

CCASE:  
SOL (MSHA) V. B EXCAVTING  
DDATE:  
19870814  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

CIVIL PENALTY PROCEEDIN

Docket No. WEST 87-20-M  
A.C. No. 05-02140-05504

v.

Docket No. WEST 87-23-M  
A.C. No. 05-02140-05505

B & B EXCAVATING,  
INC.,

Docket No. WEST 87-35-M  
A.C. No. 05-02140-05506

RESPONDENT

Docket No. WEST 87-36-M  
A.C. No. 05-02140-05507

Docket No. WEST 87-37-M  
A.C. No. 05-02140-05508

Docket No. WEST 87-51-M  
A.C. No. 05-02140-05509

Docket No. WEST 87-91-M  
A.C. No. 05-02140-05510

Docket No. WEST 87-92-M  
A.C. No. 05-02140-05511

Eaton Pit

DECISION

Appearances: Margaret A. Miller, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado, for  
Petitioner; Mark C. VanNess, Esq., Jones, Meiklejohn,  
Kehl & Lyons, Denver, Colorado, for Respondent.

Before: Judge Cetti

STATEMENT OF THE CASE

This consolidated civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (Mine Act). The Secretary of Labor on behalf of the Mine Safety and Health Administration, charges the operator of Eaton Pit with violations of Title 30 C.F.R. safety regulations.

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Pursuant to Section 110(a) of the Mine Act the Secretary of Labor filed a petition for assessment of civil penalties in each of the above captioned cases. The Respondent made a timely appeal in each of these cases. After proper notice to the parties the matter came on for hearing before me on June 24, 1987.

At the hearing I granted the joint motion of the parties to consolidate the above captioned cases for hearing.

#### STIPULATIONS IN ALL CASES

At the hearing the parties stipulated as follows:

1. The Respondent, B & B Excavating, Inc., is engaged in the mining and selling of sand and gravel in the United States and its operations affect interstate commerce.

2. B & B Excavating, Inc. is the owner and operator of the Eaton Pit mine.

3. The Respondent, B & B Excavating, is a sand and gravel operator, producing 120,000 tons per year. It has about 100 employees of which approximately 9 to 12 work in the Eaton Pit area on a seasonal basis.

4. B & B Excavating, Inc. is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

5. The administrative law judge has jurisdiction in this matter.

6. All the citations in each docket were properly served by a duly authorized representative of the Secretary upon an agent of B & B Excavating, Inc. on the date and place stated in the citation, and are to be admitted into evidence for the purpose of establishing the issuance of those citations.

7. The proposed penalties will not affect the Respondent's ability to continue in business.

8. The operator has demonstrated good faith in abating all citations.

9. Respondent's history of previous violations is shown in the computer printout received in evidence which lists the violations for which citations were issued at Respondent's Eaton Pit for the 2-year period terminating on July 8, 1986.

Docket No. 87-23

Citation No. 2634597

Citation No. 2634597 charges a non-significant and substantial violation of 30 C.F.R. 56.12008 which requires adequate insulation and proper fittings for power wires and

cables.

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The citation alleges that 10/4 Type 50 power cable entering the motor terminal box for the "Seco" screen drive motor was not provided with a cable entrance fitting. The cable supplied 480 VAC. 3 phase power to the motor and no cable damage was observed at the box.

The violation was abated in a timely manner and the citation terminated when the 10/4 50 cable entering the "Seco" screen motor terminal box was provided with a fitting.

At the hearing Respondent moved to withdraw its notice of contest. The motion was granted.

The parties stipulated that the Secretary's proposed \$20 civil penalty was the appropriate penalty and agreed Respondent should be allowed 90 days to pay the penalty.

Citation No. 2634507

Citation No. 2634507 alleges a non-significant and substantial violation of 30 C.F.R. 56.12008 in that certain cables were not properly installed where they passed into electrical compartments.

The Respondent showed good faith in abating the violation in a timely manner. The citation was terminated.

At the hearing the Respondent moved to withdraw its notice of contest. The motion was granted.

The parties stipulated that the Secretary's proposed \$20 penalty was the appropriate civil penalty and that Respondent be allowed 90 days to pay the penalty.

Citation No. 2634598

Citation No. 2634598 alleges a non-significant and substantial violation of 30 C.F.R. 56.12008 in that specified cables entering and exiting electrical enclosures were not properly installed in their respective entrance and exit fittings.

