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SOL (MSHA) V. ISLAND COUNTY HIGHWAY
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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. WEST 79-372-M ASSESSMENT CONTROL NO. 45-01299-05001
v.	
ISLAND COUNTY HIGHWAY DEPARTMENT, RESPONDENT	MINE: CAMANO ISLAND PIT & MILL

DECISION

APPEARANCES:

Faye Sutton, Esq., Office of Robert A. Friel, Associate Regional Solicitor, U. S. Department of Labor, 8003 Federal Office Building, Seattle, Washington 98174,
for Petitioner

Alan R. Hancock, Esq., Office of David F. Thiele, Prosecuting Attorney of Island County, State of Washington, Courthouse, Coupeville, Washington 98239,
for Respondent

Before: Judge John J. Morris

STATEMENT OF THE CASE

Petitioner has charged Island County, a political subdivision of the State of Washington, with violating the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (hereinafter referred to as the Act). Island County denies the violations.

Pursuant to notice, a hearing on the merits was held in Seattle, Washington on February 20, 1980.

The parties filed post trial briefs.

ISSUES

The following issues were raised by the parties:

I. Whether a sand and gravel pit is a mine subject to the Act.

II. Whether the Secretary has promulgated safety regulations governing sand and gravel pits.

III. Whether Island County's sand and gravel pit affects interstate commerce.

IV. Whether a state or its political subdivision which is the proprietor of a mine is a "mine operator" as that term is used in the Act.

V. Whether the Commission has the authority to decide the constitutionality of the application of the Act to Island County.

VI. Whether the application of the Act to Island County violates the Tenth Amendment of the United States Constitution.

VII. Whether Island County violated the Act.

VIII. Whether the proposed penalties for any affirmed violations are appropriate.

DISCUSSION

I.

The initial issue is whether a sand and gravel pit is a mine subject to the 1977 Mine Safety Act. Island County provided several definitions of "mineral" to buttress its position that sand and gravel are not minerals and therefore, Island County does not operate a "mine".

The words "mine" and "mineral" are to be construed in a manner consistent with the intent of Congress in adopting the Act. Marshall v. Stoudt's Ferry Preparation Co. 602 F. 2d 589 (3rd Cir. 1979), Cert. denied, ÄÄÄÄÄU.S.ÄÄÄÄÄ (1980). The objective of Congress was to provide all miners a safe working place. They were not concerned with the value of the material extracted from the earth. Respondent's supporting authorities which define "mineral" based on value are therefore, not appropriate.

It is evident that sand and gravel pits were intended to be within the coverage of the Act. In reviewing the safety record for metal and nonmetal mining, the House included data on the number of fatalities occurring in open pit, sand and gravel mines, stone quarries, and mills. House Report No. 95-312, 95th Cong. 1st Sess. 6 (1977). Congress also directed that any doubts over the extent of MSHA's jurisdiction are to be resolved in favor of inclusion within the Act. Senate Report No. 95-181 95th

Cong. 1st Sess. 14 (1977).

The determination that sand and gravel pits are under the jurisdiction of the Act has been upheld in recent decisions. Stoudt's Ferry, supra.; Marshall v. Cedar Lake Sand and Gravel Co. 480 F. Supp.171 (E. D. Wisc. 1979). Marshall v. Wallach Concrete Products, Inc., et al, Docket No. 79-422 ÄÄÄÄÄF. Supp.ÄÄÄÄÄ(D.C. N.M. 1980).

II.

Another contention raised by Island County is whether the Secretary has promulgated safety and health standards for the operation of sand and gravel pits pursuant to the Act. Island County is correct in its assertion that the present mandatory safety and health standards for sand, gravel, and crushed stone operations were initially promulgated pursuant to the Federal Metal and Nonmetallic Mine Safety Act, 30 U.S.C. 725. However, such standards were incorporated into the 1977 Act.

> The mandatory standards relating to mines, issued by the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act . . . which are in effect on the date of enactment of this Act shall remain in effect as mandatory health or safety standards applicable to metal and nonmetallic mines . . . under the Federal Mine Safety and Health Act of 1977 until such time as the Secretary of Labor shall issue new or revised mandatory health or safety standards applicable to metal and nonmetallic mines . . . 30 U.S.C. 961(b)(1).

