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SOL (MSHA) V. SULPHER GAS
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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. KENT 86-32-M
A.C. No. 15-14035-05502

v.

Docket No. KENT 86-39-M
A.C. No. 15-14035-05501

SULPHUR SPRINGS STONE
COMPANY,
RESPONDENT

No. 1 Mine

DECISION

Appearances: Joseph Lockett, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner;
There was no appearance for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

In these proceedings, the Secretary seeks civil penalties for a total of 26 alleged violations of mandatory health and safety standards, all being issued during an inspection on October 8, 1985. Respondent by Bill J. Morse, President, filed answers to the petitions. I issued a notice of hearing on January 7, 1987, scheduling the cases for hearing in Owensboro, Kentucky on March 3, 1987. According to the postal return receipt in the file, the notice was received by Bill J. Morse on January 9, 1987. When the case was called for hearing on March 3, 1987, no one appeared for Respondent. An attempt was made by Petitioner's representative to contact Mr. Morse by telephone but was unsuccessful. I found Respondent in default, and directed the Secretary to submit evidence concerning the alleged violations, and concerning the questions of gravity and negligence. Eric Shanholtz testified on behalf of the Secretary. Posthearing briefs were not filed. On the basis of the entire record, I make the following decision.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW COMMON TO ALL ALLEGED VIOLATIONS

1. In 1985, Respondent was the owner and operator of a stone mine in Ohio County, Kentucky, known as the No. 1 Mine. Respondent was subject to the provisions of the Federal Mine Safety and Health Act (the Act) in the operation of the mine.

2. In 1985, Respondent produced 13,557 tons of stone for a gross dollar amount of \$33,892. Five people were employed at the mine. This was the only mine operated by Respondent. Respondent was a small operator.

3. No citations were issued by MSHA to Respondent in the two years prior to October 8, 1985.

4. The mine is no longer in operation. Respondent submitted by mail a copy of what purports to be a 1984 federal income tax return, showing a loss of \$62,680 on gross receipts of \$43,893.

5. The Secretary has stipulated that Respondent made reasonable efforts to achieve compliance after the citations were issued.

FINDINGS AND CONCLUSIONS RELATED TO EACH CITATION DOCKET NO. KENT 86-39-M

CITATION 2657202

The citation charged a violation of 30 C.F.R. 56.13021 because safety chains were not being used on the 2 inch hose going from a compressor to a track drill. The drill was in operation with 90 pounds air pressure. The violation was established, was moderately serious, in that it could have injured employees in the area. The violation was obvious and therefore resulted from Respondent's negligence. I conclude that an appropriate penalty for the violation is \$100.

CITATION 2657221

This citation charged a violation of 30 C.F.R. 56.14001 because the V-Belt drive to the discharge conveyor was not guarded. The mill was in operation. The exposed belt was approximately 4 feet from ground level. The violation was established, and was moderately serious, in that it could have resulted in an injury to an employee. The violation was evident and therefore resulted from Respondent's negligence. I conclude that an appropriate penalty for the violation is \$100.

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CITATION 2657222

This citation charged a violation of 30 C.F.R. 56.12032 because a make up box cover was not provided for the drive motor to the discharge conveyor of the hammer mill. The violation was established. It was not serious but resulted from negligence since it was evident. I conclude that an appropriate penalty for the violation is \$20.

CITATION 2657223

This citation charged a violation of 30 C.F.R. 56.14003 because the head pulley for the feed conveyor to the secondary screen was inadequately guarded. The conveyor was in operation. There was a walkway adjacent. The pinch point was approximately 30 inches from floor level. The violation was established. It was not serious because of low employee exposure. The operator should have known of the violation. Therefore, it resulted from negligence. I conclude that an appropriate penalty for the violation is \$30.

