

CCASE:  
SOL (MSHA) V. COBBLESTONE  
DDATE:  
19890606  
TTEXT:

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 88-62-M  
A.C. No. 05-03950-05505

v.

Docket No. WEST 88-64-M  
A.C. No. 05-03950-05506

COBBLESTONE, LTD.,  
RESPONDENT

Docket No. WEST 88-120-M  
A.C. No. 05-03950-05507

Cobblestone Ltd

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
Mr. Leonard Lloyd, Cobblestone LTD., Pagosa  
Springs, Colorado,  
pro se.

Before: Judge Cetti

These cases are before me upon the petitions for civil penalties filed by the Secretary of Labor, pursuant to Section 105(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act", charging the operator Cobblestone LTD., with 21 violations of regulatory standards, set forth in Part 56, Title 30, Code of Federal Regulations.

The respondent filed a timely answer contesting the citations and the proposed civil penalty assessments. Pursuant to notice served on the parties an evidentiary hearing was held on the merits. The primary issues are whether the respondent violated the cited mandatory safety standards, and if so, the appropriate civil penalties to be assessed for the violations based on the criteria found in Section 110(i) of the Act.

MSHA Inspector Ronald John Renowden and Roy Trujillo inspected the Cobblestone pit and crusher on August 11th and 12th, 1987. During the two day inspection MSHA issued 21 citations alleging violations of mandatory standards found in Part 56, Title 30 Code of Federal Regulations.

The Secretary of Labor on behalf of the Mine Safety and Health Administration seeks affirmation of each of the citations and proposed civil penalty assessments.

STIPULATIONS

After taking the testimony of MSHA Inspector Ronald John Renowden as to certain violative conditions he observed during MSHA's inspection, the parties stipulated that the facts recorded on the face of each citation by the MSHA inspectors "truly and accurately represent the conditions as they existed at the time of the inspection". Cobblestone while stipulating that the facts alleged in the citations are "true and accurate" and in existence as recorded in the citations at the time of inspection, denies there was any violation on the basis that the crushing equipment was never operated in the violative condition observed at the time of the inspection. It is undisputed that the crushing equipment was not operated at any time during the two days of inspection. The parties agree that these stipulations apply to each of the citations in docket numbers, WEST 88-62-M, WEST 88-64-M and WEST 88-120-M.

The parties also stipulated that the operator's business was small.

DOCKET NO. WEST 88-62-M

Citation No. 2636670

Citation No. 2636670 alleges a "serious and significant" violation of 30 C.F.R. 56.18002. After taking testimony from Inspector Trujillo, the Secretary moved to vacate the citation on the grounds that it was duplicative in that the citation was based solely upon the observation of specific violative conditions for which the operator had already been cited. There was no objection to the motion. The motion to vacate the citation was granted.

Citation No. 2636670 and its related proposed civil penalty are each vacated.

The Electrical Related Citations Nos. 2636579, 2636580, 2636581, 2636582, 2636583, 2636584, 2636585, 2636586, 2636662, 2636665, 2636667, 2636668, 2636669, and 2636587.

The remaining 14 citations of Docket No. 88-62-M are all electrical related citations involving the crusher plant and equipment. The operator's primary defense for these citations as well as all the other citations was that he had just moved the crusher from one location at the site to another, and had not operated the crusher at the new location. He had been trying but said he was unable as of the time of the inspection to get an electrician to come to the remote area where the plant was located to do the necessary electrical work and testing. The operator testified in detail how three weeks before the

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inspection he had moved his crusher from one location to another location at the site so that it was closer to the electric shed. It was the operator's contention and testimony that he had not operated the crushing plant since he moved the crusher and therefore the plant was never in operation at a time when the violative conditions observed by the inspector were in existence. He also contended that the crusher's toggle plate had been removed for modification and consequently that the crusher was inoperable.

The MSHA inspectors Renowden and Trujillo testified about their long experience in mining and their observations during the inspection including the size and location of muck piles. Based upon their experience and their observation they testified that the crusher had been in operation after it was moved and that it was clear to them from their observations that the crushing plant had been in operation while the violative condition they observed during their inspection were in existence.

Mr. Lloyd, the operator, contended that there was only one pile of material of any substance and that was a pile of material he transported to a conveyor and used to adjust or "train" the conveyor.

