

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE  
DENVER, COLORADO 80204

24 JUN 1980

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SECRETARY OF LABOR, MINE SAFETY AND	)		
HEALTH ADMINISTRATION (MSHA),	)	CIVIL PENALTY PROCEEDING	
	)		
Petitioner,	)	DOCKET NO. WEST 79-377-M	
	)		
v.	)	A/O NO. 35-01003-05001	
	)		
KINCHELOE AND SONS, INC.,	)	MINE: KINCHELOE QUARRY	
	)		
Respondent.	)		
_____		)	

Appearances:

Judith Vogel, Esq., Office of the Solicitor, United States Department of Labor, 11071 Federal Building, Box 36017, 450 Golden Gate Avenue, San Francisco, California 94102  
for the Petitioner,

Mr. Mickey Kincheloe, Vice President, Kincheloe and Sons, Inc., P. O. Box 296, Myrtle Point, Oregon 0745%  
for the Respondent.

Before: Judge Virgil E. Vail

DECISION

The above-captioned civil penalty proceeding was brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 820(a).

Pursuant to notice, a hearing was held in Eugene, Oregon, on April 10, 1980.

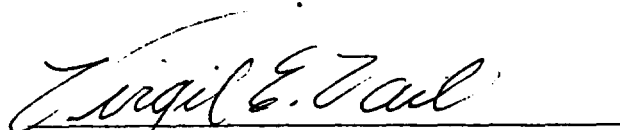
The petitioner alleges that respondent violated mandatory safety standard 30 CFR 56.14-1 by failing to guard two conveyor self-cleaning tail pulleys on its premises. <sup>1/</sup> The burden, therefore, is on the petitioner to show by a preponderance of the evidence that the unguarded machines created a safety risk to miners.

1/ 56.14-1 Mandatory. Gears, sprockets; chains; drive, head, tail, and take-up pulleys; flywheels; couplings; shafts; saw-blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

The testimony of George A. Gipson, mine inspector for MSHA shows that the **self-**cleaning tail pulleys under the cone conveyor and under the bunker conveyor were unguarded. The facts are uncontroverted that said pulleys are both approximately 12 to 14 inches above ground level. Photographs taken by the respondent and admitted in evidence show that said pulleys involved herein are indeed only 12 to 14 inches' off the ground and located within the frame-work of the conveyors (Exhibits R-1, R-2 and R-6). The petitioner argues that, because these are self-cleaning pulleys with blades on them, they are more hazardous than normal pulleys, for clothing can get caught in the blades dragging employees into the pinch points of the pulleys. Conceding that this is a possibility, the facts do not indicate that the location and height of the pulleys make such an occurrence likely. The standard requires guarding pulleys where they may be contacted by persons and may cause injury, but it seems highly unlikely in these two situations that a person would contact these pulleys or be injured by them.

In both cases, the petitioner failed to satisfy the burden of showing that a safety risk existed; rather, the facts support the respondent's position that the likelihood of an injury occurring was remote.

Therefore, it is Ordered that both citations are hereby vacated.

  
Virgil E. Vail  
Administrative Law Judge

Distribution:

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