CITATION 2657224

This citation charged a violation of 30 C.F.R. 56.1203 because a 110 volt energized receptacle in the electrical shack had a broken face, exposing energized parts. The receptacle was approximately 3 feet from floor level. The violation was established. It was serious because employees could have touched the energized parts. It was evident and, therefore resulted from Respondent's negligence. I conclude that an appropriate penalty for the violation is \$100.

CITATION 2657225

This citation charged a violation of 30 C.F.R. 56.14001 because three stacking conveyor tail pulleys were not guarded. They were accessible to employees and were at ground level. The violation was established. It was moderately serious because of the possibility of serious injury. Respondent should have been aware of the condition. I conclude that an appropriate penalty for the violation is \$100.

CITATION 2657226

This citation charged a violation of 30 C.F.R. 56.14035 because a V-belt drive to a conveyor was inadequately guarded. Pinch points, 3 feet from ground level, were accessible to employees. The belt was in operation. The violation was established. It was moderately serious because serious injury could occur. The operator should have been aware of the

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condition. I conclude that an appropriate penalty for the violation is \$100.

CITATION 2657228

This citation charged a violation of 30 C.F.R. 56.14001 because the take-up pulley to a rock conveyor was not guarded. There was an exposed pinch point approximately 3 feet from ground level. The violation was established. It was moderately serious because of the likelihood of injury. The condition was evident. I conclude that an appropriate penalty for the violation is \$100.

CITATION 2657227

This citation charged a violation of 30 C.F.R. 56.12032 because a drive motor for a rock conveyor was not provided with a makeup box cover. The motor was 6 to 8 feet high and there was low employee exposure. The violation was established. It was not serious. I conclude that an appropriate penalty for the violation is \$20.

CITATION 2657229

This citation charged a violation of 30 C.F.R. 56.12032 because a drive motor for another rock conveyor was not provided with a makeup box cover. There was low employee exposure. The violation was established. It was not serious. I conclude that an appropriate penalty for the violation is \$20.

DOCKET NO. KENT 86Ä32-M

CITATION 2657203

This citation charged a violation of 30 C.F.R. 56.5003 because an employer was drilling without using the water system thus exposing him to dust. The possibility of injury or disease resulting was not high. The violation was not serious. I conclude that \$20 is an appropriate penalty for this violation.

CITATION 2657204

This citation charged a violation of 30 C.F.R. 56.15002 because employees were working in the pit and crusher area without hard hats. Hazards in the form of falling rock and flyrock existed in the area. The practice was likely to result in injury. The operator should have been aware of the practice. The violation was established and was moderately serious. I conclude that \$75 is an appropriate penalty for this violation.

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CITATION 2657205

This citation charged a violation of 30 C.F.R. 56.15003 because an employee was observed drilling without adequate foot protection. The practice was likely to result in injury. The operator should have been aware of the practice. The violation was established and was moderately serious. I conclude that \$75 is an appropriate penalty for this violation.

CITATION 2657206

This citation charged a violation of 30 C.F.R. 56.9002 because berms were not provided along the upper bench of the pit, the elevated road leading from the upper bench, and the elevated ramp leading to the crusher charging bin. Front end loaders and dump trucks were operating in these areas. The condition was reasonably likely to result in serious injury. The operator was aware or should have been aware of the condition. The violation was established and was serious. I conclude that \$125 is an appropriate penalty for this violation.

CITATION 2657207

This citation charged a violation of 30 C.F.R. 56.4230(a)(1) because three diesel powered pieces of equipment were not provided with fire extinguishers. The violation was established. It was not serious. I conclude that \$20 is an appropriate penalty for this violation.

CITATION 2657209

This citation charged a violation of 30 C.F.R. 56.6005 because dry grass about two feet high surrounded the powder magazine. The condition was not deemed likely to result in injury because of little employee exposure. The violation was established but was not serious. I conclude that \$20 is an appropriate penalty for this violation.

