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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. CENT 79-160-M

v.

EL PASO ROCK QUARRIES, INC.,
RESPONDENT

Appearances:

Barbara Heptig Esq. Office of
James E. White, Regional Solicitor
United States Department of Labor
Dallas, Texas 75202,
For the Petitioner

Richard Mendoza Esq.
El Paso Rock Quarries
El Paso, Texas 79925,
For the Respondent

Before: Judge John J. Morris

DECISION

The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charges respondent, El Paso Rock Quarries, Inc., with violating three safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq.

After notice to the parties a hearing on the merits was held in El Paso, Texas on November 9, 1982.

The parties did not file post trial briefs.

Issues

The issues are whether respondent violated the regulations and, if so, what penalties are appropriate.

Citation 160837

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.3-50.(FOOTNOTE 1)

Petitioner's uncontroverted evidence establishes the following facts:

Earl B. Diggs, an MSHA inspector experienced in mining, issued this citation when he learned that two miners were working on a pile of rocks some 50 yards square (Tr. 7, 8, 10-12, 35, Exhibit P3). The men on the boulders lacked a sound footing while holding a 65 pound air drill (Tr. 10-11). The boulders ranged in size between two and a half feet to seven feet in diameter (Tr. 10-11). If the boulders shifted they could fall and crush the miners (Tr. 12, 13).

One or two weeks later it was found the condition had been corrected. The boulders had been separated and blocked to prevent movement. Drilling of the boulders would take place on the ground (Tr. 13).

The foregoing facts establish a violation of Section 56.3-50. The citation should be affirmed.

Citation 160839

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.18-10.(FOOTNOTE 2)

Petitioner's uncontroverted evidence establishes the following facts:

Don McCoy, in charge of respondent's quarry, advised Inspector Diggs that at the time there were no supervisors trained in first aid (Tr. 14, Exhibit P4). Further, respondent's employees hadn't been offered first aid training (Tr. 14).

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On a prior inspection MSHA had offered such training, at no cost, to respondent (Tr. 15). Forty miners were affected by this citation (Tr. 16).

The foregoing facts establish a violation of Section 56.18-10. The citation should be affirmed.

Citation 160840

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.5-3.(FOOTNOTE 3)

Petitioner's uncontroverted evidence establishes the following facts:

Inspector Diggs observed dust around the collar of a drill hole. Two miners were drilling without water. Dust was flying (Tr. 16, 17, 18).

"Collared" as used in the regulation means that when starting to drill water is added up to the steel. This causes the hole to harden and round out. (Tr. 17).

The equipment available for dust control wasn't fit for use. Hoses in the water tank had been disconnected and there was no water in the tank (Tr. 17).

It is necessary to drill wet to keep down the dust. This prevents miners from being exposed to possible silicosis caused by exposure to silica dust (Tr. 17).

There were no dust control measures at this site although there are three types of dust control measures available (Tr. 18).

The foregoing facts establish a violation of the regulation. The citation should be affirmed.

Civil Penalties

Petitioner proposes the following civil penalties for the citations:

Citation	160837	\$275
	160839	445
	160840	305

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The mandate to assess civil penalties is contained in Section 110(i) [now 30 U.S.C. 820(i)] of the Act. It provides:

(i) The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this Act, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

Concerning prior history: I find respondent has an extensive adverse history. The computer printout, admissible as a business as well as a public record, indicates respondent was assessed 326 violations as a result of 30 inspections (Tr. 19-27, Exhibit P2). At the request of the Petitioner the Judge further took official notice of prior cases involving these parties. These cases were docketed as Denver 79-139-PM; Denver 79-140-PM; Denver 79-176-PM.

Concerning size: respondent is a large operator. This is indicated by the evidence that there were 174,470.4 annual man hours expended at this quarry (Answers to Interrogatory No. 4).

Concerning negligence: These violative conditions should clearly have been known to the operator.

Concerning the effect on operator's ability to continue in business: This is essentially an affirmative issue to be established by the operator. Buffalo Mining Co., 2 IBMA 226 (1973).

Concerning gravity: The gravity is apparent and severe in two of these citations. The first aid training citation could, under some circumstances, be equally severe.

Concerning good faith: The record establishes that respondent abated the violative conditions.

After considering all of the statutory criteria I conclude that the penalties proposed by petitioner are appropriate.

Based on the foregoing findings of fact and conclusions of law I enter the following:

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ORDER

1. Citations 160837, 160839, and 160840 are affirmed.
2. The proposed civil penalties of \$275, \$445, and \$305 are affirmed.
3. Respondent is ordered to pay the sum of \$1,025 within 40 days of the date of this order.

John J. Morris
Administrative Law Judge

FOOTNOTES START HERE-

- 1 The cited standard provides as follows:

56.3-50 Mandatory. Material, other than hanging material, to be broken by secondary drilling and blasting, or by any other method shall be positioned or blocked to prevent hazardous movement before persons commence breaking operations. Persons who perform those operations shall work from a location where, if movement of material occurs, those persons will not be endangered.

- 2 The cited standard provides as follows:

56.18-10 Mandatory. Selected supervisors shall be trained in first aid. First aid training shall be made available to all interested employees.

- 3 The cited section provides as follows:

56.5-3 Mandatory. Holes shall be collared and drilled wet, or other efficient dust control measures shall be used when drilling nonwater-soluble material. Efficient dust control measures shall be used when drilling water-soluble materials.