

CCASE:  
SOL (MSHA) V. AGGREGATE MATERIALS  
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19801006  
TTEXT:

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. LAKE 80-152-M  
A.C. No. 20-2253-5002

v.

Bretschneider Pit & Mill

AGGREGATE MATERIALS CORPORATION,  
RESPONDENT

DECISION

Appearances: Gerald A. Hudson, Esq., Office of the Solicitor of  
Labor, Detroit, Michigan, for Petitioner  
William L. LaBre, Esq., Edwardsburg, Michigan,  
for Respondent

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

The above matter was heard on August 13, 1980, in  
Cassopolis, Michigan. At the conclusion of the hearing, the  
parties waived their rights to file written proposed findings of  
fact and conclusions of law and I issued a decision from the  
bench as follows:

THE COURT: Pursuant to notice, the matter was heard  
before me today, August 13, 1980, in the Probate  
Courtroom, Cassopolis, Michigan. Appearing on behalf  
of the petitioner, Secretary of Labor, was Mr. Gerald  
Hudson, of the Office of the Solicitor of Labor,  
Detroit, Michigan. Appearing on behalf of respondent  
was Mr. William LaBre of Edwardsburg, Michigan.

Mr. Thomas G. Wasley, a federal mine inspector,  
testified on behalf of the petitioner; Mr. Robert  
Bretschneider, President of respondent-corporation,  
testified on behalf of respondent. Three exhibits were  
introduced by petitioner; six were introduced by  
respondent.

Based upon the evidence presented this morning, and on the contentions of the parties, I make the following findings of fact and conclusions of law:

One, respondent is and was on August 1st of 1979, the operator of a sand and gravel mine in Cass County, Michigan.

Two, respondent is and was on August 1st, 1979, subject to the Federal Mine Safety and Health Act of 1977 in the operation of that mine.

Three, respondent is a relatively small operator and does not have a significant history of prior violations.

Number four, on August 1st, 1979, respondent's facility, respondent's mine, was inspected by Mr. Thomas Wasley, a federal mine inspector, and an authorized representative of the Secretary of Labor.

Five, on August 1st, 1979, a cover was not in place on a box variously described as a junction box and a fuse box outside the electrical distribution building in respondent's facility; there was a dispute in the testimony between Mr. Wasley and Mr. Bretschneider as to whether this was the box covered by the citation. I accept the testimony of Mr. Wasley that his citation was describing a junction box or fuse box outside of the electrical distribution building in the facility.

Six, the absence of the cover on the junction box was in violation of the mandatory standard contained in 30 Code of Federal Regulations, 56.12-32.

Number seven, the condition was evident and should have been known to respondent. Therefore, the violation was by respondent's negligence.

Number eight, the condition was only moderately serious; there were no bare wires in the box; the box was five to five and a half feet high off the ground; and the possibility of an employee receiving a shock by touching the box or wires, was relatively remote; the wires would have to somehow become bared or water introduced into the box in order to cause this hazard; however, if a shock occurred, if a employee did touch a wire that was bared or there was sufficient moisture in the box to have produced an electrical shock, an injury could have been serious.

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Number nine, the condition was promptly abated by respondent in good faith.

Based on these findings of fact and conclusions of law, I assess a penalty of \$50 for the violation found. Number ten, I find that the machine, which was cited in citation 295715, was not a stationary grinding machine, and therefore the absence of a hood on this machine did not constitute a violation of 30 CFR 56.14-8(a). I am not finding that the condition was not in violation of some other standard, however, the standard charged in the citation was 30 CFR 56.14-8(a), and my finding is that that standard was not violated. Therefore, the citation 295715 is hereby vacated, and no penalty is assessed.

Therefore, based upon these findings of fact, with respect to the two alleged violations, respondent is ordered to pay the sum of \$50 for the one violation which I have found occurred. A written decision will be issued confirming this decision issued from the bench this morning. Either party, or both parties, have the right to petition for Commission review, the time for filing a petition for Commission review will run from the date of the issuance of the written decision, which will follow.

That will conclude the record in this proceeding, I thank you very much, gentlemen.

I hereby affirm the decision issued from the bench.

#### ORDER

Respondent is ORDERED to pay \$50 in penalties within 30 days of the date of this decision. It is FURTHER ORDERED that Citation No. 295715 is VACATED.

James A. Broderick  
Chief Administrative Law Judge