III.

The third issue is whether Island County's sand and gravel operations "affect interstate commerce", and, thereby, bring Island County within the jurisdiction of the Act. The mines subject to the Act are those whose products enter commerce or those whose operations or products affect commerce. 30 U.S.C. 803. This provision is to be given a very broad interpretation. Marshall v. Kraynack 604 F. 2d 231 (3rd Cir. 1979). Congress has found that health and safety accidents in all mines disrupt production and cause loss of income to operators which in turn impedes and burdens commerce. 30 U.S.C. 801(f). Accordingly, even if a mine's products remain solely within a state, any disruption in its operations due to safety hazards affects interstate commerce. Marshall v. Kilgore 478 Supp. 4 (E.D. Tenn 1979); Marshall v. Bosack 463 F. Supp. 800 (E.D. Pa 1978).

Island County argues that since it is a small operation which does not sell its products to the public, it cannot be held to affect interstate commerce. The size of the operation is not determinative of whether it

affects interstate commerce. In the Kraynak case, the mine employed only the four individuals who owned it. The case of Martin v. Bloom 373 F.Supp. 797 (D.C. Pa 1973), cited by Island County, presents a unique situation of a mine operated by one man. The court's ruling that the local nature of the mine did not affect commerce has not been followed by other decisions. Martin appears to have a very narrow application not applicable here.

Island County may be the sole recipient of the sand and gravel mined from the pit but it still affects commerce. It is admitted that if it didn't operate the mine, it would obtain the materials from some commercial source (Tr. 26). Under the principles espoused in Wickard v. Filburn 317 U.S. 111(1942) and more recently in Bosack, supra, and Sec. of Interior v. Shingara 418 F. Supp. 693 (M.D. Pa, 1976), safety problems at the mine in combination with safety-related accidents at other mines throughout the country affect directly the stability of interstate commerce. Congress, therefore, has the power to regulate Island County's operations under the interstate commerce clause.

IV

The fourth issue focuses on the definition of "mine operator" and whether such definition includes a state in its capacity as the proprietor of a mine. Mine operator is defined by the Act as "any owner, lessee, or other person who operates, controls or supervises a . . . mine . . ." A person is designated as "any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization." 30 U.S.C. 802(d) and (f). Island County contends that a state or its political subdivision is not a "person" and thus, cannot be a mine operator subject to the Act.

The United States Supreme Court has held numerous times that Congressional acts regulating the conduct of certain businesses are to be enforced against states which have become proprietors of such enterprises. The sovereign immunity claim made by the state in these cases was not upheld even though they had argued that the acts in question were specifically directed to persons defined as corporations, partnerships etc., and were not made expressly applicable to states.

The principle enunciated by the Court has been that a state is not immune from federal regulations when it chooses to engage in a business of a private nature. Ohio v. Helvering 292 U.S. 360 (1934); Plumbers, Etc., 298 v. County of Door 359 U.S. 354 (1959).

Island County states that Congress by its definition of mine operator intended to specifically exclude states from the jurisdiction of the Federal Mine Act. Island County cites National League of Cities v. Usery 426 U.S. 833 (1976) in support of this proposition. I disagree. A state operated business is not a part of integral government functions. Ohio v. Helvering,

supra. The restriction on federal regulation of states, enunciated in Nat'l League of Cities, applies only to integral functions of state government. This principle and its application to Island County is discussed more fully below. Island County is a mine operator subject to the Act.

V.

Island County contends that the application of the Act to itself violates the Tenth Amendment of the United States Constitution. The threshold issue to be addressed before this argument can be discussed is the authority of the Federal Mine Safety and Health Review Commission to decide questions of constitutional import which relate to the application of the Act to a particular party.

The Supreme Court has held that an administrative agency lacks the authority to determine the constitutionality of a particular provision of its enabling act. Weinberger v. Salfi 422 U.S. 749 (1974). P.U.C. of California v. U.S. 355 U.S. 534 (1958). This principle, however, does not preclude a resolution by the Review Commission of the question of whether the 1977 Mine Act is applicable to Island County.

