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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 PROCEEDINGS

Docket No. WEST 85-167-M  
A.C. No. 05-00862-05501

v.

Docket No. WEST 85-168-M  
A.C. No. 05-00862-05502

LOUKONEN BROS. STONE CO.,  
RESPONDENT

Loukonen Bros. Silica Quarry

DECISION

Appearances: Robert J. Lesnick, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
Leonard Loukonen, Loukonen Brothers Stone, Company,  
Lyons, Colorado, pro se, for Respondent.

Before: Judge Carlson

This consolidated case, heard under the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the Act), arose out of inspections on July 11 and July 12, 1985, at respondent's silica pit near Lyons, Colorado. On those dates, Lyle Marti, a federal mine inspector issued 16 citations for alleged violations of various mandatory safety standards promulgated by the Secretary of Labor pursuant to the Act. The respondent, Loukonen Bros. Stone Co., contested the Secretary's petition for imposition of civil penalties. The case was heard in Denver, Colorado, with both parties presenting evidence. Both parties waived the filing of briefs or other post-hearing submissions.

GENERAL BACKGROUND

The undisputed evidence shows that respondent's mine is an open pit silica rock mining and processing operation. The rock is extracted by blasting and is then crushed on-site, after which it is sold to the cement industry. The enterprise is quite small. A partnership, its usual workforce is but three miners. These men alternate between mining the rock and running the crushing operation. Most of the citations in this consolidated proceeding were aimed at equipment used in the crushing activities.

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The business of the mine tends to be seasonal with little work done in the winter months. The partnership had operated the site since 1969.

Mr. Marti, the Secretary's inspector, in addition to carrying out the ordinary duties of a mine inspector, is certified as an electrical inspector. He testified concerning all the alleged violations. Mr. Leonard Loukonen, one of the partner's in respondent's enterprise, represented respondent.

Mr. Loukonen testified only briefly. He limited his remarks almost exclusively to background information concerning the mine, and to a brief explanation concerning the alleged electrical violations. In this latter regard, he testified that mine management had relied upon the expertise of the manufacturers and contractors who originally supplied the electrical equipment and systems.

Mr. Loukonen did not avail himself of his right to cross examine the inspector, the Secretary's sole witness. Neither did he present any testimony in an attempt to rebut the Secretary's evidence regarding the existence of the alleged violations. The respondent, that is to say, was content to remain silent concerning the alleged violations, while putting the Secretary to his proofs.

#### JURISDICTION

To show that respondent's business activities "affected commerce" within the meaning of the Act, the Secretary presented testimony that much of the mining equipment used by respondent was manufactured outside the State of Colorado. The testimony was un rebutted. I conclude that respondent's activities affected commerce.

#### REVIEW AND DISCUSSION OF THE EVIDENCE RELATING TO ALLEGED VIOLATIONS

Citation No. 2358724

Inspector Marti, during his inspection of the Loukonen operation, observed that respondent was using a front-end loader to carry dynamite. Workers had placed the dynamite in the metal bucket of the loader. The metal of which the bucket was constructed was not insulated by nonconductive materials.

The inspector concluded that use of the bucket in this fashion violated the mandatory safety standard published at 30 C.F.R. 56.6047. That standard provides:

Vehicles used to transport explosives, other than blasting agents, shall have substantially constructed

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bodies, no sparking metal exposed in the cargo space, and shall be equipped with suitable sides and tail gates; explosives shall not be piled higher than the side or end enclosures.

The undisputed evidence shows that the alleged violation occurred.

Citation No. 2358725

The carrying of dynamite in respondent's loader also gave rise to another alleged violation. The inspector noted that the loader displayed no warning signs to signify that it was carrying explosives. He cited respondent for failure to comply with the mandatory safety standard published at 30 C.F.R. 56.6043. That standard provides:

Vehicles containing explosives or detonators shall be posted with proper warning signs.

The undisputed evidence shows that the alleged violation occurred.