I credit the testimony of Inspectors Renowden and Trujillo and on the basis of their testimony and expertise find that the crushing plant was in operation at least for a limited period of time, after the crusher had been moved and the violative conditions observed by the MSHA inspectors were present. In addition, it is undisputed that the crushing plant was fully energized at the time of inspection and that none of the equipment was locked out or tagged out.

Seven of the remaining 14 citations allege a violation of 30 C.F.R. 56.12008, which 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.

The seven citations which charged a violation of the above quoted 30 C.F.R. 56.12008 are Citation Nos. 2636579, 2636583, 2636584, 2636585, 2636586, 2636662, and 2636587.

Citation No. 2636579 charges as follows:

The 2/4 G-GC, 600-2000V, rubber power cable exiting the motor starter enclosure for the jaw crusher, 50 h.p.,

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60 amp, 480 VAC motor branch circuit was not properly installed in its respective fitting. The loose cable fitting has allowed the cable to slide out of the squeeze zone and exposed the interval wires to the fitting edge and strain relief clamp, not to mention that the cable weight was being supported by the power connection in the enclosure. No vibration or flexing occurs at this location. Should the cable insulation fail and cause an arcing fault a person could be exposed to arc flashing. The box had a ground circuit via conduit at the panel.

In view of the stipulation of the parties that the citation accurately documents the conditions observed by the inspector and my finding that the crusher had been in operation while those conditions existed. I find that a violation of 30 C.F.R. 56.12008 was established. Citation No. 2636579 is affirmed.

The appropriate penalty for this violation and each of the established violations discussed below will be found and discussed in due course under the heading "penalty".

Citation No. 2636583 charges as follows:

The 10/4 type 50 rubber power cable exiting the 480 VAC 3 phase motor starter at the switch house for the "stacker feed" conveyor drive motor was observed not being provided with a cable entrance fitting. Tape had been gobbled on the cable in a effort to support and protect it where it entered the sharp metal hole at the bottom of the enclosure.

I credit the testimony of the MSHA inspectors. I find and conclude on the basis of their credible testimony, the stipulation that the citation accurately describes the conditions existing at the time of the inspection and my finding that the crusher plant and equipment had been in operation while those conditions existed, that there was a violation of 30 C.F.R. 56.12008. Citation No. 2636583 is affirmed.

Citation No. 2636584 charges as follows:

The 12/4 and 10/4 type 50 rubber power cables entering and exiting the 480 VAC, 3 phase motor starter enclosure which serviced 480 volts to the "fines stacker" motor circuit were observed not being provided with cable entrance fittings to protect the cable from sharp metal hole edges, and to support the cable to prevent strain on the starter 480 volt terminate tape had been gobbled in areas around the cable to protect the wiring from sharp edge wear.

In view of the stipulation of the parties that the citation accurately documents the conditions observed by the inspector and

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my finding that the crusher had been in operation while those conditions existed. I find that a violation of 30 C.F.R. 56.12008 was established. Citation No. 2636584 is affirmed.

Citation No. 2636585 charges as follows:

The 12/4 type 50 rubber power cables entering and exiting the 480 volt, 3 phase motor starter enclosure for the stacker motor circuit, were not provided with cable fittings to protect the cable wiring and prevent strain at on 480 volt terminations. Tape had been used to provide some protection against damage.

I credit the testimony of the MSHA inspectors. I find and conclude on the basis of their credible testimony, the stipulation that the citation accurately describes the conditions existing at the time of the inspection and my finding that the crusher plant and equipment had been in operation while those conditions existed, that there was a violation of 30 C.F.R. 56.12008. Citation No. 2636585 is affirmed.

Citation No. 2636586 charges as follows:

A strain relief cable fitting was not provided at the 2 hp, 480 VAC, 3 phase fines discharge motor junction box for the 14/4 type "50" rubber power cable. A rubber grommet existed which afforded damage protection.

In view of the stipulation of the parties that the citation accurately documents the conditions observed by the inspector and my finding that the crusher had been in operation while those conditions existed. I find that a violation of 30 C.F.R. 56.12008 was established. Citation No. 2636586 is affirmed.

Citation No. 2636662 charges as follows:

Ground continuity and resistance of the grounding system had not been done at the plant. It was evident that quite a bit of crushing had been done.

