

CCASE:

SOL (MSHA) V. HUDSON RIVER AGGREGATES

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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. YORK 80-13-M A/O No. 30-00075-05003H
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v. Haverstraw Quarry & Mill

HUDSON RIVER AGGREGATES, INC.,
RESPONDENT

DECISION

ORDER TO PAY

Appearances: William M. Gonzalez, Esq., Office of the Solicitor,
U.S. Department of Labor, New York, New York,
for Petitioner, MSHA Frederick Braid, Esq., Rain
and Pogrebin, Mineola, New York, for Respondent,
Hudson River Aggregates, Inc.

Before: Judge Merlin

This case is a petition for the assessment of a civil
penalty filed by MSHA against Hudson River Aggregates, Inc. A
hearing was held on October 15, 1980.

At the hearing, the parties agreed to the following
stipulations (Tr. 3-4):

(1) The operator is the owner and operator of the subject
facility.

(2) The operator and the facility are subject to the
jurisdiction of the Federal Mine Safety and Health Act of 1977.

(3) I have jurisdiction in the case.

(4) The inspector who issued the subject citation was a
duly authorized representative of the Secretary.

(5) A true and correct copy of the subject citation was
properly served upon the operator.

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(6) Imposition of a penalty in this matter will not affect the operator's ability to continue in business.

(7) The alleged violation was abated in good faith.

(8) The operator's history of prior violations is small.

(9) The operator's size is moderate.

(10) The operator's witness, N. Clarke Applegate is accepted as an expert in the field of structural design of conveyors, including sand conveyors.

(11) The MSHA inspector is accepted as an expert, generally, in mine health and safety.

At the hearing, documentary exhibits were received and witnesses testified on behalf of MSHA and the operator (Tr. 8-161). At the conclusion of the taking of evidence, the parties waived the filing of written briefs, proposed findings of fact and conclusions of law. Instead they agreed to make oral argument and have a decision rendered from the bench (Tr. 162). A decision was rendered from the bench setting forth findings and conclusions with respect to the alleged violation (Tr. 174-178).

BENCH DECISION

The bench decision is as follows:

This case is a petition for the assessment of a civil penalty for an alleged violation of 30 CFR 56.9-2. Section 56.9-2 provides as follows: "Equipment defects affecting safety shall be corrected before the equipment is used."

The subject citation sets forth:

Approximately 20 cross sectional braces were rusted away in a 60 foot section of the sand conveyor. The three inch by one quarter inch main angles of the framework were rotted in several areas along the entire length of the conveyor. Many cross sectional braces were rotted away for the entire length of the conveyor. 250 feet. Height on the end of the conveyor approximately 40 feet. (Order modified to allow welders and other necessary maintenance personnel to make the necessary repairs.)

I find a violation existed. There is some conflict in the testimony with respect to the extent of the rusted and deteriorated angle irons and other supports. After due

consideration, I accept the inspector's description, including his statements setting forth that 60 upright angle iron supports above the horizontal angle iron support, as well as 60 cross section supports below were rusted and deteriorated. I further accept his testimony that the 60 rusted supports above were not in contact with the horizontal angle iron and that the 20 below (directly over the roadway) also were not attached.

I further conclude that the written citation adequately covers the description given by the inspector in his testimony. The reference to 20 cross sectional braces in the first sentence of the citation refers to the bottom supports and the second and third sentences of the citation cover both supports above and below the horizontal support.

There can be no doubt that this condition affected the safety of the conveyor belt. Both the inspector and the operator's plant manager explained how the "above" supports are for the vertical weight load and how the "bottom" cross supports are for lateral support. When these supports are in proper condition they enhance safety. Conversely, their poor condition adversely affects safety.

Moreover, although the operator's expert engineer expressed the view that the 50 per cent deterioration in effectiveness of the upper angle irons which he saw did not affect safety, he admitted that a decrease in effectiveness of 75 to 80 per cent would create a danger of collapse. This mandatory standard requires only that defects "affecting" safety shall be corrected. It does not mean that an operator can wait until the equipment is on the brink of a total breakdown before it remedies the situation. I recognize that this conveyor had a cable system, walkway outriggers and 45 degree supports, which added to safety. However, this does not mean that the defects cited by the inspector did not reflect negatively upon safety. They surely did. Indeed, safety was affected even when the operator's evidence is considered by itself. The operator's expert engineer testified that maintenance was necessary because if the uncorrected situation were allowed to become worse, it might not have been possible to join new welds to the old metal, thereby making repairs impossible and necessitating construction of an entirely new conveyor system. The expense that construction of a new system would require might mean further delay on the operator's part, thereby adversely affecting safety in still another way.

Accordingly, I conclude there was a violation.

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I further conclude the violation was serious because, as the inspector testified, the danger of serious injury or even death would be present if the belt collapsed. The operator's plant superintendent testified that fifteen supports, all next to each other, over the roadway, had to be replaced. However, I find that gravity was substantially mitigated because cables, walkway outriggers and other factors added to safety above and beyond the components cited by the inspector.

I recognize the operator had ordered materials necessary for repairs. Nevertheless, I find the operator was negligent. This condition existed for some time and was becoming progressively worse.

The parties have stipulated that there was good faith abatement; imposition of a penalty will not affect the operator's ability to continue in business; the operator is moderate in size; the operator has only a small history of prior violations. I accept all these stipulations.

Bearing in mind that gravity was mitigated, the operator's moderate size and small history of previous violations, a penalty of \$250 is assessed.

ORDER

The operator is ORDERED to pay \$250 within 30 days of the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge