

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE
DENVER, COLORADO 80204

9 SEP 1980

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),)	
)	Civil Penalty Proceeding
Petitioner,)	
)	DOCKET NO. WEST 80-12-M
)	MSHA Case No. 48-00145-05005
)	DOCKET NO. WEST 80-13-M
)	MSHA Case No. 48-00145-05004
UNITED STATES STEEL CORPORATION,)	
)	Mine: Atlantic City Ore
)	Operations and Plant
Respondent.)	

DECISION AND ORDER

APPEARANCES:

Phyllis K. Caldwell, Esq., Office of the Solicitor, United States
Department of Labor, 1585 Federal Building, 1961 Stout Street,
Denver, Colorado 80294,
for the Petitioner;

Louise Q. Symons, Esq., 600 Grant Street, Pittsburgh, Pennsylvania
15230,
for the Respondent.

Before: Judge Jon D. Boltz

STATEMENT OF THE CASE

Pursuant to provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq., the Petitioner seeks an order assessing civil monetary penalties **against** the Respondent for violations alleged in the three citations involved in the above-captioned cases. The cases were consolidated for a hearing held **in Denver**, Colorado, on June 12, 1980. The Respondent denies it violated any of the standards cited by the Petitioner.

FINDINGS OF FACT

Based upon stipulation of the parties, the following Findings of Fact are made:

1. Respondent is a large operator, employing 529 employees at the plant where the alleged violations took place.
2. The penalties imposed will not affect Respondent's ability to continue in business.

3. The citations were issued by an authorized representative of the Secretary of Labor.

4. In the 24 months prior to the issuance of the citations involved in these cases, there were 33 assessed violations against the Respondent.

ADDITIONAL FINDINGS OF FACT AND DISCUSSION

DOCKET NUMBER WEST 80-12-M

Citation Number 33865

A violation of 30 CFR § 55.18-20 is alleged.¹

5. In a building located at the Respondent's taconite plant there is a tripper gallery approximately 200 feet long. The gallery may be reached by means of an elevator or by a stairway. (Tr. 11, 22, 55.)

6. A conveyor brings the material up to the-tripper gallery where a tripper mechanism causes the material to fall through a pants chute. The chute directs the material through two rows of grizzlies which are located over openings in the floor. The grizzlies are located on each side of the conveyor and after the material falls through the grizzlies and openings in the floor it goes into the ore bin, located approximately 60 feet below the floor of the tripper gallery. (Tr. 14, 76.)

7. The openings in the floor are approximately 60 feet in length and approximately 10 to 16 inches in width. They are covered by metal grizzlies bars spaced about 1 foot apart. A seal belt covers the bars. (Tr. 11, 55, 56, 76.)

8. At the time of the inspection, some of the grizzly bars on both sides of the conveyor were missing, thus leaving an opening approximately 10 feet in length and 10 to 16 inches in width. (Tr. 72.)

9. On May 15, 1979, by assignment of the Respondent, an employee was working alone washing down the floor of the tripper gallery with a water hose. . (Tr. 11.)

10. While working in the tripper gallery, this cleanup person could not been seen nor could her voice be heard by other employees. (Tr. 1 6 .)

11. None of the equipment in the tripper gallery is in operation when the cleanup employee is working there. (Tr. 61.)

12. Light bulbs were located in the tripper gallery ceiling, approximately 15 feet above the gallery floor. (Tr. 58.)

1/ Mandatory. No employee shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.

13. At the time the cleanup employee was working in the gallery, the drive motor of the equipment was locked out at the electrical junction box. (Tr. 52, 58.)

The citation should be affirmed. The first determination to be made is whether the area where the employee was assigned to work by herself was an area where hazardous conditions existed that could endanger her safety.

"Hazardous" is defined as "exposed to or involving danger; perilous; risky." Black's Law Dictionary 850 (rev. 4th ed. 1968). The mine inspector testified that there were several hazardous conditions present, including the possibility of an employee stumbling in the dust and the possibility of hose water contact with the light bulbs. These possible incidents are too remote to be considered "perilous" or "risky." The inspector testified that the most hazardous condition present was the open area in the floor where the grizzly bars were missing. I agree. Although there is some confusion as to what the employee told the inspector on the date of the violation, the import of the testimony was that the employee was mucking directly over the open hole in the floor on that date (Tr. 26). If the grizzly bars had been in place, so that the opening would have been approximately 10 to **16 inches** in width and 1 foot in length, there probably would have been no hazardous condition present within the meaning of 30 CFR § 55.18-20. However, because the openings were about 10 feet long, due to the absence of the bars, I find that a hazardous condition did exist which would **endanger** the safety of the employee due to the possibility of the employee slipping and falling into the opening. ,

Since there was a hazardous condition in the area where the employee worked, it was necessary that she be able to communicate with others. Turning again to the dictionary, to "communicate" is defined as follows: "To bestow, convey, make known, recount, impart; to give by way of information." Id., at 349.