I credit the testimony of the MSHA inspectors. I find and conclude on the basis of their credible testimony, the stipulation that the citation accurately describes the conditions existing at the time of the inspection and my finding that the crusher plant and equipment had been in operation while those conditions existed, that there was a violation of 30 C.F.R. 56.12008. Citation No. 2636662 is affirmed.

Citation No. 2636587 charges as follows:

The 10/4 50 power cable servicing 480 VAC, three phase power to the 5 hp, 480 VAC, fines stacker motor was not

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provided with a cable entrance fitting. The damage was observed and tape had been gobbled around the cable to provide damage protection.

In view of the stipulation of the parties that the citation accurately documents the conditions observed by the inspector and my finding that the crusher had been in operation while those conditions existed. I find that a violation of 30 C.F.R. 56.12008 was established. Citation No. 2636587 is affirmed.

The next two citation Nos. 2636580 and 2636581 each allege a violation of the safety standard 30 C.F.R. 56.12030, which provides as follows:

When a potentially dangerous condition is found it shall be corrected before equipment or wiring is energized.

Citation No. 2636580 charges as follows:

The 5 h.p. 7 amp, 480 VAC, 3 phase motor starter at the switch-house for the "feed hopper" motor branch circuit was observed having an arcing ground fault condition existing in the remote/local control circuit. The white 480 VAC control phase conductor in a 12/4 cable was observed being damaged and exposed the bare conductor. The bare damaged area had been laying against the right inside edge of the motor starter where it had been arcing to ground, in the unreliably grounded wire 480 VAC system. The control circuit was tapped to the line side of the starter and the circuit was protected by a 20 amp inverse time circuit breaker. This condition created a likelihood for a serious electrical accident or possible fatality to occur. . . .

In view of my findings that the crushing plant had been in operation while the condition described in the citation was in existence, it is found that a violation of 30 C.F.R. 56.12030 was established. Citation No. 2636580 is affirmed.

Citation No. 2636581 charges as follows:

The 12/3 and 12/4 type 50 cables used between the circuit breaker panel and the motor starter switchgear at the switch-house was observed being cracked and brittle which exposed bare 480 volt conductor. In some cases the bare wiring was exposed to metal enclosure framework and covers, and because the cover panel was off the main 225 amp 480 volt panel the cracked defective wiring was exposed in an accessible manner. Arc flash burns and electric

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shock could result in the event of unintentional contact or a faulted condition. Gravity of this condition was increased by the unreliable safety grounding circuits. The stacker circuit tested high resistance phase to phase on the cable from the breaker to the starter.

In view of my findings that the crushing plant had been in operation while the condition described in the citation was in existence, it is found that a violation of 30 C.F.R. 56.12030 was established. Citation No. 2636581 is affirmed.

Citation No. 2636582, issued under section 104(a), alleges a violation of 30 C.F.R. 56.12002. The citation charges as follows:

The General Electric, CR206B1, NEMA Size "O" motor controller rated at maximum use of 5 HP at 480 volts was observed being used beyond the design intended by the manufacturer, in that, a 3 hp 460 VAC "under jaw" conveyor motor, a 2 hp 460 volt "fines" discharge conveyor motor, and the jaw shaker screen, 10 or 15 hp (manplate missing) were all operated simultaneously by the underrated Size "O" starter. The total horsepower was calculated to be at least 15 hp.

Additionally, because of this condition the motor running overload protection provided at the controller unit (sized C15.18) was rated at 12.9 amps, trip @ 16.12 amps for the 10 hp motor. Therefore, the two smaller motors were not properly protected against overload. The circuit breaker for the branch circuit was 20 amps.

The cited regulatory standard 30 C.F.R. 56.12002 provides as follows:

Electric equipment and circuits shall be provided with switches or other controls. Such switches or controls shall be of approved design and construction and shall be properly installed.

The record, including the stipulations and my findings that the crusher plant was operated while in the condition observed by the inspector were in existence establishes a violation of 30 C.F.R. 56.12002. This citation was issued as S & S violation. However, the MSHA inspector on the same day he issued the citation modified the citation from an S & S to a non S & S violation. As modified to a non S & S violation, Citation No.



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Citation No. 2636662 charges as follows:

Ground continuity and resistance of the grounding system had not been done at the plant. It was evident that quite a bit of crushing had been done.

The cited mandatory standard 30 C.F.R. 56.12028 provides as follows:

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.

