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SOL (MSHA) V. CORONA INDUSTRIAL SAND
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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 PROCEEDINGS Docket No. WEST 89-413-M A.C. No. 04-04862-05510
v.	Docket No. WEST 89-414-M A.C. No. 04-04862-05511
CORONA INDUSTRIAL SAND PROJECT, RESPONDENT	Docket No. WEST 89-450-M A.C. No. 04-04862-05512
	Docket No. WEST 89-460-M A.C. No. 04-04862-05513
	Docket No. WEST 90-22-M A.C. No. 04-04862-05514
	Corona Industrial Sand Project

DECISION

Appearances: Eve Chesbro, Esq., Jonathan S. Vick, Esq., Office of the Solicitor, U.S. Department of Labor, Los Angeles, California, for the Secretary;
Stanley D. Hendrickson, General Manager, Corona Industrial Sand Project, Corona, California, pro se.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges Respondent, Corona Industrial Sand Project (Corona), with violating regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq. (the Act).

After notice to the parties, a hearing on the merits was held in Ontario, California, commencing on May 30, 1990.

The parties were granted leave to file post-trial briefs. Subsequently, they withdrew their requests.

STIPULATION

At the commencement of the hearing, the parties stipulated as follows:

1. Corona produced 389,687 tons of sand in 1989.

2. The production was about the same in 1990.

3. A certified copy of Corona's assessed history can be received in evidence. (Tr. 7; Ex. P-1).

WEST 89-413

ARTHUR S. CARISOZA, an MSHA inspector since 1975, is a person experienced in mining. (Tr. 11, 12).

Corona, a silica sand plant, processes various grades of silica sand. The company runs three shifts and employs 40-45 people. (Tr. 12, 13).

Citation No. 3296982

Mr. Carisoza issued this citation, which alleges Corona violated 30 C.F.R. S 56.9300.1

The inspector observed a 200- to 250-foot roadway that ran along a creek. There was no berm, guard, barrier, or railing to protect from driving off the edge. (Tr. 14, 15; Ex. P-2). The incline (to the creek) averaged five to six feet. (Tr. 15).

The inspector observed a front-end loader pushing sand over the edge of the incline. The tracks of the loader, as well as the tire marks of pickups and service trucks, were within five feet of the edge. (Tr. 2, 16; Exs. P-2, P-3, P-4). The night shift would have used this roadway. (Tr. 19).

Vehicles using the roadway would have occasion to back up near the incline. (Tr. 19-20). The majority of the vehicles either back into the area or back out; no high speeds are involved. (Tr. 75).

The operator had been previously cited for lack of a berm in this area. (Tr. 21).

The inspector further testified concerning the factors involved in assessing civil penalties. (Tr. 21, 22).

KEITH SPEAK, Corona's engineer, testified a nearby building and the irregular creek were about 15 to 40 feet apart. The narrowest part of the area is a dead end. (Tr. 107, 109).

Opposite the main entrance of the plant a sign designates a speed limit of 5 to 10 miles an hour. From the witness's observation, vehicles in this area would travel two to three miles per hour, or at a walking speed. (Tr. 108).

Vehicles would get as close as three or four feet from the edge. (Tr. 108). The area was not considered hazardous, hence no berm was installed at the creek. (Tr. 109).

WILLIAM W. WILSON, MSHA's area supervisor for southern California, is a person experienced in mining. (Tr. 149).

Mr. Wilson was familiar with the area involving the lack of berms and guard rails. (Tr. 150). There was never a question of a berm being required. He had never seen large equipment using the area.

The present height requirement for a berm is mid-axle, but in May 1988 there was no such requirement. (Tr. 15).

DISCUSSION

The testimony of Mr. Carisoza establishes a violation of 56.9300.

Corona's witness basically affirms the Secretary's evidence. Exhibits P-2 and P-3 establish the hazardous condition and the necessity for a berm adjacent to the edge.

The citation should be affirmed.

CIVIL PENALTIES

Section 110(i) of the Mine Act sets forth the criteria to be considered in assessing a civil penalty.

The number of persons employed by Corona indicates it is a small operator.

STANLEY D. HENDRICKSON, general manager of Corona, is familiar with the financial affairs of the company. A letter from the First Interstate Bank of Los Angeles outlines the status of Corona's loan with the bank. (Tr. 131; Ex. R-1).

The company is also engaged in a severe price war. In addition, Corona is unable to make principal payments although interest payments have been timely. (Tr. 133).

The severity of MSHA's inspections and their number are far worse than normal. (Tr. 133).

Mr. Hendrickson indicated the company had defaulted on its credit agreement with First Interstate Bank. (Exhibit R-1).

The above evidence warrants a reduction in the penalty. However, to eliminate a penalty in the circumstances presented here would not be in furtherance of the Mine Act.

