

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE, SUITE 400  
DENVER, COLORADO 80204

JUL 20 1981

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),	)	CIVIL PENALTY PROCEEDING
	)	
Petitioner,	)	DOCKET NO. WEST 80-396-M
	)	
v.	)	A/C No. 02-01037-05005
	)	
PHOENIX SAND AND ROCK,	)	MINE: Agua Fria Pit
	)	
Respondent.	)	

APPEARANCES:

Marshall P. Salzman, Esq.,  
Office of the Solicitor  
United States Department of Labor  
450 Golden Gate Avenue, Box 36017  
San Francisco, California 94102  
For the Petitioner

Kay H. Wilkins, Esq.  
1635 N. Alma School Road  
Mesa, Arizona 85201  
For the Respondent

Before: Judge Jon D. Boltz

DECISION

By authority 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 alleged violations of regulations as more particularly set forth in four citations, all of which were issued on March 11, 1980.

At the hearing, the parties agreed to the following:

1. I have jurisdiction over the parties and subject matter of these proceedings.
2. The respondent is an operator of moderate size and has a moderate history of prior violations.

3. The imposition of requested civil monetary penalties will not impair respondent's ability to remain in business.

4. The citations were in fact issued on the date indicated in the body of the citations.

5. The inspector who issued the citations was an authorized representative of the Secretary.

At the conclusion of al 1 of the evidence, the parties agreed to waive the filing of post hearing briefs and agreed to have a Decision rendered from the bench after closing arguments. The bench Decision is as follows :

BENCH DECISION

Citation No. 376188

Citation No. 376191

The petitioner alleges in Citation No. 376188 a violation of 30 C.F.R. 56.14-1<sup>1</sup>/ because the self cleaning tail pulley of a transfer belt under the cone crusher was unguarded. In Citation No. 376191 petitioner alleges a violation of 30 C.F.R. 56.12-8<sup>2</sup>/ in that electrical wires leading into, a junction box were pulled away from the strain relief clamp and were rubbing on the metal part of the junction box. These allegations were admitted by the respondent., Accordingly, considering the criteria set forth in section 110(i) of the Act, these citations are affirmed and penalties are assessed in the amounts of \$106.00 and \$48.00 respectively.

Citation No. 376189

A violation of 30 C.F.R. 56.12-32<sup>3</sup>/is alleged in that the electrical panel on the trailer for the control switches of the crusher operator did not have an adequate cover to fully cover the electrical wires. All of the wires and the connections in the box were not covered. These facts were

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1/ 56.14-1 Mandatory. Gears; sprockets; chains; drive, head, tail, and take up pulleys; fly wheel; couplings; shafts; saw blades; fan inlets; similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

2/ 56.12-8 Mandatory. Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments, Cables shall enter metal frames of motors, splices boxes, and electrical compartments only through proper fittings . When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushing.

3/ 56.12-32 Mandatory. Inspection and cover plates on electrically equipment and junction boxes shall be kept in place at all times, except during testing or repairs.

undisputed. The regulation requires cover plates on electrical junction boxes to be kept in place, and since this had not been done, the citation is affirmed. The penalty assessed is \$20.00, as alleged in the petition.

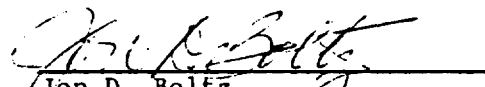
Citation No. 376190

The petitioner alleges a violation of 30 C.F.R. 56.14-1, which is the guarding regulation previously cited. Specifically, the third and fourth return idlers under the belt coming from the cone crusher were not guarded. The evidence was that these return idlers were 5 1/2 to 6 feet off the floor, and that no citations had been issued for this alleged violation during four previous inspections, "plus the complimentary inspection." (Tr. 34). The citation at issue was served because an employee had been observed walking under the idlers with a shovel at the time of the inspection. (Tr. 38). There was no evidence that any person had been observed in that area before.

I conclude that the return idlers being 5 1/2 to 6 feet above floor level and in a remote area were guarded by their location in this case. Thus, the return idlers were not moving machine parts, which might be contacted by persons and which might cause an injury.<sup>4/</sup> Citation No. 376190 is vacated.

ORDER

The foregoing bench Decision is affirmed and the respondent is ordered to pay civil penalties in the total amount of \$174.00 within 30 days of the date of this Decision.

  
Jon D. Boltz  
Administrative Law Judge

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4/ As an additional reason for concluding there was no violation, I erroneously stated that return idlers were not "similar exposed moving machine parts" as defined by the regulation. This error would not change the result since I also found that the return idlers were guarded by their location. Distribution:

Distribution:

Marshall P. Salzman, Esq., Office of the Solicitor, United States Department of Labor, 450 Golden Gate Avenue, Box 36017, San Francisco, California 94102

Kay H. Wilkins, Esq., 1635 N. Alma School Road, Mesa, Arizona 85201