

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE
DENVER, COLORADO 80204

26 AUG 1980

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),)	
)	
v.)	Civil Penalty Proceeding
Petitioner,)	
)	DOCKET NO. CENT 79-398-M
)	A/O. No. 34-00508-05004
)	DOCKET NO. CENT 79-399-M
)	A/O No. 34-00508-05005
)	
C AND O MATERIALS CORPORATION,)	
)	Mine: Wigley Quarry and Mill
Respondent.)	
)	

DECISION AND ORDER

APPEARANCES:

Fredd J. Haas, Esq., Office of the Solicitor, United States Department of Labor, 555 Griffin Square Building, Dallas, Texas 75202, for the Petitioner;

Don Cook, Owner of Respondent corporation, P.O. Box 274, Fitztown, Oklahoma 74842, pro se.

Before: Judge Jon D. Boltz

STATEMENT OF THE CASE

The Petitioner seeks an order assessing civil monetary penalties against the Respondent for three violations alleged in case number CENT 79-398-M and nine violations alleged in case number CENT 79-399-M. The cases were consolidated and a hearing was held in Oklahoma City, Oklahoma on April 29, 1980.

The citations will be discussed in the same order as presented at the hearing.

FINDINGS OF FACT AND CONCLUSIONS

Findings of Fact are enumerated 1 through 38.

1. At all times relevant to these proceedings, Respondent operated an open pit limestone mining operation two to three miles southwest of Fitztown, Oklahoma. (Tr. 19.)

2. The Respondent has not had a significant history of previous violations. (Complaint, Exhibit A.)

3. The business of the Respondent consists of **21,860** production tons or manhours per year. (Tr. **234; 235.**)

4. The proposed penalties are appropriate to the operator's size of business and will not affect Respondent's ability to continue in business.

5. The Respondent promptly took steps to abate the citations issued and demonstrated good faith in achieving rapid compliance with relevant standards.

DOCKET NUMBER CENT 79-398-M
Citation Number 167049

This citation alleges a violation of 30 CFR § 56.14-1.¹

6. A tail pulley of the conveyor belt running from under the primary crusher to the stock pile was not guarded. (Tr. 21, 22.)

7. Persons could come into contact with the tail pulley while cleaning up spillage or in servicing the tail pulley bearings and could be injured. (Tr. **23.**)

This citation should be affirmed. The Respondent stated that the guard on the tail pulley had broken off and was to be repaired as quickly as possible. This good faith mitigates the amount of the penalty.

Citation Number 167054

This citation alleges a violation of 30 CFR § 56.12-32.²

1/ Mandatory. Gears; sprockets; chains; drive, head, tail, 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.

2/ Mandatory. Inspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs.

8. The motor on the roll crusher at the north plant was not equipped with a cover plate or a junction box to contain the wiring that was on the motor. (Tr. 31.)

9. The low voltage starter at the control house, which activates the electric motor and is some distance from the crusher, had burned out at some time prior to the inspection and the equipment had not been used or operated since that time. (Tr. 243.)

10. Due to the burned out low voltage starter, there was no electrical current available to the equipment. (Tr. 243.)

This citation should be vacated. Although Respondent may have used the equipment at some time in the past without a cover in place over the exposed wiring, at the time of the inspection this equipment was inoperable and had to be repaired before it could be used. It presented no electrical hazard.

Citation Number 167067

A violation of 30 CFR § 56.15-4 is alleged.³

11. Two employees using sledge hammers were attempting to break large, oversized rocks in the primary crusher feeder without wearing safety glasses. (Tr. 39.)

12. Rock chips from the oversized rocks could have struck the employees in their eyes, resulting in eye damage or loss of sight. (Tr. 40, 41.)

This citation should be affirmed. Don Cook, owner, stated that safety glasses were supplied to employees, but the employees simply did not wear them. Needless to say, the issued glasses afford no protection

3/ Mandatory. All persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine or plant where a hazard exists which could cause injury to unprotected eyes.

unless they are worn. If they are not, the facts support finding a violation of the regulation.

DOCKET NUMBER CENT 79-399-M
Citation Number 167048

A violation of 30 CFR § 56.14-1 is **alleged.**⁴

13. The tail pulley running from beneath the primary crusher to the shaker screen of the secondary plant was not provided with a guard.

(Tr. 45.)

14. The bottom of the tail pulley was located at ground level, between two vertical I beams. (Exhibit C-2.)

15. An employee could contact pinch points of the tail pulley and conveyor belt from either side of the I beam. (Tr. 48.)