CITATION 2657210

This citation charged a violation of 30 C.F.R. 56.6020(i) because suitable danger signs were not posted at the magazine. The condition was unlikely to result in injury. The violation was established and was not serious. I conclude that \$20 is an appropriate penalty.

CITATION 2657211

This citation charged a violation of 30 C.F.R. 56.9002 because an outside mirror was missing from a haul truck. The

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absence of the mirror was unlikely to result in injury. The violation was established and was not serious. I conclude that \$20 is an appropriate penalty.

CITATION 2657212

This citation charged a violation of 30 C.F.R. 56.9087 because two haul trucks were not provided with back-up alarms, although the operator's view to the rear was obstructed. Foot traffic in the area was low. The violation was established and was not serious. I conclude that \$20 is an appropriate penalty.

CITATION 2657213

This citation charged a violation of 30 C.F.R. 56.14001 because the main shaft for the crusher protruded and provided a pinch point accessible to employees. The crusher was operating. There was a walkway beside the crusher. The condition could result in serious injury. It was evident and the operator should have been aware of it. The violation was established and was moderately serious. I conclude that \$100 is an appropriate penalty.

CITATION 2657214

This citation charged a violation of 30 C.F.R. 56.14001 because several V-belt drives on the impact crusher were unguarded. They were 4 to 5 feet from ground level and were accessible to employees. There was foot traffic in the area. The condition was likely to result in serious injury and should have been known to the operator. The violation was established and was moderately serious. I conclude that \$100 is an appropriate penalty.

CITATION 2657215

This citation charged a violation of 30 C.F.R. 56.11012 because of an unguarded opening in the bin by the impact crusher. The bin was about 8 feet deep and was empty. There was foot traffic in the area. The condition was likely to result in injury and the operator should have been aware of it. The violation was established and was moderately serious. I conclude that \$75 is an appropriate penalty.

CITATION 2657217

This citation charged a violation of 30 C.F.R. 56.14001 because a V-belt drive to the primary shaker screen was unguarded. The inspector deemed an injury unlikely because of low employee exposure. The condition was evident. The violation was

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established. It was not serious. I conclude that \$30 is an appropriate penalty.

CITATION 2657218

This citation charged a violation of 30 C.F.R. 56.14001 because the tail pulley to the waste rock conveyor was unguarded. A walkway made the exposed pulley accessible to employees. It was approximately 2 feet from floor level. The inspector deemed an injury unlikely because of low employee exposure. The operator should have been aware of the condition. The violation was established and was not serious. I conclude that \$30 is an appropriate penalty.

CITATION 2657219

This citation charged a violation of 30 C.F.R. 56.14007 because of an inadequate guard on the V-belt drive to the crusher-hammer mill. Two pinch points existed above 30 inches from the floor. The inspector deemed an injury unlikely. The operator should have been aware of the condition. The violation was established but was not serious. I conclude that \$30 is an appropriate penalty.

CITATION 2657220

The citation charged a violation of 30 C.F.R. 56.11001 because three conveyors were not adequately provided with handrails. The conveyors were approximately 20 feet from ground level and were used as access to service the head pulleys. The condition was reasonably likely to result in injury and should have been known to Respondent. The violation was established and was moderately serious. I conclude that \$80 is an appropriate penalty.

ORDER

Based on the above findings of fact and conclusions of law IT IS ORDERED:

1. The citations are AFFIRMED.
2. Respondent shall, within 30 days of the date of this decision, pay the following civil penalties for violations found herein.

CITATION	PENALTY
2657202	\$100
2657221	100
2657222	20
2657223	30
2657224	100
2657225	100
2657226	100
2657228	100
2657227	20

2657229	20
2657203	20
2657204	75
2657205	75
2657206	125
2657207	20
2657209	20
2657210	20
2657211	20
2657212	20
2657213	100
2657214	100
2657215	75
2657217	30
2657218	30
2657219	30
2657220	80

Total \$1530

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James A. Broderick
Administrative Law Judge