At the hearing the Secretary moved without objection to dismiss the citation for lack of evidence. The motion was granted. The Secretary stated on the record that the basis for the motion was that preparation for hearing has shown that the Secretary has insufficient evidence to support the alleged violation.

Docket No. 87Ä20ÄM

This docket consists of thirteen citations. Each citation number, the safety standard allegedly violated, and the proposed penalty are as follows:

Citation/Order	30 C.F.R.	Proposed Penalty
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2634461	56.12041	\$ 42.00
2634461	56.12041	\$ 42.00
2634478	56.12001	42.00
2634478	56.12001	42.00
2634479	56.12001	42.00
2634487	56.12002	20.00
2634595	56.12008	42.00
2634596	56.12004	50.00
2634599	56.12008	42.00
2634641	56.14001	42.00
2634644	56.12032	42.00
2634462	56.12008	42.00
2634470	56.14026	74.00
2634471	56.12030	85.00
2634473	56.12025	42.00

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The Secretary moved to withdraw Citation Nos. 2634461, 2634641, 2634644 and 2634470 for lack of sufficient evidence. The motion was granted.

Respondent then moved to withdraw its notice of contest with regard to the other citations in this docket. The motion was granted. The parties agreed with respect to those citations that the appropriate penalty for each was the penalty proposed by the Secretary and that respondent should be allowed 90 days to pay the penalties.

Docket No. 87Ä35ÄM

This docket consists of 20 citations. Ten of the citations allege a violation of the safety standard 30 C.F.R. 56.12001 which requires circuits to be protected against excessive overload by fuses or circuit breakers of the correct type and capacity. Eight of the citations allege a violation of 30 C.F.R. 12002 which regulates control of switches used on electrical equipment. Two of the citations allege a violation of 56.12004 which regulates the size of current capacity of electrical conductors to ensure that a rise in temperature resulting from normal operation will not damage the insulating material.

The citation number, the standard allegedly violated, and the Secretary's proposed penalty are as follows:

Citation/Order	30 C.F.R.	Proposed Penalty
2634463	56.12001	\$ 50.00
2634464	56.12002	50.00
2634465	56.12002	50.00
2634466	56.12002	20.00
2634467	56.12002	50.00
2634468	56.12002	50.00
2634469	56.12004	50.00
2634475	56.12001	50.00
2634476	56.12001	50.00
2634477	56.12001	50.00
2634480	56.12001	50.00
2634481	56.12001	50.00
2634482	56.12001	50.00
2634483	56.12001	50.00
2634484	56.12001	50.00
2634485	56.12001	50.00
2634486	56.12002	20.00
2634488	56.12002	20.00
2634600	56.12004	50.00
2634643	56.4102	50.00

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Respondent moved to withdraw its notice of contest with respect to all 20 citations. The motion was granted. The parties agreed that the Secretary's proposed penalty for each violation is the appropriate penalty and that respondent should have 90 days to pay the civil penalties.

Docket No. WEST 87Ä36ÄM

This docket consists of 20 citations. Each citation number, safety standard allegedly violated, and the Secretary's proposed penalty are as follows:

Citation/Order	30 C.F.R.	Proposed Penalty
2634646	56.12013	\$ 50.00
2634647	56.12018	50.00
2634472	56.12041	20.00
2634474	56.12001	85.00
2634648	56.9087	68.00
2634489	56.12041	20.00
2634490	56.12041	50.00
2634491	56.12041	20.00
2634492	56.12041	50.00
2634493	56.12001	50.00
2634494	56.12041	20.00
2634495	56.12002	20.00
2634496	56.12002	50.00
2634497	56.12002	20.00
2634499	56.12002	50.00
2634500	56.12002	20.00
2634502	56.12001	20.00
2634505	56.12001	50.00
2634842	56.12001	50.00
2634843	56.12001	50.00

The Secretary moved to dismiss Citation No. 2634647 for lack of sufficient evidence. The motion was granted. The respondent then moved to withdraw its notice of contest with respect to the remaining citations in this docket. The motion was granted.

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The parties stipulated that the Secretary's proposed penalties were the appropriate penalties for the violations and that respondent should have 90 days to pay these civil penalties.  
Docket No. WEST 87Ä37ÄM

This docket consists of 10 citations. Each citation number, standard allegedly violated and the Secretary's proposed penalty are as follows:

Citation/Order	30 C.F.R.	Proposed Penalty
2634844	56.12001	\$ 50.00
2634845	56.12001	50.00
2634846	56.12001	50.00
2634847	56.12001	50.00
2634848	56.12001	50.00
2634849	56.12001	50.00
2634850	56.12001	50.00
2634852	56.12001	50.00
2634854	56.12008	20.00
2634857	56.14001	68.00

Respondent moved to withdraw its notice of contest with respect to all citations in this docket. The motion was granted. The parties agreed that the Secretary's proposed penalty for each violation was the appropriate penalty and that respondent should have 90 days to pay these civil penalties.

