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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 87-19-M A.C. No. 04-04746-05503
v.	Atkinson Quarry
PAUL HUBBS CONSTRUCTION CO., RESPONDENT	

DECISION

Appearances: Theresa Kalinski, Esq., Office of the Solicitor, U.S. Department of Labor, Los Angeles, California, for Petitioner; Mr. Tony T. Paredes, Paul Hubbs Construction Co., Rialto, California, pro se.

Before: Judge Cetti

Statement of the Case

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to Section 104(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. (the "Mine Act"). The Secretary on behalf of the Mine Safety and Health Administration charges Paul Hubbs Construction Company with violating three regulatory safety standards. The charges are based upon citations issued as a result of an August 6, 1986 inspection of respondent's Atkinson Quarry which is located in Riverside County, California.

The respondent filed a timely answer contesting the existence of the violations. After proper notice to the parties this case came on for hearing before me at Riverside, California. The only issue was the existence of the violations charged in the three citations. The parties stated that there was no issue as to the penalty i.e., that if the violations were found the appropriate penalty was the penalty proposed by the Secretary. The parties introduced oral and documentary evidence and requested that the matter be held open 30 days for filing post-hearing briefs. The Secretary submitted a post-hearing brief, the respondent did not.

The Atkinson Quarry is referred to in the industry as a "grizzly" plant. It consists of a screening plant which separates the rocks by size, the scale house where loaded trucks are weighed and the surrounding quarry where the raw material is mined.

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The screening plant, also referred to as the rock plant or grizzly plant, has a box hopper where dirt and rocks are fed into the plant with front end loaders. The dirt and rocks are then fed through a screen which separates the dirt and segregates the rocks by size. Conveyor belts transport the segregated material to different areas. The rock material is then separated and stockpiled by loaders. The material is sold to contractors who use it for various projects including flood control.

A 250 kilowatt generator is housed in a trailer located adjacent to the screening plant.

#### Review of Evidence and Discussion

Citation 2675008 Fire extinguisher not fire-ready

Citation 2675008 charges a violation of 30 C.F.R. 56.4200(b)(2) which requires onsite fire fighting equipment to be maintained in fire-ready condition. The citation alleges that the fire extinguisher located inside the generator trailer which housed the 250 kilowatt generator was not maintained in a fire-ready condition.

Federal mine inspector Dale Cowley, observed the fire extinguisher in its proper bracket, strategically located, and readily accessible and with its pin properly inserted in the handle but in a completely discharged condition. It was therefore not in fire-ready condition.

The federal mine inspector was accompanied by the employer's representative, Jeff Hubb, the foreman in charge that day. Jeff Hubb, who is the adult son of the quarries manager, said nothing to the inspector that indicated the fire extinguisher had recently been discharged or vandalized.

There was no other fire extinguisher located in the area. An employee was sent out to get a properly charged fire extinguisher. Later as the mine inspector was on the road leaving the quarry he was stopped by the employee who was coming back with a replacement fire extinguisher.

The trailer in question houses a 250 KW generator which generates all the electrical power to run the plant. The trailer is located just adjacent to the grizzly. Evidence was presented that the generator is a potential fire hazard because the electrical circuitry could short out and cause a fire. The mine inspector testified "it's a very logical place for a fire to breakout" (Tr. 12).

The testimony of the federal mine inspector was straight forward and credible. On the basis of his testimony as to what he observed and what was said by the employer representative during the course of the inspection I find that the fire extinguisher located in the trailer that housed the 250 kilowatt generator was not maintained in a fire-ready condition. The respondent offered no persuasive evidence to the contrary.

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The only witness to testify on behalf of respondent was its operations supervisor who supervises and trouble shoots several different quarries that are owned and operated by respondent. This witness was not at the Atkinson Quarry on the day of inspection nor had he been there for several days prior to that date nor the day after.

Respondent offered into evidence a police report which indicated its water truck had been tampered with and taken for a joy ride. Wires had been pulled from trucks and locks broken. The operations supervisor speculated that vandals may have broken into the trailer and discharged the fire extinguisher but he offered no persuasive evidence to indicate that vandals discharged the fire extinguisher.

