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SOL (MSHA) V. ALLIED PRODUCTS
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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. SE 79-46-PM
AC No. 01-00040-05006 F
Montevallo Quarry & Mill

v.

ALLIED PRODUCTS COMPANY,

RESPONDENT

DECISION

Appearances: Murray A. Battles, Office of the Solicitor,
U.S. Department of Labor, for Petitioner
Gilbert E. Johnston, Counsel for Respondent

Before: Judge William Fauver

This proceeding was brought by the Secretary of Labor under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., for assessment of civil penalties for alleged violations of mandatory safety standards. The case was heard at Birmingham, Alabama. Both parties were represented by counsel, who have submitted their proposed findings, conclusions, and briefs following receipt of the transcript.

Having considered the contentions of the parties and the record as a whole, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

FINDINGS OF FACT

1. At all pertinent times, Respondent Allied Products Company operated a lime quarry and mill known as the Montevallo Lime Plant in Shelby County, Alabama, which produced crushed limestone for sales in or substantially affecting interstate commerce.

2. Respondent employed about 135 people at the plant and operated the quarry in two 8-hour shifts, 6 days a week and the mill in three 8-hour shifts, 7 days a week. Limestone was mined from the quarry and hauled to the mill, where it was crushed and screened before being transported by conveyor belt for storage or further processing in rotary kilns and ball mills.

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3. An elevated dirt haulage road with a crushed limestone surface led to a spoil dump about 1 mile from the plant. The road was 33 feet wide, on a 7-percent grade, and had an elevation ranging from 5 to 30 feet. Berms along the road were 6 to 18 inches high. However, at some points along the road the berms were washed away by drainage.

4. William E. Evans, the quarry foreman, was responsible for maintaining the berms along the dump haulage road. The berms, which were a mixture of clay and stone, were left behind as road scrapings when the road was constructed. When the berms washed out, they were purposely left unrepaired so that water would drain off the road instead of into the quarry.

5. Between September 5, 1974, and March 30, 1977, Respondent was issued 12 citations charging violations for inadequate berms throughout the quarry and plant.

6. On Saturday morning, November 25, 1978, one of Respondent's employees, Herman Shirley, was fatally injured while operating a Clark 620 Bobcat front-end loader on the dump haulage road. Shirley, who was 67 years old, worked in Respondent's storeroom and would normally travel to supply houses in Montevallo and Birmingham to pick up parts and accessories for the plant's machinery and equipment. He was under the direct supervision of Respondent's purchasing agent, Charlie Thornton and the storekeeper, S. D. Posey. When he was not picking up parts, Shirley would clean in and around the storeroom and haul trash to the spoil dump in a pick-up truck, which the general mill foreman, Joe Dial, used to drive to and from work.

7. Shirley normally worked on Saturday. However, he was not scheduled to work on November 25, 1978, because all laborers and clerks were off until Monday, November 27, following the Thanksgiving holiday. He reported for work anyway at his usual time, 7 a.m. The packing yard foreman, J. C. Smith, and the day shift leadman were in charge because Joe Dial was off. Smith did not question Shirley's presence or tell him to go home for the holiday week-end. The shop needed to be cleaned and he decided to let Shirley work that day. After Shirley cleaned the shop and bathhouses, he proceeded to load trash on the Bobcat because the company truck that he normally used to carry trash was not available. Edward majors, a co-worker and friend of Shirley's, saw Shirley about 9 a.m. in the lunchroom removing trash to haul to the dump. He warned Shirley not to use the Bobcat because he believed it was dangerous for Shirley to operate it.

8. Shirley made one trip to the dump, apparently hauling two 55-gallon barrels of trash in the bucket of the Bobcat. On the second trip, about 10:30 a.m., when he was hauling two 55-gallon drums, the Bobcat overturned on his return down the haulage road. The vehicle went through a washed-out area that had no berm overturned down a 6-foot embankment and landed on Mr. Shirley, who was killed in the accident. At about 4:45 p.m., Paul Misenhimer, Respondent's safety and personnel director, notified the MSHA field office in Birmingham of the fatality and

an investigation began the following day.