The Review Commission is an independent tribunal empowered by Congress to review the enforcement actions of the Secretary and determine the liability of the parties. It is the sole arbiter of the factual issues and has been given broad authority to hear and decide all matters contested before it. 30 U.S.C. 823(d)(1).

The constitutional question raised by Island County concerns the extent of the Act's jurisdiction. Congress did not expressly provide for enforcement of the Act against states nor did it specifically exclude them. The Commission must then define the jurisdiction in a way that comports with the general purposes of the Act as enunciated by Congress.

The Commission has the authority to resolve a jurisdictional question of this kind.

> [I]t has long been established that the question of the inclusion of a particular entity within the coverage of a regulatory statute is generally for initial determination by an agency, subject to review on direct appeal, . . . Securities & Exch. Com'n v. Wall Street Transcript Corp. 422 F.2d 1371, 1375 (2nd Cir. 1970) Cert. denied, 398 (1970) citing Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946).

Although the above cases dealt with the determination of jurisdiction as part of the investigative function of the enforcement agencies involved, the precept is applicable here. Congress designated that the Review Commission as the initial tribunal to adjudicate under the Act. As stated above, a necessary corollary to this duty is the authority to determine whether a particular party is within the coverage of the statute.

Review by the United States Courts of Appeals is provided to assure due process.

It is a basic rule of statutory construction that legislation is to be construed in a manner that upholds its constitutionality. U.S. v. Vuritch 402 U.S. 62 (1971). Inherent then in the Commission's duty to resolve the jurisdictional question is the obligation to analyze any possible constitutional ramifications.

Constitutional issues in general have never been taken out of the purview of agencies. Courts have frequently required that fourth amendment claims be litigated before a Commission prior to granting judicial review. Marshall v. Babcock & Wilcox Co. 610 F.2d 1128 (3rd Cir. 1979). The resolution of questions of constitutional import has also been held to be within the scope of the agencies' authority to decide jurisdictional issues. "There is no reason to believe that the Commission will not be fully aware of the importance of first amendment considerations when it interprets and applies the Act's exclusion." Wall Street Transcript Corp., supra at 1380.

Although it may still hold true that an agency cannot determine the constitutional strength of its enabling act, that is not the issue here. The Commission is faced with a question of statutory construction. The resolution of this matter requires that it analyze the legislative history and constitutional principles. The Commission is not ruling on the constitutionality of an act of Congress but is determining what Congress intended and then enforcing it. The issue on appeal then would not be whether to uphold an act of Congress as would be the question if there was an attack on the statute itself. Rather, the appellate court would have to decide whether to affirm or reverse an interpretation of the Act by the Commission.

This distinction was recognized by Davis in his treatise on administrative law.

> A fundamental distinction must be recognized between constitutional applicability of legislation to particular facts and constitutionality of legislation. When a tribunal passes upon constitutional applicability it is carrying out the legislative intent, either express or implied or presumed. When a tribunal passes upon constitutionality of the legislation the question is whether it shall take action which runs counter to the legislative intent. We commit to administrative agencies the power to determine constitutional applicability, but we do not commit to administrative agencies the power to determine constitutionality of legislation. 3 K. Davis Administrative Law Treatise, 20.04 at 74 (1958).

VI.

The merits of the constitutional question raised by Island County will now be addressed. Island County contends that the enforcement of the Act against a state or its political subdivision would violate the Tenth Amendment. Island County alleges that the constitutional principles enunciated in Nat'l League of Cities support its position. In that case, the application of the Federal Labor Standards Act to states was held to be unconstitutional because the impact of its enforcement would threaten the separate and independent existence of the states.

In applying this precept to the present case, Island County argues that the operation of a sand and gravel pit for the purpose of supplying materials for road maintenance is an integral government function. Accordingly, the County concludes that the interference from the enforcement of the Act would violate its separate and independent existence and, thus, would be unconstitutional.

Island County argues that Congress, having in mind the principles espoused in Nat'l League of Cities, intended to exclude states from the jurisdiction of the Act. Congress was no doubt aware of this landmark decision, but I find that it supports rather that negates the application of the Act to Island County.