The assessment of moderate penalties should not severely affect the company's ability to continue in business. Although Corona has defaulted on its credit agreement, it is current on its interest payments.

In the two years ending May 31, 1989, Corona had 56 violations and paid $2,805 in civil penalties. These figures indicated Corona's prior history is average. (Ex. P-1).

Corona was negligent since the unbermed creek was open and obvious. Further, the operator had been previously cited for the lack of a berm.

The gravity is established, inasmuch as vehicles operate in close proximity to the edge.

Good faith was established by the operator, promptly abating the violative condition.

On balance, a civil penalty of $50 is appropriate for Citation No. 3296982.

Citation No. 3296996

This citation alleges a violation of 30 C.F.R. 56.14107.2

During the inspection, Mr. Carisoza observed a small belt drive, pulleys, and a V-belt powered by a conveyor belt. The area is adjacent to a catwalk where workers travel. A worker could come in contact with this unguarded machinery which was 12 inches from the outside frame. (Tr. 23, 24, 79; Ex. C-5) If this occurred, he could suffer a severe cut.

The Secretary has adopted 56.14107 and it is published in the Federal Register (Tr. 99; Ex. P-15).

DISCUSSION AND FURTHER FINDINGS

As a threshold matter, it is necessary to identify the regulation in effect when this citation was issued.

The citation was issued on June 21, 1989. At that time, the regulation cited in footnote 2 applied.

A degree of confusion has been caused by the Secretary's 1988 regulation governing moving machine parts, namely, 30 C.F.R. 56.14001.

CHARLES G. INMAN, an MSHA inspector, is a person experienced in mining. He is stationed in San Bernardino, California. (Tr. 136, 137).

The witness visited Corona's site in 1988. At that time, the guards were discussed. (Tr. 139).

The Secretary changed the regulations between 1987 and the present time. The principal change is to prevent any deliberate contact with moving machine parts. (Tr. 140).

As to MSHA's citation, Corona cries foul: The company fully complied, at considerable expense and effort, with MSHA's rules in 1987. However, MSHA changed those rules and Corona finds itself cited by MSHA.

The uncontroverted testimony of plant engineer Speak establishes that, after MSHA inspected the plant in 1987, the equipment MSHA found objectionable was modified with additional guarding, reducing any openings to a 3-inch by 29-inch space. (Tr. 102-106).

In adopting what was enacted as 56.14107, MSHA reviewed its statistics and concluded that most injuries were caused in those instances where the persons were performing work-related actions with the machinery. (Ex. P-5). MSHA, therefore, considered it appropriate to require operators to totally enclose self-cleaning tail pulleys. (Pages 5 and 6 of Exhibit P-8 demonstrate MSHA's interpretation of the guarding now required.)

Corona's objections must fail. MSHA has an obligation to modify its regulations if such modifications will improve the safe working conditions for miners.

Further, all operators are subject to any such changes. However, Corona's actions, as hereafter noted, will reduce the civil penalties.

Corona's size and its ability to continue in business, and its previous history have already been discussed.

The operator was negligent. It should have known of MSHA's revised guarding requirements.

The gravity of the violation must be considered as less than severe, since Corona, in 1987, fully complied with the requirements MSHA then believed constituted adeqaute guarding.

Under the broad umbrella of good faith, Corona abated the violative conditions in 1987 and without any changes in those conditions the company again abated in 1989.

On balance, a civil penalty of $25 is appropriate for the violation of Citation No. 3296996.

Citation No. 3466364

In this situation, the operator was charged with a violation of 30 C.F.R. 56.14107.

Inspector Carisoza observed that the guards on the equipment did not meet MSHA's guarding standards. The open areas existing in the guard presented a hazard. (Tr. 29)

The openings measured 3 by 19 inches; the self-cleaning tail pulley was approximately four inches from the opening. (Tr. 30; Ex. P-7).

Employees were generally working in close proximity to this area. (Tr. 3).

MSHA's guarding guidelines address the described condition. (Tr. 32; Ex. P-8). The guards the company had installed were adequate for a solid tail pulley but not for a self-cleaning tail pulley. (Tr. 32, 33).

During the initial inspection in November of 1988, the guards, at MSHA's recommendation, were changed. (Tr. 35; Ex. P-7). The company was advised that the guards must be extended so a person could not reach around and contact a moving part. (Tr. 35). In November 1988, the company was advised that MSHA was revising the regulation. The citation in this case was issued in June of 1989. (Tr. 36).

DISCUSSION

For the reasons previously stated, this citation should be affirmed and a civil penalty of $25 assessed.

Citation No. 3466365

This citation, an alleged violation of 56.14107, was issued because the guarding on the C-19 conveyor belt had the same hazards as in the previous citation (No. 4566364). (Tr. 36, 37).

The opening measured 3 by 29 inches. The belts are below waist height. Employees work in the vicinity when the units are in motion.