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9. On November 26, 1978, Joe Garcia, a federal mine inspector, inspected Respondent's plant after learning of the fatality the preceding evening. He was accompanied by Bart Collinge, his supervisor for mining safety, Paul Misenhimer, Respondent's personnel and safety director, and an insurance consultant. When they arrived at the accident site, the area was barricaded and the Bobcat was still upside down. When Shirley's body was removed the day before, the back end of the Bobcat was picked up and swung around 90 degrees and laid back down. They found the bucket to be lowered but not in its lowest position. Inspector Garcia observed a green fluid leaking from the Bobcat, which he determined to be motor oil. No hydraulic fluid appeared to be leaking from the Bobcat in its position at the accident site. The roll-over protective structure (ROPS) had been removed from the Bobcat before the accident.

10. Normally, the Bobcat was used in confined areas in the plant, which was level, for cleaning spillage under overhead conveyor belts, horizontal rotary kilns and coolers. However, Terry Davidson, an oiler, regularly used the Bobcat about twice each month to travel up a ramp that led into the cooler pit on the No. 2 kiln. Rich Gilbert, the usual operator, was also observed using the Bobcat on this ramp on several occasions, including the night before the accident.

11. The Bobcat came equipped with a roll-over protective structure. Respondent removed the ROPS so that the Bobcat could maneuver inside the plant. Normally, the operator wore a hard hat and no employee, before Mr. Shirley, had been injured while operating the Bobcat with the ROPS removed. Respondent did not obtain an MSHA modification approval to remove the ROPS. After the accident, Respondent replaced the 620 Bobcat with a 720 Bobcat and reduced the ROPS about 5 inches so that it could be used inside the plant. Also, Respondent built a suitable berm of large rocks, which allowed drainage over the edge of the dump haulage road.

12. The Bobcat, which weighed about 3 tons, was powered by two hydrostatic motors and could attain a speed of 6.6 mph. The operator powered and steered the Bobcat with two hand levers located directly in front of his seat. To move forward or backwards, he would push or pull both levers simultaneously in the direction he wanted to travel. If he wanted to turn right or left, he would push on lever forward and pull the other lever back. To stop the machine, he would release both levers and a spring mechanism would return them to an upright position.

13. The hydrostatic motors were located under the operator's seat. When the operator pushed the levers forward or pulled them back, a valve was activated, causing a vane pump to draw hydraulic fluid from two reservoir tanks, which were joined by a cross-pipe or manifold so that they would always contain an equal amount of fluid. The tube through which fluid was drawn was about 1 inch from the bottom of the reservoir tanks.

14. The Bobcat developed a hydraulic fluid leak several

weeks before the accident. The hydrostatic system depended on an equal balance of pressure so that the more air that became trapped in the system, the less

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efficiently the Bobcat would operate. As the level of fluid in the reservoir tanks diminished, the operator would experience increasing difficulty in driving, steering and operating the bucket, which was controlled by a separate valve. Symptoms of an imbalance in pressure ranged from squeaking noises to erratic or "jerky" movements when engaging the hand levers. Occasionally, the operator would have to stop the machine to add more fluid and some of the other employees using the Bobcat experienced difficulty keeping the engine running. Freddie Smitherman, who was unaware of the leak, noticed that the bucket would squeak when raised or lowered. Terry Davidson, who was aware of the leak, testified that as the machine traveled forward, it left a stream of hydraulic fluid in its path. He also testified that while operating the Bobcat, he would sometimes have difficulty turning and occasionally he would hear squeaking noises. One time, when he wanted to stop the machine, the levers remained in the forward position, causing the machine to creep forward.

15. For about 3 weeks before the accident, the Bobcat was leaking hydraulic fluid from the rear axle and from the pump and pump fittings, causing the machine to malfunction. The loading yard foreman had been aware of the leak for about 3 weeks before the accident. The Montevallo Welding Company had been requested to pick up the Bobcat for servicing on Friday, November 24. However, it picked up a different piece of equipment, which also needed servicing, and the Bobcat was not repaired before Mr. Shirley's accident.

16. In investigating the accident site, Inspector Garcia observed two faint impressions in the road that he determined to be tire tracks. The right track was 142 feet long and veered gradually to the right side of the road where the Bobcat overturned. Before photographs were taken of the accident site, the right tire track was painted to ensure that it would be visible.