In view of the parties stipulation and my finding that the crushing plant had been in operation while the condition alleged in this citation was in existence a violation of 30 C.F.R. 56.12028 was established. Citation No. 2636662 is affirmed.

Citation No. 2636665 as amended reads as follows:

"A bad splice was observed on the 14/4 SO cable that was spliced to a 12/4 SO cable that was not (b) insulated to a degree at least equal to that of the original and sealed to exclude moisture and (c) provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket. This splice was approximately three feet from front discharge conveyor motor."

The cited safety standard 30 C.F.R. 56.12013 provides as follows:

Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be:

- (a) Mechanically strong with electrical conductivity as near as possible to that of the original;
- (b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture; and
- (c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

It is clear from the record including the stipulation of the parties that the citation accurately describes the condition observed by the inspector and my finding that the crusher plant had been in operation while those conditions were in existence that there was a violation of the provisions of 30 C.F.R. 56.12013. Citation No. 2636665 is affirmed.

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Citation 2636667 charges as follows:

The 20 amp circuit breaker, the principle power switch for the stacker motor was not labeled to show what unit it controlled. Identification could not be readily made by location.

The cited mandatory standard provides as follows:

Principle power switches shall be labeled to show which units they control, unless identification can be made readily by location.

I credit the testimony of the MSHA inspectors. I find and conclude on the basis of their credible testimony, the stipulation that the citation accurately describes the conditions existing at the time of the inspection and my finding that the crusher plant and equipment had been in operation while those conditions existed, that there was a violation of 30 C.F.R. 56.12018. Citation No. 2636667 is affirmed.

Citation No. 2636668 alleges a violation of 30 C.F.R. 56.12008 as follows:

The 2/4 power cable entering jaw crusher motor terminal box was not properly installed in that the restraining strap had come loose allowing the weight of the cable to put a strain on the 480 V conductor connection inside the junction box. There is a lot of vibration in this area from the jaw crusher.

In view of my findings that the crushing plant has been in operation while the condition described in the citation was in existence, it is found that a violation of 30 C.F.R. 56.12008 was established. Citation No. 2636668 is affirmed.

Citation No. 2636669 alleges a violation of 30 C.F.R. 56.12004 as follows:

The power cable laying alongside feed conveyor and feed hopper had been subjected to mechanical damage from rock falling from conveyor. Some damage was observed on cables where they had been hit by falling rocks.

The cited mandatory standard 30 C.F.R. 56.12004 provides as follows:

Electrical conductors shall be of a sufficient size and current-carrying capacity to ensure that a rise in temper

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ature resulting from normal operations will not damage the insulating materials. Electrical conductors exposed to mechanical damage shall be protected.

Inspector Trujillo testified that the electrical conductors along side the feed conveyor and feed hopper were exposed to mechanical damage and were not protected. Mr. Lloyd testified that he put the boulders on the cable to protect the cable and that he did not see any damage to the cable.

The Secretary presented evidence that there were dents in the power cable where 20 to 25 pounds boulders had fallen on the cable. The boulders were intermittently on the cable where you would normally expect to find boulders falling off the side of an incline conveyor. Mr. Trujillo stated that if someone were going to try to protect the power cable with boulders they would have put them all along the length rather than intermittently and they would not have put the boulder right on top of the cable because when another rock hits that rock on the cable it would damage the cable.

I credit the testimony of Inspector Trujillo. The electrical conductors in question were unprotected and exposed to mechanical damage. The violation of 30 C.F.R. 56.12004 was established. Citation No. 2636669 is affirmed.

DOCKET NO. WEST 88-64-M

Citation No. 2636577

Citation No. 2636577, when issued charged the employer with a "significant and substantial" violation of safety standard 30 C.F.R. 56.12032 for failure to keep the cover panel for a circuit breaker distribution panel in place.

The citation in relevant part reads as follows:

The enclosure/cover panel for the general electric 480/277 volt AC, 3 phase, 225 amp, 4 wire, circuit distribution panel board, located at the main motor control switch house was not in place. This exposed the bare terminal (partially) of the 480 VAC load-side terminals, and cracked-brittle "50" cable bare wiring at the panel. The panel contained approximately 9 circuit breakers for motor circuits and no testing or repairs were being performed in the panel at the time of inspection.

Should an electric fault occur at the panel, with the cover off, and a worker was exposed to the event, it is reasonably likely he would receive serious electric arc flash burns.