Citation 2675009 Tail pulley not guarded

Citation 2675009 charges that the self cleaning tail pulley on the plant's waste conveyor was not equipped with a guard to prevent contact with belt and pulley.

30 C.F.R. 56.14001 provides "head, tail, and takeup pulleys . . . and similar exposed moving machines parts which may be contacted by persons, and which may cause injury to persons, shall be guarded."

The federal mine inspector testified that during his inspection of the plant he observed that there was no guard on the self cleaning tail pulley on the conveyor belt. The unguarded tail pulley was in an area where employees had access to it while it was operating.

Respondent speculated that the guard may have been taken off and stolen by vandals, but offered no persuasive evidence to indicate that this had occurred. The mine inspector testified that he observed evidence that indicated the plant had been running without the guard in place. He looked very closely to see if the tail pulley guard had been taken off recently for repairs or some other reason, and inadvertently not replaced. He found none of the usual evidence that would indicate that the conveyor belt and tail pulley had been operating with a guard or that the guard had been recently taken off.

On the basis of the federal mine inspector's credible testimony it is found that, the tail pulley on the plant's waste conveyor was not guarded and therefore, in violation of 30 C.F.R. 56.14001

Citation No. 2675011 Generator not grounded

Citation 2675011 alleges a violation of 30 C.F.R. 56.12025 which mandates all metal enclosing or encasing electrical circuits be grounded or provided with equivalent protection.

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The mine inspector testified that the 250-kilowatt generator which provided the electrical current to operate the entire plant was not grounded. The mine inspector asked the foreman in charge if the generator was grounded. The foreman replied "I guess not".

The inspector indicated that an acceptable ground for the generator would be a ground rod driven into the ground with a conductor coming from the generator attached to the grounding rod. He stated that an appropriate grounding rod would be a solid rod about one-half inch to three-quarters of an inch in diameter and eight feet long. It is generally driven all the way into the ground except for the top two inches. The mine inspector explained that if the rod is in the ground any length of time it can be covered up with litter. That this is why he walked around the trailer a couple of times kicking the ground, looking and asking questions. The mine inspector testified that he did not observe any evidence indicating that the generator was grounded or had recently been grounded.

The employer's representative, foreman Hubbs, said nothing during the inspection to indicate that he thought that this failure to ground the generator might be due to recent vandalism.

Respondent's representative at the hearing speculated that the grounding rod may have been stolen by vandals. However, he offered no evidence whatsoever to show that the lack of grounding had anything to do with vandals or that the generator had ever in fact been grounded.

Federal mine inspector Dale Cowley's testimony was credible. Respondent's offered no persuasive contrary evidence.

#### Findings and Conclusions of Law

1. Paul Hubbs Construction Company is the owner and operator of the Atkinson Quarry which is located in Riverside County, California.

2. The Atkinson Quarry is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, U.S.C. 801, et seq.

3. The Federal Mine Safety and Health Review Commission has jurisdiction in this matter.

4. The fire extinguisher in the trailer which housed the 250-kilowatt generator was a part of the onsite fire fighting

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equipment for fighting fires in their early stages and it was not maintained in fire-ready condition. This constituted a violation of 30 C.F.R. 57.4200(b). Citation No. 2675008 is affirmed and the civil penalty of \$20 proposed by the Secretary is assessed.

5. The tail pulley on the plant waste conveyor was not guarded. This constituted a violation of 30 C.F.R. 56.14003. Citation No. 2675009 is affirmed and the civil penalty of \$54 is assessed.

6. The metal enclosing the 250 kilowatt electric generator was not grounded nor provided with equivalent protection. This constituted a violation of 30 C.F.R. 56.12025. Citation No. 2675011 is affirmed and the \$20 civil penalty proposed by the Secretary is assessed.

ORDER

Based upon the above findings of fact and conclusions of law it is ordered that respondent shall pay within 30 days of this decision the above civil penalties totaling \$94.

August F. Cetti  
Administrative Law Judge