17. The Bobcat was transported to the shop on Monday, November 27, to conduct tests on its driving, steering and bucket functions. Inspectors Garcia and Scotty Wallace, safety director Misenhimer, State Inspector Henson, Rich Gilbert, the operator, and others were present. Motor oil was added to the engine before the tests began. No hydraulic fluid was added. The level of hydraulic fluid in the reservoirs was measured to be about 1-1/2 inches, which was about 10 gallons. The Bobcat's reservoir capacity was 17-1/2 gallons. No hydraulic fluid leaked from the machine while upside down following the accident.

18. The first test involved operating the Bobcat on the level concrete surface inside the shop. All the machine's functions, including steering and movement of the bucket, operated smoothly.

19. The Bobcat was then taken outside with the motor running and driven into a small ditch to approximate the grade on the haulage road. With the front of the Bobcat lower than its rear, the fluid was expected to run to the front of the machine;

this test was to determine whether the pumps were able to pick up fluid from the reservoirs on a downward grade. When the operator, Rich Gilbert, tried to move the machine from the ditch, none of its functions (forward and reverse movement, steering, bucket operation) would operate.

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20. The Bobcat was left in that position for about two weeks until the sales representative from Atlanta, Mr. Shoebach, arrived. He determined that the level of hydraulic fluid had decreased about one-quarter inch since November 27. Before more tests were conducted, the sales representative added 7-1/2 gallons of fluid to the reservoirs. With the reservoir tanks filled, the operator was able to move the Bobcat out of the ditch without difficulty. After driving around the yard and returning to the ditch, the operator released the hand levers. However, they remained in a forward position instead of returning to an upright position.

21. In the MSHA inspector's opinion, three factors contributed to the cause of the accident and Mr. Shirley's death: a defect in the equipment that caused hydraulic fluid to leak and affect the Bobcat's steering; the absence of roll-over protection; and the absence of a berm on the elevated haulage road where the Bobcat left the road and overturned down an embankment.

22. On November 26, 1978, Inspector Garcia issued a citation to Respondent, reading in part: "The road leading up the elevated ramp to the spoil dump was not provided with a berm to prevent equipment from going over the bank on the open side." The cited condition was abated on November 28, 1978, after Respondent constructed adequate berms.

23. On November 27, 1978, Inspector Garcia issued a citation to Respondent, reading in part: "An oil leak existed in the hydraulic system on the Clark 620 Bobcat front-end loader which adversely affected steering and contributed to a fatal accident on 11/25/78." The cited condition was abated on January 23, 1979, by repairing the source of the leak.

24. On December 4, 1978, Inspector Garcia issued an order of withdrawal to Respondent, reading in part: "The roll-over protection structure had been removed from the Clark Melroe Bobcat model 620 front-end loader, serial 4970-M-11013 that was involved in a fatal accident on November 25, 1978." The cited condition was abated on January 23, 1979, by installing a modified ROPS on the Bobcat. No exception had been taken to the absence of ROPS on the Bobcat during the last inspection of the Montevallo Plant in March, 1977.

25. In May 1978, when Harry Reeves became general manager of Respondent's plant, there was no safety program and he directed Paul Misenhimer to establish a program that would meet the needs of the company and the requirements of MSHA. The safety program that was subsequently established required that the minutes of every meeting be forwarded to Reeves' office for review. The meetings were conducted by Misenhimer and Respondent's supervisors, including Joe Dial. Misenhimer conducted 12 to 15 meetings in 1978. However, he was unable to maintain accurate records of all the meetings because he did not conduct all of them.

26. Terry Davidson testified that he could not recall one way or the other whether he attended any safety meetings prior to the accident. Freddie Smitherman testified that he could not say how many safety meetings were held in 1978.

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27. Respondent's safety rules prohibited any employee from starting or operating any machine or piece of equipment without authorization or without being qualified to operate it, which included knowing how to start, stop and operate it in a safe manner. Mr. Shirley was required to sign a written statement that acknowledged receipt of Respondent's safety rules booklet.

28. Authority to operate the Bobcat and other pieces of equipment was given by the plant superintendent, the general manager, Harry Reeves, or the plant manager, Joe Dial. Rich Gilbert, Wesley Smith and the leadman, Freddie Smitherman, were authorized to operate the Bobcat. Before an employee could obtain authorization to operate the Bobcat, which was considered more difficult to operate than other pieces of equipment, he was supposed to become qualified. Normally, when an employee successfully bid on a piece of equipment for which he had no prior experience he would be placed in a training program with an experienced operator so that he could gain the necessary experience to become qualified and authorized. As shown below, Respondent did not enforce its equipment-qualifying rule with any regularity or by an established program.

