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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

v.

SAN MIGUEL COUNTY,  
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. DENV 79-569-PM

A/C No. 05-03169-05002 V

MINE: San Miguel County  
Screening Plant

Appearances:

James H. Barkley Esq.  
Office of the Solicitor  
United States Department of Labor  
1585 Federal Building  
1961 Stout Street  
enver, Colorado 80294,  
For the Petitioner

John Horn Esq.  
County Attorney  
San Miguel County  
P.O. Box 482  
Telluride, Colorado 81435,  
For the Respondent

Before: Judge Virgil E. Vail

DECISION

STATEMENT OF THE CASE

The above captioned civil penalty proceeding was brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a) [hereinafter referred to as "the Act"].

Pursuant to notice, a hearing was held on March 10, 1981 at Grand Junction, Colorado.

STIPULATIONS

At the commencement of the hearing, the parties offered the following stipulations:

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1. Respondent admits the violation as alleged in Citation no. 325901. (FOOTNOTE 1)

2. Respondent admits that it is the operator of the mine located at Sliprock, Colorado, the location where Citation no. 325901 was issued.

3. The Administrative Law Judge has jurisdiction of this case.

#### ISSUE

The only issue left to be determined was what penalty should be assessed for the violation of mandatory safety standard 56.14-1.

#### PENALTY ASSESSMENT

The parties presented testimony relating to the six criteria as set forth in 30 U.S.C. 815 for determining the appropriate amount of the penalty.

The evidence showed that Rosendo Trujillo, a federal mine inspector, issued Citation no. 325901 on June 29, 1978. He cited the respondent for failing to have the pinch point on a drive chain guarded. (Tr. 6). The drive chain was approximately three feet long and a half to two feet from the ground. (Tr. 6 and 9). Mr. Trujillo issued the citation based on his belief that an employee could get caught and pulled into the chain, thereby losing an arm or leg.

Respondent presented the testimony of their road foreman, Clifford Geisinger, who had accompanied Mr. Trujillo during the inspection. Mr. Geisinger testified that it would be difficult for anyone to get caught in the pinch point. He based his belief on the fact that the bin protrudes out at an angle above the chain. Because of this, a person would have to crouch or bend over to get close to the chain. (Tr. 10). He stated that in the eighteen years that he had worked with the machine there had never been an injury and the pinch point had never been guarded. (Tr. 10).

The respondent has no prior history of any violations. Also, I find that respondent's negligence was only slight. However, the fact that there had been no prior injuries and that the guard would be inconvenient, since it has to be removed periodically for cleaning purposes, are not mitigating circumstances.

Respondent did not demonstrate good faith in abating the citation. Mr. Geisinger told the inspector he would not put a screen on until he had orders to do so. The same day the citation was issued, Mr. Geisinger spoke with the Commissioners and was told to keep running the machine without the guard. (Tr. 11).

