

CCASE:  
SOL (MSHA) V. SUPERIOR ROCK  
DDATE:  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER  
v.  
SUPERIOR ROCK PRODUCTS,  
RESPONDENT

CIVIL PENALTY PROCEEDING  
  
Docket No. WEST 81-261-M  
A.C. No. 42-01711-05001  
  
Mt. Pleasant Pit Mine

DECISION

Appearances: Robert J. Lesnick, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
Respondent did not appear.

Before: Judge Morris

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

After notice to the parties, a hearing on the merits was held on September 7, 1983 in Salt Lake City, Utah. Respondent failed to appear at the hearing and further failed to respond to the Order To Show Cause issued on September 9, 1983.

Issues

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

Citation 583694

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.14-6 which provides:

56.14-6 Mandatory. Except when testing the machinery, guards shall be securely in place while machinery is being operated.

MSHA's Inspector William W. Wilson has been in the agency's employ since 1978. His mining experience began with Phelps Dodge Corporation in 1968 (Tr. 3-5).

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On November 21, 1980, witness Wilson inspected respondent's single bench sand and gravel operation (Tr. 5, 6). Kenneth Allred, who identified himself as the vice-president and general manager, stated the mine had been operating since the previous summer (Tr. 6).

The inspector did not know about the existence of the mine until he saw it while he was travelling over U.S. Highway No. 89 (Tr. 7). In viewing the plant, the inspector observed a Caterpillar generator and a Clarke front-end loader. Generators and loaders of this type are manufactured in the State of Illinois (Tr. 7).

The inspector wrote this citation because the guard for the 48 inch high shaker pulley and D belt were not in place. This condition constituted a hazard to workers on the walkway (Tr. 8-12, Exhibits 1, 2 3). Personnel could be caught on the moving parts. There were two, sometimes three, employees on the site (Tr. 12, 13). The inspector considered this citation and all except one of the remaining citations to be significant and substantial (Tr. 13-15).

Citation 583695

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.14-1, which provides:  
Guards

56.14-1 Mandatory. 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.

The MSHA inspector took photographs showing that the chain drive belt (45 inches from the walkway) feeding the shakers and the D-belt assembly was not guarded. Exhibit 1 shows the highly visible unguarded condition (Tr. 15, 17). If the two or three employees were standing on the walkway, they could be caught in the chain drive and pulley assembly (Tr. 16).

Citation 583697

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.14-1, cited above.

The MSHA inspector testified that the west side of the D belt assembly underneath the shaker was not guarded (Tr. 17). In addition, the area was accessible to employees (Tr. 17, Exhibit 3). There

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were footprints within 17 inches and the assembly was six to seven inches above ground level (Tr. 19). In this area and in the previously cited areas an employee could contact the pinch points without tripping or lunging (Tr. 19).

Citation 583698

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.12-13(b). The cited section in full provides as follows:

56.12-13 Mandatory. Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be: (a) Mechanically strong with electrical conductivity as near as possible to that of the original; (b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture; and (c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

Inspector Wilson observed and photographed certain uninsulated electrical wires at the worksite. Bare metal was showing in more than one place (Tr. 20-24, Exhibits 4-9). This condition was adjacent to a travelled walkway (Tr. 24). The upper wire on Exhibit 8 was 53 inches above the ground (Tr. 24).

Citation 583699

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.4-24(b), which provides:

56.4-24 Mandatory. Fire extinguishers and fire suppression devices shall be: (b) Adequate in number and size for the particular fire hazard involved.

Inspector Wilson could not locate any fire extinguishers on the property (Tr. 26, 27). Any fire would not be controlled. (Tr. 26).

Inspector Wilson would not consider this violation as significant and substantial if he was writing the citation on the day of the hearing (Tr. 27).

Citation 583700

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 56.26-1, which provides:

56.26-1 Mandatory. The owner, operator, or person in charge of any metal and non-metal mine shall notify the nearest Mining Enforcement in Safety Administration Metal and Nonmetal Mine Health and Safety sub-district office before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent.

When any mine is closed, the person in charge shall notify the nearest sub-district office as provided above and indicate whether the closure is temporary or permanent.

According to Inspector Wilson, company representative Allred stated the company had been in operation and the inspector observed that himself. Allred did not claim the company had registered under another name. In fact, Allred pleaded ignorance of MSHA's regulation (Tr. 27, 28).

Discussion

The evidence offered in connection with each citation establish a violation of the relevant regulation. Accordingly, each citation should be affirmed.

I further rely on the inspector's judgment and affirm the significant and substantial assertion as to all of the citations except number 583699, (fire extinguishers). In connection with this citation, the inspector indicated at the hearing that he did not consider that violation to be significant and substantial. Accordingly, the allegations of significant and substantial as to Citation 583699 are stricken.

Civil Penalties

The six criteria for assessing a civil penalty is set forth in 30 U.S.C. 820(i),

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points for respondent's size or history of previous violation. Negligence points are assessed for all citations except number 583699 (fire extinguishers). The assessment points proposed for gravity appear to be in order.

The Office of Assessment failed to credit respondent with any good faith, but each citation shows respondent abated the violative condition. By virtue of that fact, the Secretary's proposed assessments appear to be excessive.

The proposed assessments should be modified as follows:

Citation No.	Original Proposed	Disposition
583694 (guards not secured)	\$ 44	\$ 25
583695 (unguarded belt)	44	25
583697 (unguarded D belt)	44	25
583698 (splices not insulated)	34	20
583699 (fire extinguishers)	8	6
583700 (failure to report)	8	6

ORDER

Based on the facts and conclusions of law recited herein, I affirm the following citations and assess the penalties as noted thereafter:

1. Citation No.	Penalty
583694	\$ 25
583695	25
583697	25
583698	20
583699	6
583700	6

2. Respondent is ordered to pay the sum of \$107 within 40 days of the date of this order.

John J. Morris  
Administrative Law Judge