The Respondent argues in its brief that there were two means of communication available, a "pager" and the alarm bell in the elevator. The evidence shows that there was a paging system available for use by the employee and presumably she could "make known, impart, or give information" by means of this equipment. However, the equipment was not operable at the time of the inspection. As far as the alarm bell in the elevator is concerned, even if the definition of to "communicate" were stretched sufficiently to sanction use of the elevator alarm bell, there was no evidence showing that the elevator would always be available and would not be in use on a different floor when the employee would need to use it. Such evidence falls far short of the communication definition.

I find that the employee was unable to **communicate with** others within the meaning of the regulation. The citation was abated immediately by the assignment of an additional employee to work in the area. (Tr. 18.)

DOCKET NUMBER WEST 80-13-M
Citation Number 339622

A violation of 30 CFR § 55.20-3(a) is alleged.²

14. In the electrical shop on May 7, 1979, approximately 30 wooden blocks were located behind some lockers in an area used to dry electric motors. The girth of the blocks measured 4 by 4 inches and 4 by 6 inches and they were from 1 to 3 feet long. (Tr. 84, 87, 92.)

15. The wooden blocks were in a 2 by 3 foot pile and a maximum of four candy wrappers were observed in and around the wooden blocks. (Tr. 92.)

16. The wooden blocks were used in connection with work on electric motors. (Tr. 96.)

This citation should be vacated. The evidence shows that the blocks were used in the shop to block electric motors, auto engines, and other equipment so that slings, cables and forklift trucks could secure and lift them. The blocks are heavy and when not in use were tossed into the area in which they were observed by the inspector. (Tr. 103, 104.) However, the inspector testified that there was no safety hazard in regard to the method in which the blocks were piled (Tr. 100), although it appeared to him that the employees had begun to use the area as a refuse pile (Tr. 95). Under these circumstances it would be a strained interpretation of the regulation to find that up to four candy wrappers located in or near the wood blocks constituted a failure to keep the work place clean and orderly, particularly when there was no evidence as to how long the paper might have been there, 1 hour or 1 month.

Citation Number 339620 .

A violation of 30 CFR § 55.12-30 is alleged.³

17. An electric grinder with two grinding wheels measuring approximately 16 inches in diameter was located in the dozer and loader repair area. The wheels were contained within a housing, the top of which was 3 1/2 to 4 feet above the floor. (Tr. 120, 140, Exhibit P-4.)

18. When a grinding wheel is spinning under electrical power and the power is turned off, the wheel continues to spin for 6 minutes before coming to a full stop. (Tr. 107.)

19. Each wheel is contained within a cast iron peripheral guard that encloses the wheel except for the opening where grinding takes place. (Tr. 135.)

2/ Mandatory. At all mining operations: (a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

3/ Mandatory. When a potentially dangerous condition is found it shall be corrected before equipment or wiring is energized.


This citation should be vacated. From the evidence presented, I cannot find that a potentially dangerous condition existed in regard to the electric grinder. The Petitioner showed that the grinder was in a well traveled area of the shop and that the citation would not have been issued if the equipment had been located in an area where fewer persons came into contact with it. Thus, there was no defect complained of in regard to the equipment itself--just its location. There were other grinding wheels in the shop. When turned off, it took approximately 1 1/2 minutes for their grinding wheels to come to a full stop. Since the grinding wheels are well guarded with a cast iron guard that completely surrounds each wheel, except for the small opening where grinding takes place, I find that the risk of injury is too remote to be considered a "potentially dangerous condition" within the meaning of the cited regulation.

CONCLUSIONS OF LAW

1. The undersigned Judge has jurisdiction over the parties and the subject matter of these proceedings.
2. The Respondent violated 30 CFR § 55.18-20 as alleged in Citation Number 33865.
3. The Petitioner failed to prove that Respondent violated the regulations cited in Citation Numbers 339622 and 339620.

ORDER

Citation Numbers 339622 and 339620 and the penalties **therefor** are VACATED. Respondent is ORDERED to pay a civil penalty of \$72, in regard to Citation 33865 within 30 days of the date of this Decision.


Jon D. Boltz
Administrative Law Judge

Distribution:

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