

CCASE:

SOL (MSHA) v. KENTUCKY-TENNESSEE CLAY

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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. SE 84-8-M  
A.C. No. 22-00032-05501

v.

Crenshaw Mine & Plant

KENTUCKY-TENNESSEE CLAY CO.,  
RESPONDENT

DECISION

Appearances: Charles Merz, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee,  
for Petitioner;  
No appearance for Respondent

Before: Judge Fauver

This civil penalty case was called for hearing at 9:30 a.m.,  
August 6, 1985, at Lexington, Kentucky, pursuant to section  
105(d) of the Federal Mine Safety and Health Act of 1977, 30  
U.S.C. 801, et seq. Petitioner appeared by counsel. Respondent  
did not appear, and was held in default, whereupon evidence was  
received from Petitioner.

Having considered the evidence and the record as a whole, I  
find that a preponderance of the substantial, probative, and  
reliable evidence establishes the following:

FINDINGS AND CONCLUSIONS

1. Respondent is a large operator of several surface mines.  
At all relevant times Respondent operated Crenshaw Mine and Plant  
producing clay for sale in or substantially affecting interstate  
commerce. About 40 employees were employed at the site; work was  
scheduled for three shifts a day, five days a week.

2. On August 17, 1983, Federal Mine Inspector Walter Turner  
inspected the Crenshaw Mine and Plant. He observed that the front  
windshield on front-end loader No. 1526 was cracked, obstructing  
much of the operator's viewing area. He issued Citation No.  
2079936, charging a violation of 30 C.F.R. 55.9-11.

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(a) Negligence. This condition was known by Respondent, and existed for at least one week. It was clear negligence for Respondent to operate the equipment with the cracked windshield.

(b) Gravity. The cracks in the windshield were on the operator's side and obstructed about one-quarter of his vision to the front of the vehicle. This was a serious hazard, endangering the driver and other persons who might be injured in the event of an accident.

(c) Compliance History. Respondent had no prior violation of 55.9-11 at this site in the 24-month period before the citation.

3. On August 17, 1983, Inspector Turner observed that the front windshield on front-end loader No. 1528 was cracked, obstructing much of the operator's viewing area. He issued Citation No. 2079841, charging a violation of 30 C.F.R. 55.9-11.

(a) Negligence. This condition was known by Respondent, and existed for at least a week. It was clear negligence for Respondent to operate the equipment with the cracked windshield.

(b) Gravity. The cracks in the windshield were on the driver's side and obstructed about one-quarter of his vision to the front of the vehicle. This was a serious hazard, endangering the driver and other persons who might be injured in the event of an accident.

(c) Compliance History. Respondent had no prior violation of 55.9-11 at this site in the 24-month period before the citation.

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4. On August 17, 1983, Inspector Turner observed that the No. 79 mill bottom and top bag conveyor tail pulleys were not guarded, exposing the bag machine operator to unguarded pinch points. He issued Citation No. 2079935, charging a violation of 30 C.F.R. 55.14-1.

(a) Negligence. This condition was known by Respondent. Respondent was negligent in operating the equipment without guards over the pinch points.

(b) Gravity. This was a serious hazard, endangering the bag machine operator and others who might come into contact with pinch points.

(c) Compliance History. Respondent had one prior violation of the cited standard about one month before the citation.

5. On August 17, 1983, Inspector Turner observed that the No. 53 mill bottom and top bag conveyor tail pulleys were not guarded, exposing the bag machine operator to unguarded pinch points. He issued Citation No. 2079937, charging a violation of 30 C.F.R. 55.14-1.

(a) Negligence. This condition was known by Respondent. Respondent was negligent in operating the equipment without guards over the pinch points.

(b) Gravity. This was a serious hazard, endangering the bag machine operator and others who might come into contact with pinch points.

(c) Compliance History. Respondent had one prior violation of the cited standard about one month before the citation.

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6. On August 17, 1983, Inspector Turner observed that the No. 63 mill feed conveyor tail pulley was not guarded. He issued Citation No. 2079940, charging a violation of 30 C.F.R. 55.14-1. The tail pulley was in a pit area about six feet below the plant floor. The pulley wheel had spokes and the wheel, top and sides were unguarded. A ramp led to the tail pulley. The ramp was not obstructed or barred by a gate or sign. The pulley area required regular cleaning and maintenance. A preponderant and reasonable inference from the evidence indicates that spillage was probably shoveled onto the conveyor in the pit while the conveyor was moving. At least one employee was subject to exposure to the unguarded pulley.

(a) Negligence. Respondent knew about this condition, and was negligent in not putting a guard on the pulley.

(b) Gravity. This was a serious safety hazard, exposing at least one employee to danger.

(c) Compliance History. There was one prior violation of the cited standard in the 24-month period before the citation.

7. On August 17, 1983, Inspector Turner observed that the No. 63 Mill grinder V-belts and pulleys were not guarded. The grinder was about three feet below ground level. A ramp providing access to the machine was not obstructed or barred by a gate or sign. Based on the condition observed, Inspector Turner issued Citation No. 2079939, charging a violation of 30 C.F.R. 55.14-1.

The findings and conclusions as to negligence, gravity, and compliance history in No. 6, above, apply to this citation also.

8. On August 17, 1983, Inspector Turner observed that No. 53 Mill feed conveyor tail pulley was not guarded. The tail pulley was about six feet below ground level. A portable ladder provided access to the pulley area. The ladder was not barred or obstructed to access. A reasonable inference from the evidence is that spillage around the pulley was shoveled onto the conveyor while the conveyor was moving. Inspector Turner issued Citation No. 2079938, charging a violation of 30 C.F.R. 55.14-1.

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(a) Negligence. This condition was readily observable. Respondent was negligent in failing to guard the pinch points of this equipment.

(b) Gravity. This was a serious safety hazard, exposing at least one employee to danger.

(c) Compliance History. There was one prior violation of the cited standard in the 24-month period before the citation.

#### DISCUSSION WITH FURTHER FINDINGS AND CONCLUSIONS

I find that each of the violations charged was proved, was due to negligence, and was a serious violation that could contribute to a fatal or serious injury. Respondent is credited with making a good faith effort to achieve rapid compliance after receiving each citation.

Considering each of the criteria for assessing a civil penalty under section 110(i) of the Act, I find that an appropriate civil penalty for each violation is as follows:

Citation	Civil Penalty
2079936	\$100
2079841	100
2079935	100
2079937	100
2079940	50
2079939	50
2079938	50

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding.

2. Respondent violated the safety standards as charged in the above listed citations.

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ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay to Petitioner the civil penalties assessed above, in the total amount of \$550, within 30 days of this Decision.

William Fauver  
Administrative Law Judge