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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. WEST 84-70-M

A.C. No. 02-01918-05501

v.

Gravel Pit Mine

GENERAL ROCK & SAND,
RESPONDENT

DECISION

Appearances: Theresa Kalinski, Esq., Office of the Solicitor,
U.S. Department of Labor, Los Angeles, California,
for the Petitioner.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration, charges respondent with violating 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 took place in Phoenix, Arizona on January 28, 1986.

Procedural Matters

At the commencement of the hearing the Secretary moved for dismissal of the respondent's notice of contest on the grounds that the operator had failed to appear at the hearing.

The judge denied the motion and directed that the Secretary proceed with his proof. Subsequently, the judge issued an order to show cause directed to respondent. The respondent failed to reply to the order.

Summary of the Case

Colby Lumpkins, Jr., an MSHA inspector and a person experienced in mining, inspected respondent on December 14, 1983.

The inspector found that the conveyor was not provided with a stop cord or barrier. A tension cable could have been used (Tr.6).

There were two or three workers operating the plant and employees would be in this area for maintenance purposes.

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In the inspector's opinion the hazard in this situation was that it would not have been possible to stop the conveyor if a worker became entangled in the equipment.

The foregoing facts caused the inspector to issue Citation 2088144 for the violation of 30 C.F.R. 56.97. The regulation provides as follows:

Unguarded conveyors with walkways shall be equipped with emergency stop devices or cords along their full length.

Inspector Lumpkins further observed that the wires connecting to the junction box lacked a bushing connection. A bushing serves to hold the cable steady as well as secure. It also prevents the cable from being pulled out. The junction box itself was attached to a drive motor on a shaker screen. Its position subjected it to vibration.

In the inspector's opinion this violative condition could cause the insulation to wear through. Electrical shocks could result if this occurred (Tr. 8, 9).

The foregoing facts caused the inspector to issue Citation 2088145 for the violation of 30 C.F.R. 56.128. The cited regulation provides as follows:

Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

Inspector Lumpkins further observed an unguarded tail pulley section. In his opinion both sides of the tail pulley should have been guarded. Employees could be caught in the unguarded pulley (Tr. 12).

The foregoing facts caused the inspector to issue Citation 2446500

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for the violation of 30 C.F.R. 56.14Å1. The cited regulation 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.

Discussion

The record establishes a violation of each of the contested citations. They should be affirmed.

Proposed Civil Penalties

The statutory criteria for assessing civil penalties is contained in 30 U.S.C. 820(i) which provides as follows:

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.

The record establishes that the operator has no previous adverse history. In addition, the operator must be considered to be small inasmuch as it only employs two or three workers. The record does not present any information concerning the operator's financial condition. Therefore, in the absence of any facts to the contrary, I find that the payment of penalties will not cause respondent to discontinue its business. Buffalo Mining Co., 2 IBMA 226 (1973) and Associated Drilling, Inc., 3 IBMA 164 (1974). The operator was negligent since the violative conditions were open, obvious and known to the operator from a prior inspection. The gravity of the violations was high since severe injuries could have resulted from these conditions. To the operator's credit was its rapid abatement of the violations.

After considering the statutory criteria, I deem that the proposed penalties are appropriate.

Conclusions of Law

Based on the entire record and the factual findings made in the narrative portion of this decision, the following conclusions of law are entered.

1. The Commission has jurisdiction to decide this case.
2. Respondent violated 30 C.F.R. 56.9Å7, 56.12Å8 and 56.14Å1.
3. The contested citations and the proposed civil penalties therefor should be affirmed.

ORDER

Based on the foregoing facts and conclusions of law I enter the following order:

1. Citation 2088144 and the proposed penalty of \$20 are affirmed.
2. Citation 2088145 and the proposed penalty of \$20 are affirmed.
3. Citation 2446500 and the proposed penalty of \$54 are affirmed.
4. Respondent is ordered to pay the sum of \$94 within 40 days of the date of this decision.

John J. Morris
Administrative Law Judge