In Nat'l League of Cities, the Court expressly refrained from overruling the ultimate holding in U.S. v. California 297 U.S. 175 (1936) which affirmed the propriety of federal regulation of a railroad owned and operated by a state. The Court distinguished the case before it from this earlier decision on the basis that the operation of a railroad engaged in interstate commerce was not "an area that the states have regarded as integral parts of their governmental activities." Nat'l League of Cities, supra at 854.

In U.S. v. California the State contended that because the revenue from the operation of the railroad was used for harbor improvements, it was performing a purely public function in its sovereign capacity. It concluded that it should, therefore, be excluded from the jurisdiction of the Safety Appliance Act. The Court agreed that the State of California was acting within its powers, but this did not exempt it from regulation by the federal government. In making this determination the Court analyzed the purpose of the Act and found that its effectiveness would be impaired if it were not applied to state-owned railroads.

> The Federal Safety Appliance Act is remedial, to protect employees and the public from injury because of defective railway appliances (cites omitted), and to safeguard interstate commerce itself from obstruction and injury due to defective appliances upon locomotives and cars used on the highways of interstate commerce even though their individual use is wholly intrastate (cites omitted). The danger to be apprehended is as great and commerce may be equally impeded whether the defective appliance is used on a railroad which is state-owned or privately-owned. No convincing reason is advanced why interstate commerce and persons and property concerned in it should not receive the protection of the act whenever a state, as well as a private-owned carrier, brings itself within the sweep of the statute, or why its all-embracing language should not be deemed to afford that protection. U.S. v. California, supra at 185.

U.S. v. California is analogous to the present case. The Federal Mine Safety and Health Act is also remedial. Congress was keenly aware of the grave dangers involved in every kind of mining activity and, further, recognized the need for a uniform regulatory scheme. Equal protection for all miners is at the heart of the 1977 Act. House Report No. 95-312, supra at 8-9. The danger to be apprehended and the potential impediment to interstate commerce is as great in state-owned mines as in those operated by private companies.

Island County argues that the State of Washington Industrial Safety and Health Act sufficiently monitors the safety practices of its mines as evidenced by their excellent safety record. Island County is to be commended for its excellent safety record. However, the safety record is not relevant to the issue of whether the Act applies to the County. Congress did not provide for the review of a mine operator's safety record before the issuance of a citation.

The Washington Industrial Safety and Health Act is still a viable means of protection for miners. Congress did not intend to fully displace any State plans on mine safety. They envisioned a "dual system which encourages State participation while at the same time not relinquishing Federal enforcement." House Report No. 95-312, supra at 25. Only state laws that conflict with the Act are superseded by it. 30 U.S.C. 955

Federal regulation of state-owned enterprises that have counterparts in the private sector is supported by the principles espoused in Nat'l League of Cities. Several decisions of the appellate courts have construed the precepts enunciated by the Court to prohibit federal intervention only when it would significantly hinder or interfere with a traditional function of a state.

> In determining whether an otherwise valid exercise of the federal commerce power would impermissibly impair state sovereignty we are therefore required to balance the reason for the exercise against the extent of usurpation of state policy making or invasion of integral state functions that would result, giving "appropriate recognition to the legitimate concerns of each government." (cite omitted). Friends of the Earth v. Carey 552 F.2d 25, 37 (2nd Cir., 1977).
>
> Where the legitimate exercise of a power delegated to Congress outweighs the interference with the state's self-determination in providing its essential public services, the tenth amendment is no bar to congressional action. Peel v. Florida Dept. of Transp. 600 F. 2d 1070, 1083 (5th Cir. 1979).

The maintenance of county roads is an essential and traditional service of local governments. The operation of a mine is not. It is a convenient method of providing materials needed for road construction, just as the running of the railroad was a convenient and economical means of maintaining California's harbors.

Island County fails to satisfy the criteria developed by the courts in their analyses of integral government functions. The County is not perceived by the community as the principal provider of sand and gravel, nor is it particularly suited for the operation of a mine. Amersbach v. City of Cleveland 598 F.2d 1033 (6th Cir. 1979). The operation of a sand and gravel pit is not an activity that is necessary to the separate and independent existence of a state.

