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SOL (MSHA) V. BLACK SAND  
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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),

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 80-331-M

PETITIONER

v.

A/C No. 45-01582-05007

BLACK RIVER SAND & GRAVEL INC.,  
RESPONDENT

MINE: Black River Pit

BENCH DECISION

DDATE:

October 9, 1981

TTEXT:

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Appearances:

Ernest Scott, Jr. Esq.  
Office of the Solicitor  
United States Department of Labor  
8003 Federal Office Building  
Seattle, Washington 98174,

For the Petitioner

James L. Hawk President  
Black River Sand & Gravel, Inc.  
6808 South 140th  
Seattle, Washington 98178,

Pro Se

Before: Judge Jon D. Boltz

The Petitioner filed a petition for assessment of civil penalties against the Respondent for alleged violations of regulations promulgated pursuant to the Federal Mine Safety and Health Act of 1977. The evidence having been concluded, the parties have agreed to waive filing of post hearing briefs and also agree that a bench decision may be rendered at this time.

Based on statements and agreements of the parties, I make the following findings of fact:

1. Respondent has a moderate history of previous violations.

2. The size of Respondent's business is less than average for a sand and gravel operation in this area.

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3. Assessment of proposed civil penalties will not affect Respondent's ability to continue in business.

4. Respondent demonstrated good faith in achieving rapid compliance after notification of the violations.

5. The Act gives me jurisdiction over the parties and the subject matter of these proceedings.

6. The inspectors who issued the citations were duly authorized representatives of the Secretary of Labor.

CITATION NO. 586025

The Petitioner alleges that there was not a side guard on the self cleaning tail pulley on the left side of the #1 primary conveyor belt. The citation alleges a violation of 30 C.F.R. 56.14-7, which regulation states that guards shall be of substantial construction and properly maintained.

It is undisputed that part of the guard had been removed, and Respondent's evidence showed that this was done for clean up purposes. The equipment, however, was in operation at the time of the inspection and, thus, I find under these circumstances that there was a violation of the cited regulation. The ground area where the Respondent's plant was located was extremely wet and muddy at all times and employees did not clean up spillage around the tail pulley by shovel. This clean up was accomplished by use of a bucket on a front end loader. There was, therefore, not a great risk of injury to the employees.

The citation is affirmed and a penalty of \$65.00 is assessed.

CITATION NO. 586026

Petitioner alleges that there was no back guard on the self cleaning tail pulley on the #2 conveyor which was operating in the pit, in violation of 30 C.F.R. 56.14-7.

It is undisputed that there was no back guard on the pulley and that the pulley was at ground level. Again, because of the ground conditions in this area of the operation, the potential for contact with the self cleaning tail pulley was somewhat remote, however, I am taking this into consideration for the purpose of assessing the penalty only. I find that there was a violation of the regulation and the citation is affirmed. The penalty assessed is \$60.00.

CITATION NO. 586027

Petitioner alleges that there was no guard on the self cleaning tail pulley on the #4 up slope conveyor belt operating in the pit. The Petitioner also alleges that the tail pulley was exposed to persons in the area, in violation of 30 C.F.R. 56.14-1.

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The cited regulation states, inter alia, that tail pulleys which may be contacted by persons, and which may cause injury to persons, shall be guarded. Again, the evidence is undisputed that there was no guard. Even though the conditions were muddy, evidence was presented that the pulley was operating near ground level approximately two feet from two employees. The guard had been removed for repairs and had not been replaced. Thus, the pulley might have been contacted by persons and it might have caused injury to them. Under these circumstances, the citation is affirmed and a penalty of \$100.00 is assessed.

CITATION NO. 586028

Petitioner alleges that the V-belt drive pulley on the #3 conveyor belt was not provided with a guard. The Petitioner also alleges that it was within reach of persons in the area, all in violation of 30 C.F.R. 56.14-1.

The evidence was that the drive pulley was approximately five feet above ground level, and it was easily accessible by two employees who were seen working within approximately two feet of the exposed pulley. Thus, these persons in the area could have come into contact with the pulley and could have been injured. The citation is affirmed and a penalty of \$75.00 is assessed.

CITATION NO. 586029

The Petitioner alleges there was no safe means of access to the plant pond pump, in violation of 30 C.F.R. 56.11-1. This regulation states that a safe means of access shall be provided and maintained to all working places.

A wooden walkway had been constructed horizontally over approximately a twelve foot stretch of water as the means of access to the pump. The rungs on the walkway were approximately six inches in width with a space in between the rungs. The walkway had a handrail. I find that access to the work area was not unsafe. The handrail provided adequate support as testified to by a witness for the Respondent, and this handrail, along with the walkway, I find allowed for safe access to the work area. This citation is vacated.

CITATION NO. 586030

Petitioner alleges that the berm had been washed away by drainage water on the elevated roadway leading to the electrical control shed, in violation of 30 C.F.R. 56.9-22, which states that berms or guards shall be provided on the outer banks of elevated roadways.

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The berm was approximately eighteen inches above the roadway surface and approximately two feet wide. The evidence is undisputed that the berm was on the outer bank and that the roadway was elevated. Although the width of the wash out of the berm is disputed in that the MSHA inspector stated that it was 15 to 20 feet and the Respondent stated that it was just a few feet, there is, nevertheless, a violation of the cited regulation, since at least a portion of the berm was not in place at the time of the inspection. The evidence that the roadway was seldom travelled is a matter which I am taking into consideration in assessing a penalty. The citation is affirmed and the penalty assessed is \$85.00.

CITATION NO. 586031

Petitioner alleges that there was no guard on the back section of the self cleaning tail pulley on the discharge belt under the jaw crusher, in violation of 56.14-7.

It is undisputed that there was no guard on the back section of the tail pulley. However, because the area around this particular pulley is always extremely muddy and cannot be contacted by individuals unless they wade through mud which was testified to as approximately waist deep, I find that the citation should be vacated. The spillage is cleaned up by loader as previously described in this Decision. Because of the remote location of the pulley and the fact that the employees do not come into contact with it, the citation is vacated.

CITATION NO. 352939

Petitioner alleges the floor area in front of the wash plant distribution center did not have a dry wooden platform or a dry insulating mat to protect personnel operating the switches from risk of electrical shock, in violation of 30 C.F.R. 56.12-20. The pertinent part of that regulation states that dry wooden platforms and insulating mats, or other electrical non-conductive materials shall be kept in place at all switchboards and power controlled switches where shock hazards exist.

It is undisputed that the floor area in the distribution center had sand and mud approximately 2 inches deep and that the area was wet. It is also undisputed that the center did have a board on which electrical switches were mounted. There was a wooden palet and mat which were buried under the sand and mud on the floor. The Respondent admitted that it had exercised poor housekeeping in that area. The Respondent had been previously cited for the same violation in the same area in November 1978. The citation is affirmed and the penalty assessed is \$130.00.

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ORDER

The foregoing Bench Decision is affirmed and the Respondent is ordered to pay total civil penalties in the sum of \$515.00 within 30 days of the date of this Decision.

Jon D. Boltz  
Administrative Law Judge