Citation No. 2358726

During his inspection the inspector saw uncovered nail heads in the interior of the explosives magazine at respondent's pit. A part of the construction of the magazine, the nails had not been countersunk, and had not been filled over with nonconductive material. He believed the exposed metal nails were violative of the mandatory safety standard published at 30 C.F.R. 56.6020. That standard, as pertinent here, provides:

Magazines shall be -  
(f) made of non-sparking materials on the inside,  
including floors . . . .

Inspector Marti maintained that the nail heads could conduct static electricity or a nearby discharge of lightning into the magazine enclosure. Approximately eight cases of dynamite were in the magazine at the time of the inspection.

The undisputed evidence shows that the alleged violation occurred.

Citation No. 2358727

When Inspector Marti examined the primary crusher at respondent's pit, he observed what he believed were deficiencies in the wooden platform attached to the west side of the crusher. He cited these deficiencies as a violation of the mandatory safety standards published at 30 C.F.R. 56.11027. That standard provides:

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Scaffolds and working platforms shall be of substantial construction and provided with handrails and maintained in good condition. Floor boards shall be laid properly and the scaffolds and working platforms shall not be overloaded. Working platforms shall be provided with toeboards when necessary.

Specifically, according to the inspector's testimony, the platform consisted of a single 2 x 8 inch wooden plank. The plank was approximately 6 feet above the ground. The violative condition, in the inspector's view, was that the handrails could not be effective to prevent falls because they were spaced out laterally from the edges of the planking six to eight inches. Thus, should a worker make a misstep, he could easily fall between the handrail and the edge of the plank (Tr. 40041).

I must conclude that the undisputed testimony established the violation.

Citation No. 2358728

On the opposite side of the same primary crusher the inspector saw another inadequate platform. This one was 6 to 8 feet above the ground and gave workers access to the hopper bin for maintenance purposes. Inspector Marti testified that a part of the platform was constructed of metal screen; the remainder consisted of a deteriorating 2 x 8 inch wooden plank. The plank, the inspector maintained, was not of the "substantial construction" required for platforms by 30 C.F.R. 56.11027. Also, the handrails were again so placed that a worker could easily fall through the space between the outside edge of the plank and the inside edge of the rail. The metal screen was also inadequate for a platform, according to the inspector, because it was too light and weak.

The uncontested evidence shows a violation of 30 C.F.R. 56.11027.

Citation No. 2358729

On the left side of respondent's secondary crusher the inspector noted that an electrical control panel located 8 feet above the ground was provided with no safe means of access. He testified that in the event of an emergency, a worker would have to climb up the frame of the machine to reach the disconnect switch or the other electrical components. He therefore cited respondent for violating the mandatory safety standard published at 30 C.F.R. 56.11001. That standard provides:

Safe means of access shall be provided and maintained to all working places.

The uncontested evidence shows a violation of the standard.

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Citation No. 2358730

This citation, too, concerns an alleged falling hazard. The inspector testified that steps leading from the primary crusher engine workdeck to the primary crusher workdeck were not provided with handrails. He cited this condition as a violation of 30 C.F.R. 56.1102. That standard provides:

Crossovers, elevated walkways, elevated ramps, and stairways shall be of substantial construction provided with handrails, and maintained in good condition. Where necessary, toeboards shall be provided.

The steps in question varied from 6 to 8 feet above the ground.

The uncontested evidence shows a violation of the cited standard.

Citation No. 2358731

Inspector Marti testified that the working deck and travelway around the primary crusher engine had unprotected openings large enough for a worker's foot to fall through. The holes, he stated, could cause sprains or broken bones. He believed that this condition violated the mandatory safety standard published at 30 C.F.R. 56.11012. That standard provides:

Openings above, below, or near travelways through which persons or materials may fall shall be protected by railings, barriers, or covers. Where it is impractical to install such protective devices, adequate warning signals shall be installed.

The evidence shows that the standard was violated as alleged.