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The cited standard 30 C.F.R. 56.12032 provides:

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

Inspector Renowden testified that the cover panel for the general electric 480/277 VAC, 3 phase, 225 ampere, 4 wire, circuit breaker panel board was not in place at the time of his inspection. No testing or repairs were being done. The bare, energized conductors within the panel board were readily accessible.

The citation when issued characterized the violation as "significant and substantial". At the hearing after both sides presented their evidence on this citation the Secretary's counsel conferred off the record with the inspector and then moved to amend the citation to reflect a non S & S violation rather than an S & S violation. There was no objection to the motion. The motion was granted.

Inspector Renowden's testimony clearly shows that there was a violation of 30 C.F.R. 56.12032. Citation No. 2636577 as amended by the Secretary to a non S & S violation, is affirmed.

Citation No. 2636664

Citation No. 2636664 issued under section 104(a) of the Act, alleges a violation of the mandatory safety standard 30 C.F.R. 56.14001. The citation reads as follows:

The V-Belt drive on head pulley on INT Conveyor was not provided with a guard. This V-Belt drive could be contacted very easily. Some crushing had been done.

The cited safety standard 56.14001 mandates that head pulleys "which may be contacted by persons and which may cause injury to persons", shall be guarded. Inspector Roy Trujillo testified that the guard on the intermediate conveyor head pulley was not in place at the time of the inspection. The V-Belt in question came from an electric motor that was "bigger" than a 3/4 quarter horsepower motor. The V-Belt drive was used to operate an intermediate conveyor that carried rocks over to the stacker conveyor. There were many cobblestones in the area ranging from 4 to 8 inches in diameter and bigger. Consequently, the footing in the area was not secure. He observed footprints in the area but he could not determine whether anyone was walking through the area when the plant was running. Mr. Trujillo testified that if someone should stumble while walking by when the belt was running and try and catch himself by putting a hand out where it would be

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caught by the pinch point, it would probably tear his arm off. In his opinion a fall in the area was reasonably likely. It would be a serious injury that would involve hospitalization and many lost work days.

Mr. Trujillo testified that he was sure the plant had been crushing a short time before the inspection but could not testify that the guard was off at a time when the belt was in operation. The operator told the inspector that the guard was not in place because it was being repaired. When the inspector returned the next day to complete the inspection the guard was in place. The inspector testified however, that he did not notice anything that indicated to him that the guard had been repaired.

Mr. Lloyd testified the guard was off because it was being repaired and the belt in question had not been operating while the guard was off. There was no contrary evidence. I find no persuasive evidence that the belt and pulley had been operated with its guard off. Under the circumstance there is no persuasive evidence of a violation of the cited safety standard which expressly requires the pulley be guarded only when the moving parts may be contacted by persons and which may cause injury to the persons. Since the guard was off while the pulley and belt were not moving there is no violation of the cited safety standard. Citation No. 2636664 is vacated. The decision on this citation turns not on the issue of credibility but on the safety standard's express requirement of exposure and the insufficiency of the evidence to establish exposure.

DOCKET NO. WEST 88-120-M

Citation No. 2636578

Citation No. 2636578 charges the operator of Cobblestone with a "significant and substantial" violation of the mandatory safety standard 30 C.F.R. 56.12025. The cited standard provides as follows:

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

Citation No. 2636578 charges as follows:

Inspection of the safety grounding system has revealed that improper and unsafe grounding existed as described in the following discussion. The power to the crushing plant was supplied by three pole mounted 50 KVA, high voltage single phase transformers connected Y-Y. The secondary was connected in a 480 volt grounded WYE (STAR) service and was "earth" grounded at the power pole butt ground. The four

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service conductors was a Quadraplex aerial drop of approximately 30-35 feet to the main 200 amp service fused disconnect outside on the side of the electrical switch house. The fourth wire, or system grounding conductor was fed directly through the main 200 amp service switch and was terminated to the NEUTRAL terminal bar at the 225 amp, 3 phase 400 480 VAL distribution panel inside the switch house. The NEUTRAL bar was INSULATED from the metal panel enclosure and no bonding jumper existed. A bare ground wire was terminated to the panel frame and extended to the main switch outside, where it was also connected to the metal box frame, and it was these connected/terminated to an earth driven copper ground rod below the 200 amp switch. This wiring method created a high resistance/impedance value in the safety ground system between the ground transformer location at the power pole, and the ground rod beneath the 200 amp main disconnect at the switch house. This unsafe practice/condition was detected by visual observation and verified with electrical testing instruments: OHMMETER @ megohms; "Biddle" insulation tester, on ohms scale @ 200 ohms. In the event of a ground fault condition it is highly likely that the circuit protective devices will not function as needed, and could expose electrocution hazards to the workers at the plant. . . . (The electrical system was tested for a ground fault by this electrical inspector, and none was detected - otherwise a imminent danger closure order would have been issued) On 8/12/87 @ 1400 hrs during an impedance test it was found that the fines stacker drive motor was not grounded.

