile equipment with wheels or tracks, when parked on a grade, shall be either blocked or turned into a bank or rib; and the bucket or blade lowered to the ground to prevent movement. "

7. Beyond the downgrade, in front of the truck, the ground leveled off for a distance of approximately 100 feet, to where a guard house was located. (Tr.10).

8. The truck was left unattended, the brakes were not set and the wheels were not blocked.

The citation should be affirmed.

The Respondent argues that the cited regulation is misapplied because the truck was not mobile equipment used for loading, hauling, and dumping ores or for any other purposes as required under the standards of 30 CFR § 57.9, entitled "Loading, Hauling, and Dumping."

Although the evidence concerning the use of the truck is conflicting, it appears that it was used, among other things, for hauling purposes. Respondent's garage supervisor testified that the truck was used for hauling purposes, although it was to be taken out of service and replaced by a new truck. (Tr.12).

The truck was mobile equipment and was left unattended without the brakes being set. This is sufficient to support a finding that there was a violation of 30 CFR § 57.9-37.

Citation 336462

This citation alleges a violation of 30 CFR 8 57.9-2<sup>2</sup>.

The following facts were established:

9. The brake and tail lights on the truck referred to in the previous citation were not operating when inspected. (Tr. 12, 13).

10. The truck was not used after the inspection, but was sold.  
(Tr. 102).

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<sup>2/</sup> "Mandatory. Equipment defects affecting safety shall be corrected before the equipment is used."

The citation should be vacated because the equipment was not used after the time of the inspection. The fact that **the** brake and tail lights **were** not operating did not affect safety.

Citation 336465

This citation charges a violation of 30 CFR § 57.14-6<sup>3</sup> in that the guard for the V-belt drive on the Centurian coal feeder was allegedly not in place while the machinery was operating.

I find that the evidence establishes the following:

11. The motor on the coal feeder operates only when coal is dumped into the hopper. This dumping operation occurs three times per week.

(Tr. 112).

12. The coal feeder motor operates for approximately 3 hours when coal is dumped into the hopper. Thus, the coal feeder operates approximately 9 hours per week. (Tr. 112, 113).

13. The coal feeder motor does not turn on automatically, but must be turned on in a control room located approximately 30 to 40 feet away, up a flight of steps above the area of the coal feeder. (Tr. 114, 115).

This citation should be vacated because the Petitioner failed to prove that the guard was not in place on the coal Feeder motor while the machinery was being operated. It was conjecture by the Mine Safety and Health Administration witness that because dust was on the metal guard lying by the coal feeder that "the unit may have been operated with the guard off."

(Tr.16). Likewise, it was speculative to conclude, based upon **his** "**understanding**" (Tr.17) that **the** unit comes **on** automatically without the

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3/ "Mandatory. Except when testing the machinery, guards shall be securely in place while machinery is being operated."

necessity of turning on a switch, that the coal feeder unit could operate. Such testimony is insufficient to prove a violation occurred.

Citation 336466

A violation of 30 CFR § 57.14-1<sup>4</sup> is alleged.

The facts are as follows:

14. Three return idler rollers, which provide a support system for a conveyor belt on its under side (Tr.19), were unguarded.

15. At the time of the inspection there was spillage under the unguarded return idler rollers. (Tr.20).

16. Employees of the Respondent would be in the proximity of the unguarded return idler rollers when cleaning up spillage and while inspecting the equipment. (Tr.20).

17. The return idler rollers were located on an incline, approximately one to four feet above the floor level depending on the angle of the incline. (Tr. 19, 21).

18. A person, while working in the area, might get caught between the moving parts of the idler rollers and the conveyor belt and might suffer injury. (Tr. 19).

The Respondent argues in its brief that the return idler rollers should not be considered to be "similar exposed moving machine parts." I conclude, however, that the wording of the regulation is sufficiently broad to include them. The idler rollers and conveyor belt are moving machine parts and there is a danger of injury to persons as a result of

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4/ "Mandatory. Gears; sprockets; chains; drive, head, 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."

pinch points being left unguarded. The more relevant question is whether or not these exposed moving machine parts "may be contacted." Judge Koutras in his decision of Secretary of Labor v. Massey Standard Rock Company, 1 MSHC 2111, June 18, 1979, sets down a test by which the applicability of section 57.14-1 may be measured. The Massey case dealt with section 56.14-1, but the wording is the same as section 57.14-1.

"..when an inspector cites a violation of section 56.14-1, it is incumbent on him to ascertain all of the pertinent factors which lead him to **conclude** that in the normal course of his work duties at or near exposed machine parts, an employee is likely to come into contact with **such parts** and be injured if such parts are not guarded ." Massey at p. 556 of official text.