Citation No. 2358732

According to the inspector, the guard for a flywheel and its belt and chain drive on the east side of the primary crusher was of insubstantial construction and did not fully cover pinch points. Specifically, the guard had been broken loose and bent so that it no longer performed its proper function. The bottom of the flywheel in question was about 5 feet above the ground. In terms of the hazard presented, the inspector's chief concern was that a worker climbing a nearby ladder on the crusher frame could slip and catch a hand or arm in the incompletely guarded pinch-point. He cited the defective guard as a violation of the mandatory safety standard cited at 30 C.F.R. 56.14007. That standard provides:

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Guards shall be of substantial construction and properly maintained.

The evidence establishes that respondent violated the cited standard.

Citation No. 2358733

Inspector Marti noted that the drive shaft furnishing power to the crushers was incompletely guarded. The large shaft, situated some 3 feet above the ground, was guarded on both sides and above, but not below. Marti testified that should the universal joint on the shaft break while the shaft was turning at high revolutions, the lack of guarding on the far side could allow the shaft to drop and whip about violently. This whipping action, he maintained, could fragment the incomplete guard and hurl the fragments considerable distances. The inspector cited the lack of a guard completely surrounding the shaft as a violation of the mandatory safety standard published at 30 C.F.R. 56.14007. That standard provides

Guards shall be of substantial construction and properly maintained.

The evidence establishes that respondent violated the cited standard as alleged.

Citation No. 2358734

Inspector Marti examined the generator and engine that supplied electrical power to the secondary crusher and conveyor at respondent's pit. In the course of his examination he found that the 480 volt system lacked a record of testing for a proper ground to earth. Grounding to earth is necessary, the inspector testified, to insure that the fuses or circuit breakers in the control panels operate properly. Otherwise, should a motor short out, a worker touching a piece of equipment can become a conductor and suffer an electrical shock. The inspector testified that Leonard Loukonen acknowledged to him that the effectiveness of the ground to earth had not been tested annually or otherwise.

Marti cited the record keeping failure as a violation of the mandatory safety standard published at 30 C.F.R. 56.12028. That standard provides:

Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the resistance measured during the most recent tests shall be made available on a request by the Secretary or his duly authorized representative.

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The evidence shows that the testing and recording standard was violated as alleged.

Citation No. 2358735

This citation also alleges a violation of an electrical standard. According to the inspector, there was no ground wire in the metal-enclosed electrical cable providing power to the 440 volt motors serving the secondary crusher. He testified that a fourth wire was necessary to meet the requirements of the grounding standard published at 30 C.F.R. 56.12025. That standard provides:

All metal enclosing or encasing electrical circuits shall be grounded or provided with equivalent protection. This requirement does not apply to battery-operated equipment.

"Equivalent protection," as used in the standard, can only mean a ground fault circuit interrupter within the system, the inspector testified. The system had no such device.

The uncontested evidence shows that the respondent violated the cited standard.

Citation No. 2358736

This citation charges a violation of 30 C.F.R. 56.12025, the same standard cited in the citation discussed immediately above. The inspector testified that eight metal electrical enclosure boxes mounted on the secondary crusher were not grounded, nor were they served by a ground fault circuit interrupter.

The undisputed evidence establishes a violation.

Citation No. 2358737

Inspector Marti noted a guarding defect on respondent's secondary crusher. Specifically, he noted that at the end of the discharge belt the belt and pulley presented an unguarded pinch-point. Ordinarily, he testified, this pinch-point would be 10 to 12 feet above ground level and would offer no hazard to workers. Because of a buildup of materials below the pinch-point, however, the miners could conceivably be caught up in the pinch-point. The new ground level created by the pile of materials was but 5 feet below the belt and pulley.

The inspector cited this condition as a violation of the mandatory safety standard published at 30 C.F.R. 56.14001. That standard provides:



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Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may cause injury to persons, shall be guarded.

The evidence establishes the violation.

