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SOL (MSHA) V. UNITED STATES STEEL  
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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. LAKE 82-36-M A.O. No. 21-00282-05029
v.	
UNITED STATES STEEL CORPORATION, RESPONDENT	Minntac Mine
UNITED STATES STEEL CORPORATION, CONTESTANT	Contest of Citation
v.	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Docket No. LAKE 81-191-RM Citation No. 486750 7/30/81  Minntac Mine
LOCAL UNION NO. 1938, DISTRICT 33, UNITED STEELWORKERS OF AMERICA, REPRESENTATIVE OF THE MINERS	

DECISION

Appearances: Robert A. Cohen, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, on behalf of the Secretary of Labor  
Louise Q. Symons, Esq., Pittsburgh, Pennsylvania, on behalf of United States Steel Corporation  
Clifford Kasenan, Safety Chairman, Local Union 1938, United Steelworkers of America, Virginia, Minnesota, on behalf of the Representative of the Miners

Before: Administrative Law Judge Broderick

STATEMENT OF THE CASE

The two cases have been consolidated since they both involve the same citation. The notice of contest filed by U.S. Steel challenges

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the validity of the citation and the civil penalty proceeding seeks a penalty for the violation charged in the citation. Pursuant to notice, a hearing was held on the consolidated cases in Duluth, Minnesota on March 23, 1982. Federal mine inspector James Bagley and Larry Claude testified on behalf of the Secretary. William Parker and Michael Kerr testified on behalf of U.S. Steel. No witnesses were called by the Representative of the Miners. The Secretary and U.S. Steel have filed posthearing briefs. Based on the entire record and considering the contentions of the parties, I make the following decision.

#### FINDINGS OF FACT

1. At all times pertinent to this proceeding, U.S. Steel was the operator of the Minntac Plant, a mine as defined in the Federal Mine Safety and Health Act of 1977. The subject plant produces goods which enter interstate commerce.
2. U.S. Steel is a large operator, and the assessment of a penalty will not affect its ability to continue in business.
3. A total of 180 violations were assessed against the subject mine within the 24 months prior to the violation involved herein, of which 170 have been paid.
4. Respondent demonstrated good faith in abating the condition after the issuance of the citation involved in this proceeding.
5. In July, 1981, and for some time prior to that, it was a common practice at the subject mine for drivers of 85 ton and 120 ton haulage trucks to check the oil level while the truck motor was running.
6. Newly hired truck drivers since 1977 have been instructed by U.S. Steel to turn off the truck engine while checking the oil.
7. On July 30, 1981, the driver of a Wabco truck (No. 528) with a Cummins engine checked the oil in his vehicle while the motor was running.
8. In checking the oil, it is necessary to place one's foot on the bottom step of a boarding ladder, take a hand hold on a grab iron or radiator brace and pull oneself up to the exposed engine.
9. There was a pinch point between the V-belt on the alternator and the alternator pulley located at the front or right hand side of the alternator from the point of view of the person on the ladder.
10. The oil dipstick was toward the back or left hand side of the ladder. It was approximately 16 inches from the alternator pulley. The pinch point was approximately 18 inches from the grab iron.

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11. On July 30, 1981, Inspector Bagley issued a citation for a violation of 30 C.F.R. 55.14-1 in which he charged that the truck in question had an alternator V-belt drive assembly which was not guarded to prevent persons from contacting it, and the equipment operator stated that he checked the engine oil with the engine running.

12. The citation was terminated when U.S. Steel fabricated and installed a guard over the alternator and its V-belt assembly. The inspector refused to accept as abatement the company's proposal that it issue a "job safety procedure" instructing the equipment operators to shut down the trucks before checking the engine oil.

13. The inspector testified at the hearing that mechanics checking the timing of the engine might also be exposed to the pinch point. This aspect of the alleged hazard was not included in the citation, nor was it part of the reason for issuing the citation. I am not considering it in this proceeding.

#### REGULATION

30 C.F.R. 55.14-1 provides as follows: "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."

#### ISSUES

1. Whether an unguarded V-belt on the alternator of a truck engine constitutes a violation of the standard in question where the truck operator checks the engine oil with the engine running?

2. If so, whether the condition can be abated by requiring that the engines be turned off before checking the oil, or whether a guard is necessary?

3. If a violation was established, what is the appropriate penalty?

#### CONCLUSIONS OF LAW

1. The U.S. Steel Corporation is subject to the provisions of the Federal Mine Safety and Health Act of 1977, in the operation of the Minntac Plant.

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2. The undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding.

3. The V-belt assembly on the alternator of the No. 528 Wabco truck is, while the engine is running, a moving machine part. If the engine oil is checked with the engine running, the V-belt assembly constitutes a pinch point which may be contacted by persons.

#### DISCUSSION

There is no real dispute that one checking the oil by the dipstick on the truck in question while the engine is running is subjected to the possibility of coming in contact with the pinch point formed between the alternator V-belt and the alternator pulley. U.S. Steel argues that the risk is remote (it compares it to the risk of being struck by a falling meteor); that no other operator has ever been cited for the condition; that no injuries have ever been reported due to the condition; that the citation resulted from the personal campaign of a U.S. Steel employee to have guards installed; that the equipment manufacturers never considered the need for a guard; that the inspector was arbitrary in requiring the installation of a guard for abatement. (" . . . if MSHA inspectors have that right they have succeeded where President Truman failed in dictating how the steel companies should run their businesses. Youngstown Sheet and Tube v. Sawyer, 343 U.S. 579 (1952)"). Brief of United States Steel, p. 7). These arguments are largely beside the point. A risk of injury from the possible contact with moving machine parts was shown by the evidence.

4. There is no risk of injury from contact with moving machine parts in checking the oil with the engine off, since in that case, there are no moving machine parts. Therefore, the condition could properly have been abated by requiring that the engine oil be checked only with the engine turned off. This is the procedure recommended by the equipment manufacturers and the stated policy of U.S. Steel.

5. The probability of an injury occurring in the circumstances shown was slight. On the other hand, if an injury occurred it could be relatively serious. I conclude that the violation was not serious.

6. The company had an official policy of requiring the engines to be turned off when checking the oil. For various reasons, the policy was more honored in the breach than in the observance. This fact should have been known to management personnel. I conclude that U.S. Steel was negligent in permitting the practice to continue.

7. I conclude that an appropriate penalty for the violation is \$75.

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ORDER

On the basis of the above findings of fact and conclusions of law, IT IS ORDERED that Citation No. 486750 issued July 30, 1981, is AFFIRMED. IT IS FURTHER ORDERED that U.S. Steel Corporation, within 30 days of the date of this decision, pay the sum of \$75 as a civil penalty for the violation of 30 C.F.R. 55.14-1 charged in the citation.

James A. Broderick  
Administrative Law Judge