29. Freddie Smitherman operated the Bobcat before he was "qualified" to operate it.

30. Various employees who were not authorized to operate the Bobcat, including, Herman Shirley, were seen operating it. Terry Davidson, the oiler, operated the Bobcat without authorization at times when he needed a heavy object moved between oil stations located on either side of the plant and a regular operator was not present. He had been using the Bobcat about twice a week during the 5 months before the accident. Dial was aware that Davidson drove the Bobcat. Ball mill helpers and the burner helpers also drove the Bobcat without authorization. In July, 1978, Dial observed Shirley operating the Bobcat in trying to remove a piece of equipment from a pick-up truck and told him that he was not authorized to operate it and that he should get a regular Bobcat operator to handle the job. Another time, a few months later, Dial told Shirley, in the presence of Freddie Smitherman, to stop using the Bobcat when he observed him moving the machine out of the path of a truck he was driving. The former plant superintendent, Lyle Butterworth, also told Shirley on another occasion, in Dial's presence, to get off the Bobcat.

31. Dial testified that Shirley was not qualified to operate the Bobcat because he was temperamental and preferred to do things his own way, and that he also tended to handle equipment roughly.

32. Shirley was never disciplined for operating the Bobcat without authorization. Evans had reprimanded a number of employees for violating safety rules but he never fired anyone for a safety violation. While Evans was in charge, there were a total of 5 fatalities in the whole plant.

DISCUSSION WITH FURTHER FINDINGS

On November 26, 1978, Inspector Garcia charged Respondent with a violation of 30 C.F.R. 56.9-22, which provides: "Berms or guards shall be provided on the outer bank of elevated roadways." The basic issue as to this citation is whether the berm on the outer bank of Respondent's elevated haulage road was adequate to prevent equipment from going over the side of the road.

The Secretary argues that the berms along Respondent's haulage road were inadequate and that this condition contributed to the death of Herman Shirley when the Bobcat he was operating left the road and overturned on him.

The Secretary recommends a penalty of \$10,000.

Respondent contends that the cited standard is "vague and uncertain" because it does not specify a required height for berms or guards. Respondent also contends that the Secretary's application of section 56.9-22, which requires a berm to be as high as the mid-axle of the largest piece of equipment that travels the road, is not published in 30 C.F.R. Part 56 and, therefore, is not binding on Respondent. Respondent argues that the berm along the road, which was 6 to 18 inches, was adequate to stop the Bobcat from going over the side.

I find that Respondent violated 30 C.F.R. 56.9-22 by failing to provide or maintain a berm on the outer bank of the haulage road at the site of the accident. A preponderance of the evidence shows that the berm was constructed of road scrapings, that it was 6 to 18 inches high and that at the site of the accident it was washed out and deliberately allowed to remain open for drainage. A visual examination of the photographs taken on November 26 shows an absence of a berm where the Bobcat overturned. William Evans, the quarry foreman, testified that when berms were washed out they were left unrepaired. I find that Respondent was aware that the berm was inadequate and that this condition allowed the Bobcat to leave the road and contributed to the fatal accident on November 25, 1978.

Respondent's argument that the cited standard is "vague and uncertain" is unpersuasive. There was no berm at the point where the Bobcat overturned. This was not a situation in which the inspector was given unbridled discretion to determine whether or not a berm was adequate. In this case, the berm had washed out and Respondent purposely left it unrepaired in spite of the obvious safety hazard.

On November 27, 1978, Inspector Garcia charged Respondent with a violation of 30 C.F.R. 56.9-2, which provides: "Equipment defects affecting safety shall be corrected before equipment is used." The basic issue as to this citation is whether the leak in the Bobcat's hydraulic system affected the safety of its operation.

The Secretary argues that the Bobcat leaked hydraulic fluid, that Respondent was aware of the leak and that the leak caused the operation of

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the Bobcat, including steering and bucket movement, to malfunction. The Secretary contends that the leak constituted a defect that prevented the hydrostatic pump from drawing enough fluid into the system, causing the Bobcat to operate improperly, and that this defect contributed to the fatal accident.

The Secretary recommends a penalty of \$10,000.