Differently stated, this same test was applied in the case of Secretary of Labor v. Central Pre-Mix Concrete Company, 1 MSHC 2237, September 26, 1979.

"...on a case-by-case basis, petitioner (the Secretary of Labor) must establish that the unguarded areas in question, by its location and proximity to the comings and goings of mine personnel, exposes them to the hazard or danger of being caught in the unguarded pulley. ...[T]his question can only be determined by consideration of the prevailing circumstances at the time the citation issued." Central Pre-Mix at p. 1431 of official text.

Upon applying these tests to the foregoing findings of fact, I conclude that the citation should be affirmed.

Citation 336471

This citation alleges a violation of 30 CFR § 57.14. 1<sup>5</sup>.

The facts are as follows:

19. Three return idler rollers that support a moving conveyor belt, located approximately seven, eight and nine feet above the floor in the distribution building, were unguarded. (Tr 23-30, 186-187).

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5/ See footnote 4 on page 5.

20. There was a build-up of muck or dirt on the floor below the return idler rollers at the time of the inspection.

Applying the tests used in the Massey and Central Pre-Mix cases previously cited, this citation should be vacated. The evidence does not support a finding that in the normal course of his work duties at or near the exposed machine parts, an employee may come in contact with such parts and may be injured if the parts are not guarded. As the return idler rollers *were* seven, eight and nine feet above the floor, they were guarded by location. In addition, by removing spillage from the floor, it would not be necessary for an employee to work close to the return idler rollers.

Citation 336472

This citation alleges a violation of 30 CFH. § 57.14.1<sup>6</sup>.

I find the following facts:

21. This **takeup** pulley operates on a vertical belt and is used to take the slack out of the conveyor belt, as it starts up or as it continues under load (Tr. 189), and provides tension on the belt. (Tr. 192).

22. On the **takeup** pulley, a pinch point is created at the point where the belt comes into contact with the rotating device around which the belt travels. (Tr. 76).

23. A horizontal work platform with two handrails was located near the vertical belt. The belt travels up vertically within two to three inches of the handrails. (Tr. 193, 67).

24. The lower portion of the **takeup** pulley was guarded. (Tr. 64).

A guard was located at the end of the **takeup** pulley, but the Petitioner presented testimony to show that the vertical movement of the tail pulley

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<sup>6/</sup> See footnote 4 on page 5.

can vary from a few inches to two or three feet when the belt starts up initially or when under load conditions. (Tr. 217). This testimony is disputed by Respondent's witness who testified that the movement is eight inches. I find that the testimony of Respondent's witness is more acceptable because he made actual measurements after the citation issued. (Tr. 229). As the lower portion of the tail pulley was guarded, no violation was proven in regard to its function.

However, I find an unsafe work area was created by the nearness of the upward moving belt to the two handrails which were two to three inches away from the belt. (Tr.67). The evidence was in dispute as to how close the running belt would come to the railings, three to four inches (Tr.200) or "about a foot" (Tr. 208), but I find from the evidence that there is some horizontal movement and fluctuation in the operation of the belt. In addition, the mine inspector testified that the belt moves at approximately ten feet per second, and "[i]f you got into it there is no way you could get out of it." (Tr.75). He also testified that in actual operation, "when it got flopping," the belt probably could touch the handrails. Thus, in the normal course of his work duties on the work platform, an employee may come into contact with such moving parts and may be injured if such parts are not guarded. This citation should be affirmed.

Citation 330660 and 336470

These citations were withdrawn by the Petitioner.

I find the facts to be as stated in paragraphs 1 through 24 and in addition find the following:



25. Respondent's history of prior violations is not significant and good faith was demonstrated in achieving rapid compliance after notification of the violations alleged.

Conclusions of Law

1. The undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding at all times relevant to this proceeding. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977.

2. The Respondent violated the regulations cited in Citations 336461, 336466 and 336472.

3. The Petitioner failed to prove violations of the regulations cited in Citations 336462, 336465 and 336471.

4. The Petitioner having withdrawn Citations 336660 and 336470, the citations should be vacated.

Order

1. Citation 336461 and the proposed penalty of \$44 are affirmed.
2. Citation 336466 and the proposed penalty of \$20 are affirmed.
3. Citation 336472 and the proposed penalty of \$18 are affirmed.
4. Citations 336462, 336465, 336471, 336660 and 336470 and all penalties therefor are vacated.

It is further Ordered that the Respondent pay the affirmed penalties within 30 days from the date of this Decision.

  
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3 - x Boltz  
Administrative Law Judge

Distribution:

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