This citation should be affirmed. The tail pulley was not guarded by its location between the two vertical I beams, although the pinch points could not easily be reached. (Tr. 268.) Without installation of a guard, injury may result to an employee working around the tail pulley.

Citation Number 167050

A violation of 30 CFR § 56.9-87 is **alleged.**'

16. Heavy duty mobile **equipment**, consisting of a Caterpillar 930 rubber-tired front end loader **operated** in the plant and stock pile areas, was not equipped with a reverse signal alarm or an observer. (Tr. 53.)

17. The operator's view to the rear was obstructed due to the construction of the cab in which he sits and the placement of the exhaust pipe and muffler system behind the cab. (Tr. 54.)

4/ See footnote 1/, supra.

5/ Mandatory. Heavy duty mobile equipment shall be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

This citation should be affirmed. Although the evidence shows that truck drivers standing in the area observe the operation of the loader, there is no evidence that they act as observers in order to signal the operator of the loader as to when it is safe to back up.

Citation Number 167051

A violation of 30 CFR § 56.11-1 is alleged.⁶

18. A work platform, located next to a shaker screen, was approximately 20 feet above the ground. (Tr. 60, 69.)

19. A conveyor belt, operated from under the primary crusher, carried material up to the shaker screen. (Tr. 64.)

20. In order to gain access to the work platform, it was necessary for an employee to climb up the grid work supporting the platform and shaker screen, or to climb up the conveyor belt, and go on to and across the shaker screen. (Tr. 65.)

21. Prior to the inspection, handrails had been installed on both the conveyor and the work platform. (Tr. 270.)

22. The citation was subsequently terminated by an MSHA inspector, one who had not written the citation, on the basis that the handrails, as installed, were acceptable. (Tr. 270.)

This citation should be vacated. The evidence shows that the Respondent did provide a safe means of access to the work platform. The conveyor was equipped with handrails so that an employee could walk up the incline directly to the shaker screen. Exhibit C-9 is a photograph which shows the conveyor and the unit with the work platform and shaker screen as all being solidly connected. The access does not appear unsafe. In addition, the -citation had been terminated without any material change having been made. (Tr. 270.)

6/ Mandatory. Safe means of access shall be provided and maintained to all working places.

Citation Number 167052

A violation of 30 CFR § 56.14-1 is **alleged.**⁷

23. A guard was not provided on the shaker screen flywheel drive, (Tr. 71.)

24. A work platform in connection with the shaker screen unit was located just below the flywheel, and persons working on the work platform could come into contact with the 16 to 18 inch diameter flywheel. (Tr. 73, 272.)

25. The work platform, which was several feet above ground level, was accessible by means of an attached ladder. (Tr. 75.)

26. If an employee came into contact with the unguarded flywheel while it was in motion, he could suffer cuts and bruises. (Tr. 78.)

The citation should be affirmed. The standard requires that flywheels which may be contacted by persons and which may cause injury to persons shall be guarded. The Petitioner has met the burden of proof of a violation, to a **preponderance** of the evidence, based upon the above findings of fact.

Citation Number 167053

A violation of 30 CFR § 56.14-1 is **alleged.**⁸

27. A guard was not provided for the flywheel of the hammer mill crusher at the north plant. (Tr. 80.)

28. The flywheel was between 30 and 36 inches in diameter. The bottom edge of the flywheel was approximately 5 feet 2 inches above waste material on the ground and the waste material was approximately 1 1/2 to 2 feet deep. (Tr. 84, 86.)

7/ See footnote 1/, supra.

8/ Id.

29. The MSHA inspector issued the citation because the buildup of waste material on the ground below the flywheel reduced the distance between the floor and the flywheel and presented a hazard to employees working directly below the flywheel.

This citation should be affirmed. The Petitioner has shown by the evidence that, due to its location, the unguarded flywheel might be contacted by employees and might cause injuries to occur.

Citation Number 167057

A violation of 30 CFR § 56.9-87 is alleged.⁹

30. A large Caterpillar D9 dozer, operated in the pit area, was neither equipped with an audible reverse signal alarm nor was an observer present to assist while the dozer was operating. (Tr. 89.)

31. The operator of the machine sat approximately 6 feet above ground level and; due to the size of the machine, the operator's view directly to the rear was obstructed. (Tr. 90, 91.)