Citation No. 2358738

This citation alleges an electrical violation. According to the inspector, the metal cover plate intended to cover a splice box on the 440 volt generator set was missing. The box contains the terminals which connect the generator to the power cable. The inspector's chief concern was that rodents would enter the box (situated only 6 inches above the ground) and cause electrical shorts by gnawing away insulating materials.

He therefore cited respondent for violating the mandatory safety standard published at 30 C.F.R. 56.12032. That standard provides:

Inspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs.

The evidence shows that the violation occurred.

Citation No. 2358739

This citation also concerns the lack of a cover plate in violation of 30 C.F.R. 56.12032. Inspector Marti testified that the main disconnect box on the secondary crusher had two uncovered openings on its left side, allowing access to rodents, dirt and dust. Each of these could cause an electrical fault.

The uncontested evidence establishes a violation of the cited standard.

#### PENALTIES

The Secretary proposes a \$20.00 civil penalty for each violation. Section 110(i) of the Act requires the Commission, in penalty determinations, to consider the operator's size, its negligence, its good faith in seeking rapid compliance, its history of prior violations, the effect of monetary penalties on its ability to remain in business, and the gravity of the violations.

Most of these statutory elements strongly favor the respondent. The pit operation was quite small. A maximum of three employees worked there, alternating between extraction and crushing duties. The evidence shows that respondent had no history of prior violations under the Act. The respondent's representative acknowledge that payment of the proposed penalties would not affect the partnership's ability to remain in business.

Concerning the gravity of the violations, the evidence was essentially the same for all the crushing equipment violations. In each instance, the possibility of employee injury was present. The locations of both the mechanical and electrical defects were such, however, that the likelihood of a worker's actually coming into contact with them was not great. Moreover, as the Secretary's inspector and counsel both noted, there was no employee exposure on the date of inspection since the crushing operation was shut down. Similarly, because most of the cited defects were in obscure locations the respondent's negligence was not high. In each instance I find it to have been in the low-to-moderate range. The severity and negligence involved in the explosives violations are judged to rank about equally with the crusher infractions. The consequences of an accidental detonation could be severe; the likelihood of such an event, however, was very low.

On balance, I conclude that a modest penalty is in order for all violations. Based upon the record, an appropriate civil penalty for each violation is determined to be \$20.00.

#### CONCLUSIONS OF LAW

Based upon the entire record herein, and in accordance with the factual determinations contained in the narrative portion of this decision, the following conclusions of law are made:

- (1) The Commission has the jurisdiction to decide this matter.
- (2) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.6047 as alleged in Citation No. 2358724.
- (3) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.6043 as alleged in Citation No. 2358725.
- (4) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.6020 as alleged in Citation No. 2358726.
- (5) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.11027 as alleged in Citation No. 2358727.
- (6) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.11027 as alleged in Citation No. 2358728.
- (7) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.11001 as alleged in Citation No. 2358729.

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(8) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.1102 as alleged in Citation No. 2358730.

(9) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.11012 as alleged in Citation No. 2358731.

(10) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.14007 as alleged in Citation No. 2358732.

(11) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.14007 as alleged in Citation No. 2358733.

(12) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.12028 as alleged in Citation No. 2358734.

(13) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.12025 as alleged in Citation No. 2358735.

(14) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.12025 as alleged in Citation No. 2358736.

(15) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.14001 as alleged in Citation No. 2358737.

(16) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.12032 as alleged in Citation No. 2358738.

(17) The respondent violated the mandatory safety standard published at 30 C.F.R. 56.12032 as alleged in Citation No. 2358739.

(18) The reasonable and appropriate civil penalty of each of the violations affirmed above is \$20.00.

ORDER

Accordingly, all citations in this consolidated matter are ORDERED affirmed; and respondent Loukonen Bros. Stone Company is ORDERED to pay to the Secretary of Labor a total civil penalty of \$320.00 within 30 days of the date of this decision.

John A. Carlson  
Administrative Law Judge