Respondent argues that the Bobcat was not defective and that the leak in the hydrostatic system did not affect the operation of its driving and steering functions. Respondent argues that the Bobcat was supposed to be used only on the level surface of the plant's shop and that no one had previously taken it on the haulage road. Respondent contends that the Bobcat operated satisfactorily during the 3 weeks prior to the accident even though the pumps leaked hydraulic fluid and that it was used the night before the accident without incident. Respondent contends that the tests conducted after the accident show that the Bobcat operated smoothly on the level plant surface even though its reservoirs contained only 10 gallons of fluid.

I find that Respondent violated 30 C.F.R. 56.9-2 by allowing the Bobcat to be used before a defect in the hydrostatic system was corrected. A preponderance of the evidence shows that the Bobcat had been leaking fluid for about 3 weeks prior to the accident and that Respondent was aware of the leak. At the time of the accident, 7-1/2 gallons of fluid had leaked from the machine and it was scheduled to be repaired. Terry Davidson, the oiler, testified that the leak was very obvious and as the Bobcat traveled forward it left a stream of fluid in its path. He also testified that sometimes he would have trouble turning the Bobcat and that he heard it make squeaking noises. He stated that on one occasion he released the levers to stop the machine but they remained in the forward position. This defect would prevent stopping the vehicle so long as the motor was running. Freddie Smitherman, who used the Bobcat the night before the accident, testified that the bucket squeaked when raised or lowered and Rich Gilbert testified that he would occasionally have to stop the machine to add more fluid.

On irregular terrain, an operator could stop the Bobcat by lowering the bucket and causing it to strike a substantial mound or hill before the machine. However, I find that the bucket was neither intended to serve nor functioned reliably as a brake on a graded surface such as the dump haulage road. Lowering the bucket could not stop the Bobcat on the elevated road to the spoil dump.

The tests conducted on November 27, 1978, show that the Bobcat operated smoothly on a level surface. However, when placed in a ditch with its front end down to approximate the grade of the haulage road, the Bobcat would move neither forward or backward. This test would not explain why the Bobcat seemed to operate properly on the haulage road on Shirley's first trip to and from the dump but it raises a substantial question about the machine's reliability. A preponderance of the evidence shows

that the Bobcat's steering, driving and bucket functions were adversely affected by the leak, particularly when the Bobcat was used on a downward slope.

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On December 4, 1978, Inspector Garcia charged Respondent with a violation of 30 C.F.R. 56.9-88, which provides in pertinent part: " * * * all * * * front-end loaders * * * as used in metal and nonmetal mining operations, with or without attachments, shall be used in such mining only when equipped with * * * Roll-over protective structures (ROPS)."

The Secretary contends that this violation contributed to the fatal accident, and recommends a penalty of \$10,000.

The basic issue as to this citation is whether Respondent's Bobcat 620 front-end loader was required to be equipped with ROPS. Respondent admits that it removed the roll-over protective structure from the Bobcat so that it could maneuver inside the plant to clean in and around confined areas under overhead conveyor belts and rotary kilns and coolers. Respondent argues that because the Bobcat was used only in the plant area the equipment was subject to 30 C.F.R. 56.14-13, which requires all front-end loaders to be equipped with protective canopies "when necessary to protect the operator," rather than the cited standard. Respondent contends that since all operators using the Bobcat in the plant area wore hardhats, it was not necessary to install an overhead canopy, and it was also unnecessary to provide ROPS because there was no danger of the Bobcat overturning. Respondent argues that the Bobcat was used only in the plant area, that the operator always wore a hardhat, and that no employee had been previously injured while operating the Bobcat without ROPS. Respondent contends that no exceptions were taken by inspectors during the last inspection of the Montevallo Plant in 1977 after the Bobcat's ROPS had been removed.

I find that Respondent violated 30 C.F.R. 56.9-88 by allowing the Bobcat to be used with the roll-over protective structure removed. The cited standard unambiguously requires that ROPS be provided on all front-end loaders. I find unpersuasive Respondent's argument that because the Bobcat was used in the plant area it was relieved of this requirement and I also find unpersuasive its argument that section 56.14-13 applied rather than section 56.9-88. Respondent's arguments confuse the purpose of protective canopies with the purpose of ROPS. The standard that requires overhead canopies only when needed to protect the operator does not supersede or negate the requirement that all front-end loaders be provided with ROPS. In many instances, an overhead canopy will provide the same protection afforded by ROPS. However, when an overhead canopy is not required, the operator must still be protected should the piece of equipment overturn, which is what ROPS are designed to do. In addition, the fact that the Bobcat was regularly driven on the elevated ramp in the plant refutes the contention that it was confined to level areas.