Compliance with the Act may have an indirect effect on road maintenance. Island County may be expected to suffer some budgetary repercussions. The County Engineer testified that its funds were presently insufficient to meet all its needs, and compliance with the Act would cause further reductions. However, the impact would not be so substantial as to displace the County's policies of road maintenance. Island County concedes that there are other sources of sand and gravel.

In weighing any impact on road maintenance projects against the paramount objective of Congress to ensure a safe working place for all miners, the scales tip heavily in favor of mine safety. The application of the Act to states comports with the intentions of Congress, and is not violative of the Tenth Amendment. The Act must be construed to include within its jurisdiction a mine operator which is a state or political subdivision thereof.

For the foregoing reasons I rule against all the contentions raised by Island County.

VII.

The validity of the following citations is contested by Island County:

Citation No. 351642

Petitioner alleges that Island County violated 30 CFR 56.11-2 (FOOTNOTE 1) by failing to install a handrail on an elevated walkway. The facts are uncontroverted.

1. A walk platform constructed around the motor for the jaw crusher lacked a handrail (Tr. 114, 115, P-1).

2. A workman was observed by the inspector near the motor (Tr. 114).

3. A worker would be on the platform when doing maintenance work on the motor or when changing belts (Tr. 141).

4. The walkway is 5 to 6 feet in width (Tr. 135).

5. The distance from the platform to the surface below is 5 feet (Tr. 115).

6. There is a danger of someone falling off the platform which could result in a broken arm or leg (Tr. 115).

The standard involved requires that handrails be provided on all walkways. It was used by miners and a danger of falling and subsequent injury did exist. Accordingly, the citation should be affirmed.

Citation No. 351644

Petitioner charges that Respondent violated 30 CFR 56.14-1(FOOTNOTE 2)

by failing to install a guard at the head pulley where the pinch points were exposed. The facts are uncontroverted.

1. A guard was not installed at the head pulley of the No. 2 conveyor belt where the pinch points were exposed (Tr. 117, P-2).

2. There is a walkway along the side of the conveyor belt near the pinch points (Tr. 118).

3. The walkway is approximately 2 feet wide (Tr. 119).

4. The walkway is used frequently by miners (Tr. 142).

5. A miner's clothing could be caught in the pinch points and the miner pulled into the roller (Tr. 117, 118).

6. The walkway was approximately 2-1/2 feet from the rollers on the belt (Tr. 120, 142).

7. The pinch points are near the rollers (P-2).

The pinch points are moving machine parts which because of the close proximity to the walkway could cause injury to a miner.

This is a constant danger since the walkway is used frequently by the miners. Accordingly, I find that the standard was violated and the citation should be affirmed.

Citation No. 351651

Petitioner charges that 30 CFR 56.9-7 (FOOTNOTE 3) was violated because there was no emergency stop cord on the No. 2 conveyor belt nor was there a guard rail between the conveyor belt and the walkway. The facts are uncontroverted.

1. A walkway used frequently by the miners was located

2-1/2 feet from the rollers on the No. 2 conveyor belt (Tr. 120, 142).

2. There was no guard between the walkway and the conveyor belt. (Tr. 119).

3. There was no emergency stop devise along the belt line to shut off the power to the belt (Tr. 119).

4. The hazard was that someone could be pulled into the rollers and not be able to turn off the conveyor. (Tr. 119).

Island County failed to comply with 30 CFR 56.9-7. The citation should be affirmed.

Citation No. 351653

The Secretary alleges that Island County violated 30 CFR 56.12-18 (FOOTNOTE 4)

The facts are uncontroverted.

1. The electrical panels located along the crusher platform which control the operation of the plant were not labeled as to what equipment they regulated (Tr. 121, P-3).

2. There are 12 electrical devices in each panel (Tr. 143).

3. There are at least 10 panels in the area (P-3).

4. Other power switches are at the main electrical shed which is 50 - 60 feet away from the panels in question (Tr. 122).

