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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 PROCEEDING

Docket No. LAKE 89-36-M
A. C. No. 11-01896-05503

v.

Vandalia Sand & Gravel

VANDALIA SAND & GRAVEL,
RESPONDENT

DECISION

Appearances: Maria P. Peterson, Esq., Office of the Solicitor,
U. S. Department of Labor, Chicago, Illinois, for
the Secretary;
Mr. Mike Themig, Vandalia Sand & Gravel, Vandalia,
Illinois, for the Respondent.

Before: Judge Weisberger

Statement of the Case

In this case, the Secretary (Petitioner) seeks a civil penalty for the alleged violation by the Operator (Respondent) of 30 C.F.R. 56.15001. Pursuant to notice, a Hearing has held in St. Louis, Missouri, on October 3, 1989. Jerry Spruell testified for Petitioner, and Respondent did not present any witnesses.

At the Hearing, the Parties entered into the following stipulations:

1. The Federal Mine Safety and Health Commission has jurisdiction over these proceedings.

2. Respondent's wife owns and operates the sand and gravel pit at Vandalia known as Vandalia Sand and Gravel, and that Mr. Mike Themig is the manager of the same gravel and sand pit.

3. The Respondents have worked 4,980 man-hours between December 23, 1987, through December 23, 1988.

4. The Respondent does not have any prior violations with MSHA.

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Issues

The issues before me are whether Respondent violated 30 C.F.R. 56.15001, and the penalty to be imposed on Respondent if such a violation did occur.

Regulation

30 C.F.R. 56.15001, as pertinent, provides as follows:
"Adequate first-aid materials, including stretchers and blankets, shall be provided at places convenient to all working areas."

Findings of Fact and Discussion

Inasmuch as Respondent did not present the testimony of any witnesses at the Hearing, the factual findings that I have made in this case were based upon the testimony of Jerry Spruell, an MSHA Inspector, who testified for Petitioner.

On October 3, 1988, Spruell went to Respondent's sand and gravel operation to perform a semiannual inspection. He met with Mike Themig and asked him if he had a stretcher, blankets, and first-aid materials at the property, and Themig indicated that he did not, but that "if someone got hurt he would merely call the hospital" (Tr. 14). On October 6, 1988, Spruell returned to the site, and at that time was shown a stretcher which was folded up. The side support braces of the stretcher were broken, and Spruell opined that due to its condition it would not be able to carry a person. He indicated that in his opinion, a stretcher is "adequate" if it is capable of transporting the largest person employed on the site.

According to Webster's New Collegiate Dictionary (1979 edition), (Webster's) a "stretcher" is defined as "a litter (as of canvas) for carrying a disabled or dead person." Webster's defines "adequate" as ". . . lawfully, and reasonably sufficient." Inasmuch as the stretcher in question has support braces that were broken, I find that it was inadequate to carry disabled persons.

According to Spruell's notes made on October 7, 1988, on October 3, 1988, Themig had indicated that a blanket was ". . . in his truck." When Spruell was at the site on October 4, 1988, the pickup truck was not at the site. On October 17, 1988, when Spruell again returned to the site, a blanket was taken from a welding truck and placed in the scale house.

Based upon the above, and considering that Respondent did not contradict or rebut Themig's statement to Spruell, on October 3, 1988, that he did not have a blanket, I conclude that a blanket was not provided at any place convenient to the working areas on October 3 - 4, 1988.

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Respondent had on the site, two first-aid kits which had the following materials: ten 3/4 inch band-aids, 1.8 ounces first-aid cream, six antiseptic cleansing wipes, one roll of cloth tape, one roll of gauze, two burn cream packs, two nonstick pads, two extra large bandage strips, one pair scissors, and a first-aid guide. According to Spruell, the first-aid materials were inadequate as they did not contain any splints.

Inasmuch as the support braces for the stretcher were broken, and the evidence tends to indicate that a blanket was not provided at the site on October 3 - 4, I find that Respondent did violate section 56.15001, supra.

Spruell indicated that on October 4, 1988, Themig had told him that if an employee would suffer a neck or back injury, the instructions were to call for emergency medical help from the hospital. A map submitted by Respondent indicates that an emergency vehicle from the hospital can reach Respondent by going down 8th Street for 10 blocks, and then turning right on St. Louis Avenue out to Respondent's site. There is no evidence with regard to any hazard occasioned by the lack of having a blanket at the site. The first-aid kit was, as indicated by Spruell, adequate for very minor wounds. I find the violation to be of a low level of gravity.

Respondent had not abated the condition by the date stipulated to on the citation, October 11, 1988. According to Spruell, Themig had indicated that in the past other MSHA Inspectors had accepted the stretcher, and there was no need for any splints as the first-aid materials were adequate. Eventually after a discussion with Spruell, who had discussed the possibility of issuing a section 104(b) Order, the violative conditions were abated by Themig, by nailing two 2 x 4s to a plywood board, and labeling it a stretcher, taking wooden lathes and marking them splints, and placing these in the scale house along with the blanket. Taking all the above into account I conclude that the penalty proposed by Petitioner, of \$20, is appropriate for the violation found herein.

ORDER

It is ORDERED that, within 30 days of this Decision, Respondent pay \$20 as a civil penalty for the violation found herein.

Avram Weisberger
Administrative Law Judge