Docket No. WEST 87Ä51ÄM

This docket consists of citation number 02634498 issued on July 22, 1986 alleging a violation of 30 C.F.R. 56.12002 for lack of individual motor running overload control protection on specified equipment. Respondent's motion to withdraw its notice of contest was granted. The parties agreed that the Secretary's proposed penalty for each violation was the appropriate penalty and that respondent should be allowed 90 days to pay the civil penalties.

Docket No. WEST 87Ä91ÄM

This docket consists of 20 citations. Each citation number standard allegedly violated, and the Secretary's proposed penalty are as follows:

Citation/Order	30 C.F.R.	Proposed Penalty
2634649	56.11002	\$ 50.00
2634501	56.12001	50.00
2634503	56.12041	50.00
2634504	56.12001	20.00
2634506	56.12025	50.00
2634841	56.12008	20.00
2634853	56.12032	50.00
2634856	56.12030	50.00
2634508	56.12002	85.00

2634510	56.12013	50.00
2634511	56.12001	50.00
2634512	56.12001	50.00
2634513	56.12001	33.00
2634514	56.12001	50.00
2634515	56.12001	50.00
2634516	56.12001	50.00
2634517	56.12001	50.00
2634518	56.12002	20.00
2634519	56.12002	20.00
2634520	56.12002	20.00

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The Secretary of Labor moved to withdraw Citation Nos. 2634649, 2634853 and 2634511 for lack of evidence. The motion was granted. The respondent then moved to withdraw its notice of contest with respect to the remaining citations. The motion was granted. The parties agreed that the penalties proposed by the Secretary of Labor are the appropriate penalties for the violations and that respondent should have 90 days to pay said civil penalties.  
Docket WEST 87Ä92ÄM

This docket consists of the four citations listed below with the citation number, standard allegedly violated and the

Secretary's proposed penalty as follows:

Citation/Order	30 C.F.R.	Proposed Penalty
2634684	56.12001	\$50.00
2634858	56.12008	20.00
2634859	56.12018	50.00
2634860	56.12013	50.00

The Secretary of Labor moved to withdraw Citation No. 2634859 on the basis of insufficient evidence. The motion was granted. Respondent then moved to withdraw its contest with respect to the four remaining citations within this docket. The motion was granted. The parties agreed that the Secretary's proposed civil penalties are the appropriate penalties for each of the violations and agreed that respondent should have 90 days to pay said civil penalties.

#### FINDINGS AND CONCLUSIONS OF LAW

Based upon the pleadings, stipulations, and the information placed upon the record at the hearing, I enter the following findings and conclusions of law:

1. The Respondent, B & B Excavating, Inc., is engaged in the mining and selling of sand and gravel in the United States and its operations affect interstate commerce.

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2. B & B Excavating, Inc. is the owner and operator of the Eaton Pit Mine.

3. Respondent has about 100 employees of which approximately 9 to 12 work in the Eaton Pit area on a seasonal basis.

4. B & B Excavating, Inc. is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

5. As the Administrative Law Judge assigned by the Federal Mine Safety and Health Review Commission to hear this case, I have jurisdiction to hear and decide this case.

6. Respondent's history of previous violations is shown in the computer printout which lists the violations for which citations were issued at Respondent's Eaton Pit for the 2Äyear period terminating on July 8, 1986.

7. The penalties assessed will not affect Respondent's ability to continue in business.

8. The operator has timely abated each of the citations and has demonstrated good faith in doing so.

9. Each citations, except those listed below as dismissed, is affirmed and its related proposed civil penalty is assessed as the appropriate penalty for each of the violations.

ORDER

1. Each of the citations listed below is dismissed and its related proposed penalty vacated: Citation Nos. 2634598, 2634461, 2634641, 2634644, 2634470, 2634647, 2634649, 2634853, 2634511, and 2634859.

2. All other citations are affirmed and in satisfaction of these citations IT IS ORDERED that Respondent shall within 90 days from the date of this decision pay a civil penalty in the sum of \$3,466 for the violations found herein.

August F. Cetti  
Administrative Law Judge