This citation should be affirmed. The evidence shows that the dozer was heavy-duty mobile equipment and that the view of the operator was obstructed. There were employees on foot observed in the area at the time the dozer was operating. (Tr. 94.)

Citation Number 167059

A violation of 30 CFR § 56.9-87 is alleged.¹⁰

32. A Mack M-20, a rubber-tired in-dump haul truck with a 15 to 18 ton load capacity, was operating in the area between the pit and the crusher plant and was neither equipped with an audible reverse signal alarm device nor was an assisting observer present during its operation. (Tr. 98.)

9/ See footnote 5/, supra.

10/ Id.

33. When the truck was being operated in reverse, the view of the operator to the rear was obstructed. (Tr. 100.)

This citation should be affirmed. The Petitioner has met the burden of proving a violation of the regulation by evidence showing: that the equipment was heavy-duty and mobile; that the view of the operator to the rear while backing up was not unobstructed; and that there was no observer or audible signal alarm utilized.

Citation Number 167060

A violation of 30 CFR § 56.9-2 is alleged.¹¹

34. A truck with a hauling capacity of approximately 15 tons, carrying quarry material from the pit to the primary crusher, was equipped with a back-up alarm, but the alarm was defective and not in operation. (Tr. 108, 109.)

35. Employees were observed on foot in the area of operation of the truck, in the pit and at the primary crusher. (Tr. 117.)

The citation should be affirmed. Here the defective equipment affects safety in that employees who are on foot and in the area of operation of the truck might be injured, even though, as Respondent tends to argue, no one is supposed to be on foot in that area.

Citation Number 167065

A violation of 30 CFR § 56.5-50 is alleged.¹²

11/ Mandatory. Equipment defects affecting safety shall be corrected before the equipment is used.

12/ Mandatory.

(a) No employee shall be permitted an exposure to noise in excess of that specified . . . [in the standard].

(b) When employees' exposure exceeds that listed in the ... table, feasible administrative or engineering controls shall be utilized. If such controls fail to reduce exposure to within permissible levels, personal protection equipment shall be provided and used to reduce sound levels to within the levels of the table.

36. A 930 Caterpillar loader operator working in the plant area was exposed to 190.6 percent of the permissible limit for an 8-hour exposure to noise as measured by a dosimeter. (Tr. 119.)

37. A conversion table used in connection with the results of the dosimeter reading showed that the employee was exposed to between 94.5 dBA and 95 dBA in an 8-hour period, whereas the regulation (30 CFR § 56.5-50) prescribes that during such 8-hour period no employee shall be permitted an exposure to noise in excess of 90 dBA. (Tr. 124.)

38. The excess noise was caused by a hole in the muffler (Tr. 277), by the fact that the rear window of the machine was left open (which allowed for increased flow of noise vibration to the operator), and by the fact that the operator was playing a radio loudly in the cab. (Tr. 125.)

This citation should be affirmed. In order to abate the citation, Don Cook **stated, that** the muffler was repaired and use of the radio was eliminated. (Tr. 277.) Thus, there were feasible administrative or engineering controls which could have been utilized to reduce exposure of noise to acceptable levels.

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge has **jurisdiction** over the parties and subject matter of the proceeding. At all times relevant, Respondent was subject to the provisions of the Federal Mine Safety and Health Act of 1917.

2. The Respondent did not violate the regulations cited in Citation Numbers 167054 and 167051.

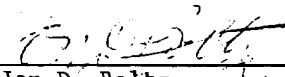
3. The Respondent violated the regulations cited in Citation Numbers 167049, 167067, 167048, 167050, 167052, 167053, 167057, 167059, 167060, and 167065.

ORDER

Citation Numbers 167054 and 167051 are hereby vacated. Based upon the criteria set forth in section 110(i) of the Act, the penalties determined for the violations proven are as follows:

<u>CITATION NUMBER</u>	<u>AMOUNT</u>
167049	\$ 42.00
167067	50.00
167048	42.00
167050	50.00
167052	50.00
167053	50.00
167057	100.00
167059	100.00
167060	100.00
167065	90.00

It is further ordered that the Respondent pay the above penalties in the total amount of \$674 within 30 days from the date of this Decision.



Jon D. Boltz
/Administrative Law Judge

Distribution:

Fredd J. Haas, Esq., Office of the Solicitor, United States Department of Labor, 555 Griffin Square Building, Dallas, Texas 75202

Don Cook, C and O Materials, P.O. Box 274, Fitztown, Oklahoma 74842