The record satisfactorily established that there was a violation of the mandatory grounding requirements of the safety standard 30 C.F.R. 56.12025. The violation could have contributed to a fatal electric shock by allowing the electric current to flow through a miner's body rather than through the grounding conductor. The violation resulted from the operator's negligence. The violation of the provisions of 30 C.F.R. 56.12025 was established. Citation No. 2636578 is affirmed.

The appropriate penalty for this violation and each of the established violations will be discussed below under the heading "penalty".

Citation No. 2636661

Citation No. 2636661 (as well as Citation No. 2636663) alleges a 104(a) violation of 30 C.F.R. 56.14001. The citation charges:

The V-Belt drive and pulleys were not provided with guards on the fines discharge conveyor. This V-Belt was approximately 3 to 4 feet from the ground level and the pinch points could be contacted easily.

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The cited regulation, 30 C.F.R. 56.14001 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.

Inspector Trujillo testified that the V-Belts were 3 to 4 feet above ground and the pinch points could be easily contacted by a person and could easily cause injury. The violation of 30 C.F.R. 56.14001 was established. Citation No. 2636661 is affirmed.

Citation No. 2636663

Citation No. 2636663, issued under section 104(a) of the Act, charges the operator with a violation of 30 C.F.R. 56.14001 which is quoted above under the heading "Citation No. 2636661". Citation No. 2636663 alleges that the V-Belt drive and pulleys on the jaw crusher were not provided with guards. The evidence presented by petitioner established that there was an unguarded pinch point was about 5 1/2 feet above the ground that was readily accessible. The operator testified that the bull wheel of the crusher traveled in the opposite direction from the direction claimed by the inspector and thus that the pinch point was 3 feet higher than the height asserted by the inspector. Respondent claimed therefor that the pinch point was protected by location. Petitioner contends that there was no protection by location even if the pinch point was 8 1/2 feet high rather than 5 1/2 feet high. Petitioner also presented evidence that in addition to the pinch point hazard there was the hazard from the unguarded revolving spokes of the bull wheel.

I credit the testimony of the mine inspector and find there was a violation of 30 C.F.R. 56.14001. Citation No. 2636663 is affirmed.

Citation No. 2636666

Citation No. 2636666 issued under section 104(a) of the Act, alleges a violation of mandatory standard 30 C.F.R. 56.12018. The citation reads as follows:

The 20 amp 3 pole circuit breaker, the principal power switch for the fines stacker was not labeled to show what unit it controlled. Identification could not be readily made by location.

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The cited standard 30 C.F.R. 56.12018 provides:

Principal power switches shall be labeled to show which unit they control, unless identification can be made readily by location.

It clearly appears from the record that the principal power switch for the fines stacker was not labeled as required by the cited mandatory safety standard. The violation of 30 C.F.R. 56.12018 was established. Citation No. 2636666 is affirmed.

#### PENALTY

Section 110(i) of the Act mandates consideration of six criteria in assessing appropriate civil penalties:

- (1) The size of the business and the appropriateness of the penalty to the size;
- (2) The effect on the operator's ability to continue in business;
- (3) The operator's history of previous violation;
- (4) Whether the operator was negligent;
- (5) The gravity of the violations;
- (6) Whether the good faith was demonstrated in attempting to achieve prompt abatement of the violation.

With respect to size, Cobblestone is owned and operated by Leonard Lloyd. It is almost a one-man operation. Mr. Lloyd does practically all of the mining and milling work with a little help from his son and one other part-time person. Mr. Lloyd testified that he has no employees.