Respondent contends that it should not be held responsible for the negligence and unauthorized conduct of an employee, and asserts that the cause of the fatal accident was Shirley's unauthorized and unsafe use of the Bobcat in direct violation of the company's safety rules. Respondent contends that on three

previous occasions Shirley had been reprimanded for using the Bobcat and that he knew he was not allowed to operate equipment without authorization or without knowing how to operate it.

The evidence shows that a safety program was established about 5 months before the accident. However, the testimony of Paul Misenhimer, the safety director, and Harry Reeves, the general manager, indicate that records of the meeting were not well kept. Terry Davidson and Freddie Smitherman, the only employees to testify about the substance of the safety meetings, which were supposedly held once a week, remembered very little about the meetings or whether any were held.

I find that Respondent did not adequately train its employees about the dangers of operating equipment without being qualified or without obtaining authority. There was evidence that Herman Shirley acknowledged receipt of the company's safety handbook and that he knew of the rule against operating equipment without authorization. However, a preponderance of the evidence shows that various employees who were not authorized to operate the Bobcat used the machine anyway and on three previous occasions management personnel observed Shirley using it. When observed using the equipment without authorization, he was not disciplined but was told simply to cease using it. There was also evidence, which I credit, that Respondent permitted its employees to use the Bobcat without being qualified. Freddie Smitherman stated that he used the Bobcat with the consent of Joe Dial, the plant foreman, before becoming qualified. Only after gaining experience in this fashion did he become qualified and, subsequently, authorized.

I find that Respondent was negligent in not taking appropriate measures to prevent or deter Shirley (1) from operating the Bobcat without authorization and (2) from operating it on the dump haulage road. I find that Respondent's safety program failed to impress upon Shirley an absolute necessity to refrain from using equipment without authorization. I find that Respondent took no measures, such as a warning sign, to prevent employees from using the Bobcat on the dump haulage road. I also find that Respondent neglected to warn its employees who used the haulage road, including Shirley, of the washed out berms on the outer bank.

Respondent also asserts that the Secretary failed to prove by a preponderance of the evidence that the accident was caused by a defect in the Bobcat's steering and driving systems and argues that it was just as likely the result of Herman Shirley suffering a heart attack while operating the Bobcat. Respondent argues that the fact that Shirley was 67 years old and that the Bobcat veered gradually for 142 feet to the side of the road lead to a reasonable inference that Shirley became unconscious and slumped forward onto the levers, causing the machine to continue traveling down the haulage road and to leave the road. However, there was no medical evidence to support a conclusion that Herman Shirley was rendered unconscious before the machine left the road, and I find this theory to be mere speculation. The preponderance of the evidence establishes that death was due to a combination of defects negligently caused and permitted by Respondent, including: (1) the hydraulic fluid leak; (2) the missing berm; and (3) the removal of the ROPS. These negligent

defects combined with Respondent's negligence in not taking more effective and reasonable measures to prevent or deter Shirley from operating the Bobcat without authorization and from operating it on the dump haulage road.

CONCLUSIONS OF LAW

1. The undersigned Judge has jurisdiction over the parties and subject matter of this proceeding.

2. Respondent violated 30 C.F.R. 56.9-22 by failing to provide a berm on the outer bank of the elevated roadway as alleged in Citation No. 81004. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$10,000 for this violation.

3. Respondent violated 30 C.F.R. 56.9-2 by using defective equipment, i.e., the Bobcat front-end loader, as alleged in Citation No. 81004. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$5,000 for this violation.

4. Respondent violated 30 C.F.R. 56.9-88 by failing to provide roll-over protection on the Bobcat front-end loader as alleged in Citation/Order No. 81053. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$10,000 for this violation.

ORDER

WHEREFORE IT IS ORDERED that Allied Products Company shall pay the Secretary of Labor the above-assessed civil penalties, in the total amount of \$25,000.00, within 30 days from the date of this decision.

WILLIAM FAUVER
JUDGE