5. There was a danger that if someone were injured while the equipment was in operation, a co-worker would not be able to turn off the equipment immediately because of the lack of labels. This could increase the risk of severe injury. (Tr. 122).

The location of the power switches did not identify the units they controlled. There were several panels in one central area, and they regulated the operation of the entire plant. Accordingly, the citation should be affirmed.

Citation No. 351654

The Secretary alleges that an opening at the edge of a travelway should have had a safety chain or barrier around it to prevent someone from falling off the platform. It is alleged there was a violation of 30 CFR 56.11-12. (FOOTNOTE 5)

The evidence is uncontroverted.

1. Between the edge of a travelway platform and another structure there was an opening which did not have any guard or barrier around it to prevent someone from falling through it. (Tr. 122, P-4).

2. The walkway is six feet above the ground (Tr. 123).

3. The opening is near the area where the electrical panels are located which is visited frequently by those attending to the power switches. (Tr. 123, 143).

4. At times the dust in the area hinders visibility which adds to the risk of falling (Tr. 123).

There was a danger that someone could fall through the opening, particularly during periods of low visibility. The citation should be affirmed.

Citation No. 351647

The Secretary charges that the tail pulley under the jaw crusher was not guarded as required by 30 CFR 56.14-1. (FOOTNOTE 6)

The facts are uncontroverted.

1. The self-cleaning tail pulley under the jaw crusher lacked a guard (Tr. 124, P-5).

2. Workers are in the area near the pulley when cleaning around the belt (Tr. 125, 146).

3. Normally, a worker would be 18 inches to 36 inches from the pulley while cleaning the area with a shovel (Tr. 147).

4. The pulley protrudes about 6 inches into the walkway area (Tr. 145).

5. The hazard is that while cleaning the area, a miner's clothing could be caught in the pulley, and the worker could be pulled into the equipment and sustain injuries (Tr. 124, 125).

Miners can come in contact with the unguarded tail pulley while cleaning the belt. There is a risk of injury if a miner's clothing should get caught in the pulley. The standard was violated. The citation and penalty should be affirmed.

Citation No. 351648

Petitioner alleges that a broken ladder leading to the screening plant constituted a violation of 30 CFR 56.11-1. (FOOTNOTE 7)

The evidence is uncontroverted:

1. A ladder leading to a work platform of the screening plant was broken at the top of the hand rail (Tr. 124, 125, P-6).

2. The ladder was not secured to the platform (Tr. 126).

3. Workers were on the platform (Tr. 126).

4. There was a danger that a miner could fall off the ladder to the ground 8 to 10 feet below (Tr. 126).

5. There was an alternative safe means of access to the platform (Tr. 136).

Although the condition of the ladder cited by the inspector posed a danger to the miners, there was another safe means of access to the platform. The standard requires only that a safe means of access be provided. Respondent complied with the standard. Accordingly, the citation should be vacated.

Citation No. 351652

Petitioner cited Island County for an alleged violation of 30 CFR 56.14-1. The standard is set forth in footnote 2. The evidence is uncontroverted.

1. A self-cleaning tail pulley in the plant area was not guarded (Tr. 127, P-7).

2. The pulley protruded approximately 2-1/2 feet into the walkway area (Tr. 145).

3. A miner could be pulled into the machine and severely injured (Tr. 127, 128).

The standard requires that pulleys be guarded if they are in an area where they could be contacted by workers and cause injury. The facts establish a violation of this provision. The citation should be affirmed.

Citation 351646

The Secretary contends that Island County violated 30 CFR 56.11-5. (FOOTNOTE 8)

This standard requires that fixed ladders be anchored securely. The facts are uncontroverted.

1. Two ladders providing access to the work platform in the rolls crusher area and to a work area around the electric motor were not secured (Tr. 128, 129, P-8).

2. The ladder to the crusher was 7 to 8 feet high. The other one was 8 to 10 feet high (Tr. 130, 131, 135).

3. A miner was observed using the ladder to the crusher (Tr. 130, 131).

4. The platform around the rolls crusher is used for maintenance work (Tr. 145).

The ladders were used by the miners and were unsecured. The citation should be affirmed.