The gravel pit and crushing equipment is located on ten acres of Mr. Lloyd's 120 acre homesite. Evidence was presented that Cobblestone grossed \$45,000 from January 1, 1988 to October 5, 1988. It has three or four thousand dollars outstanding accounts receivable. Mr. Lloyd has additional income of \$2,000 to \$3,000 from his jewelry business which he works at during the winter months.

Mr. Lloyd testified that he was four months delinquent in his payments on a \$366,000.00 note that is secured by his acreage, his residence, and business of Cobblestone including all equipment. Mr. Lloyd stated that Cobblestone has not been able to gross the amount needed to cover the notes. In view of his delinquency of four mortgage payments the mortgagor has asserted



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its right of acceleration on the note and turned it over to its attorney's for collection. The amount due is \$366,000.00 plus interest at 11.25 percent per annum. Cobblestone has a second mortgage in the sum of \$50,000.00. The annual amount due on these two notes is approximately \$50,000.00 a year.

The operator's history of previous violations is set forth in Exhibit P-1 which is the printout of the assessed violations in the history report. The printout shows that the operator has at least a moderate history of previous violations.

With respect to the gravity of the violations Inspector Renowden testified that in the electrical related citations which he characterized as significant and substantial the gravity is high. The hazards that resulted from these violations are primarily potential electric shock and electrocution and thermal arc flash burns. He believed there was a substantial possibility that the injuries would either be an electrocution, electrical shock or flash burns. There was a likelihood of loss work days or restricted duty from such an injury.

With respect to each citation that he marked S & S it was his opinion based on his occupational background and expertise that injuries would be reasonably likely to occur and there was a reasonable likelihood of a serious injury.

Each of the citations on its face indicate that the number that could be exposed to the potential hazard was one. The person most likely to be exposed to the hazard is the operator himself since he is the one who does practically all the work. Irrespective of the number of persons exposed to the hazards the gravity of the violation is high in view of the seriousness of the potential injury.

Mr. Lloyd, the operator moved the crusher from one location to another approximately three weeks prior to the inspection. He testified that he had been attempting to get an electrician to check over and correct the electrical work he performed in moving the crusher to its new location. He contends that any equipment he operated was in the nature of alignment and adjustment so the plant would be able to go into production. He states that at the time of the inspection he was still preparing the equipment for commercial production. I have found however, on the basis of the testimony the MSHA inspectors that while he may still have been in the process of making some adjustments and corrections, that he was operating his crushing equipment. I find that the violations cited were the result of the operator's negligence. I characterized negligence as ordinary negligence which is also known as moderate negligence.

~1013

The operator presented evidence of his difficulty in meeting the payment due on the notes secured by his heavily mortgaged property and equipment and his inability to pay the proposed penalties. The operator has financial difficulties. However, I do not believe the appropriate penalties assessed in this case will constitute the difference between the operator continuing or not continuing in business.

Mr. Lloyd's good faith was demonstrated by his abatement of each of the cited violations within the extended time MSHA allowed him for abatement of the violations.

Based on the statutory criteria set forth in section 110(i) of the Act and also taking into consideration that the operator was essentially engaged in a one-man operation, had recently moved the crusher from one location to another and was trying to obtain the services of an electrician to check the work and correct any hazards and the business's serious financial difficulty I find that the appropriate civil penalty for each of the violations as follows:

Citation No.	30 C.F.R. Violated	Assessed Penalty
2636578	56.12025	\$ 250.00
2636661	56.14001	100.00
2636663	56.14001	50.00
2636666	56.12018	20.00
2636577	56.12032	50.00
2636579	56.12008	20.00
2636580	56.12030	40.00
2636581	56.12030	30.00
2636582	56.12002	20.00
2636583	56.12008	20.00
2636584	56.12008	20.00
2636585	56.12008	20.00
2636586	56.12008	20.00
2636662	56.12028	20.00
2636665	56.12013	30.00
2636667	56.12018	20.00
2636668	56.12008	30.00
2636669	56.12004	20.00
2636587	56.12008	20.00
		\$800.00

ORDER

1. Citation No. 2636577 is modified to delete the characterization "significant and substantial" and as so modified affirmed.

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2. Citation Nos. 2636664 and 2636670 and their related proposed penalties are each vacated.

The respondent Cobblestone Ltd is directed to pay the civil penalties assessed in these proceedings within forty (40) days of the date of these decisions. Upon receipt of payment, these proceedings are dismissed.

August F. Cetti  
Administrative Law Judge