Citation No. 351650

Petitioner charges Island County violated 30 CFR 56.12-32 (FOOTNOTE 9).

The evidence is uncontroverted.

1. A junction box to the electric motor of the jaw crusher lacked a cover plate. (Tr. 131).

2. The inspector did not observe any testing or repair work being done on the motor at the time of the inspection (Tr. 136).

3. The wires of the motor were exposed to dust and moisture which could generate an electric shock (Tr. 132).

The standard requires that cover plates remain on electrical equipment at all times unless maintenance work is being performed. Island County did not refute Petitioner's statement that at the time of the inspection testing or repairs on the motor were not in progress. The citation should be affirmed.

Citation No. 351649

Secretary cited Island County for an alleged violation of 30 CFR 56.12-18. The standard is set forth in footnote 4. The facts are uncontroverted.

1. Ten of the 12 electrical panels in the electrical shed were not labeled (Tr. 132, 133).

2. The inspector could not tell by the panels' location which units they controlled (Tr. 137).

3. The danger to be apprehended is that the power to a particular machine could not be turned off quickly if someone were caught in the equipment (Tr. 133). Unless their location clearly indicates which units they control, power switches are to be labeled. Island County had not complied with the standard. The citation should be affirmed.

Citation No. 351655

The Secretary alleges that Island County did not have a stretcher in the area as required by 30 CFR 56.15-1.10 The transcript is incomplete on the proof of this citation. (Tr. 133). However, Island County concedes that the prerequisite evidence was erroneously deleted from the transcript (Brief, page 16).

Accordingly, the Citation should be affirmed.

VII

Island County disputes the appropriateness of the Secretary's proposed penalties. The penalty initially assessed by the Secretary for each citation is reduced as set forth in the ORDER. This reduction reflects the extraordinary good faith effort of Island County to abate the violative conditions. The mine was shut down immediately after the citations were issued, and the necessary repairs were made before it re-opened a day and a half later. (Tr. 157-159). This was done even though a withdrawal order had not been issued, and the inspector had given Island County up to 5 days to effect some of the repairs.

CONCLUSIONS OF LAW

Island County in its capacity as a mine operator of the Camano Island Pit and Mill is subject to the 1977 Mine Safety Act. All of the citations at issue except No. 351648 should be affirmed.

ORDER

Based on the foregoing findings of fact and conclusions of law, I enter the following order.

1. The citations listed below are affirmed and the corresponding penalty is assessed.

351642	-	$ 14
351644	-	$ 30
351646	-	$ 14
351647	-	$ 30
351649	-	$ 22
351650	-	$ 8
351651	-	$ 16
351652	-	$ 30
351653	-	$ 22
351654	-	$ 14
351655	-	$ 8

2. Citation No. 351648 and the proposed penalty therefor are VACATED.

John J. Morris
Administrative Law Judge

~FOOTNOTE_ONE
1 Mandatory. Crossovers, elevated walkways, elevated ramps, and stairways shall be of substantial construction provided with handrails, and maintained in good conditions. Where necessary, toeboards shall be provided.

~FOOTNOTE_TWO
2 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.

~FOOTNOTE_THREE
3 Mandatory. Unguarded conveyors with walkways shall be equipped with emergency stop devices or cords along their full length.

~FOOTNOTE_FOUR
4 Mandatory. Principal power switches shall be labeled to show which units they control, unless identification can be made readily by location.

~FOOTNOTE_FIVE
5 Mandatory. Openings above, below, or near travelways through which men or materials may fall shall be protected by railings, barriers, or covers. Where it is impractical to install such protective devices, adequate warning signals shall be installed.

~FOOTNOTE_SIX

6 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.

~FOOTNOTE_SEVEN
7 Mandatory. Safe means of access shall be provided and maintained to all working places.

~FOOTNOTE_EIGHT
8 Mandatory. Fixed ladders shall be anchored securely and installed to provide at least 3 inches of toe clearance.

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

~FOOTNOTE_TEN
10 Mandatory. Adequate first-aid materials, including stretchers and blankets, shall be provided at places convenient to all working areas. Water or neutralizing agents shall be available where corrosive chemicals or other harmful substances are stored, handled, or used.