The rotating spurs can come in contact with a worker while he is servicing the unit. (Tr. 37).

DISCUSSION

The evidence is uncontroverted. For the reasons previously stated, this citation should be affirmed and a penalty of $25 assessed.

Citation No. 3466368

The inspector issued this citation alleging a violation of 30 C.F.R. 56.14107. He observed that employees could cross directly under two unguarded return idlers adjacent to a conveyor belt. The idlers were low enough that a person could contact the equipment. (Tr. 38-44; Ex. P-9, P-10, P-11).

The openings located on the sides of the pulleys were about 3 x 29" . The rollers were about 50-54 inches off the ground. (Tr. 44).

The inspector testified as to matters relating to a civil penalty. (Tr. 45). He further believed the violation was significant and substantial. (Tr. 46).

DISCUSSION

The testimony and the photographs (Exs. P-9, P-10, P-11) establish that the return idlers were unguarded. A worker could contact the idlers.

Corona's negligence was high since the condition was open and obvious. Even though the idler was overhead, if a worker or his tools became entangled, he could get injured.

Citation No. 3466368 should be affirmed and a penalty of $50 should be assessed.

Citation No. 3466370

While the inspector was conducting a noise and dust survey, he noticed a feeder lacked guarding. The rollers, head pulley, and tail pulley were exposed. Workers in the area could contact the exposed parts. As a result of the described condition, the inspector issued Citation No. 3466370 alleging a violation of 56.14107. (Tr. 47-50; Ex. P-12, p. 13).

The head pulley was 8 inches by 24 inches; the rollers were about 3 by 24 inches.

The feeder sits above the tail pulley about waist high. A person can easily contact the exposed parts on both sides. (Tr. 52).

The inspector further testified as to gravity and negligence. In the inspector's view, this was an S&S violation. (Tr. 54-56).

Witness Speak testified that the equipment involved in Citation Nos. 3466470 and 3466372 was built when the original plant was constructed. (Tr. 115).

After a CAV inspection, Peerless Conveyor fabricated brackets which were then installed. (Tr. 116). The equipment remained in place until the date of the instant inspection.

The CAV inspection of October 7, 1987, resulted in written notices. (Tr. 117). Some of the notices refer to tail pulleys. (Tr. 123).

The feeder and feed belt were not remodeled between the MSHA inspections of November 1988 and June 1989. (Tr. 118).

Robins Engineers and Constructors, originally Hewitt Robins, is described as the premier designer of conveyors in the world. (Tr. 127). The Robins Company agreed with the fix on the tail pulleys. (Tr. 128).

DISCUSSION

The factual situation here is similar to that involved in the previous citation. The same reasoning applies.

This citation should be affirmed and a civil penalty of $25 assessed.

Citation No. 3466371

The feed conveyor, below the #1 feeder, carries material from the feeder to the scalping screen. The tail pulley was not covered. Employees could contact the exposed parts, thus a violation of 56.14107 was alleged.

The inspector estimated the size of the pulley to be around 13-27 inches. It was located about 12 inches above the ground.

Access for cleaning was available from both sides. (Tr. 57-60; Exs. P-13, P-14).

There were no guards protecting the equipment although there was a shield for dust purposes. (Tr. 60, 61).

The inspector further testified as to gravity and negligence. In the inspector's opinion, the violation was S&S. (Tr. 60-62).

During the initial inspection in 1988, the unguarded tail, head, and take-up pulleys were discussed. (Tr. 63). At that time, the operator was asked to totally enclose the tail pulleys. (Tr. 63).

After a previous CAV, the operator reduced the size of some openings; however, some of the openings remained. (Tr. 64).

Exhibit P-7 illustrates the partial guarding installed by the operator on that particular moving part. Although the size of the openings was reduced, the guards still didn't comply with the MSHA regulations. At the initial inspection, the opening was 12 by 29 inches. It had been reduced to that size. (Tr. 67). Other conveyor openings had also been reduced in size. (Tr. 68).

DISCUSSION

The factual situation here is basically the same as previously discussed.

The citation should be affirmed and a penalty of $25 assessed.

Citation No. 3296997

This Citation alleges a violation of 30 C.F.R. 56.14109.4

Mr. Carisoza entered the area where the conveyor belt was located. An area 3 to 3.5 feet long at the head pulley of the conveyor belt was exposed. It was lower than the waist-high catwalk. The belt was moving at 200 to 350 feet per minute. If a person fell on the belt he could not reach the stop cord. (Tr. 25, 26, 85; Ex. P-6). He would be carried into the head pulley. (Tr. 27).

The platform, where the unguarded section was located, is basically used for maintenance purposes. (Tr. 27; Ex. P-6). The opposite side of the conveyor was equipped with all necessary guards and pull cables. (Tr. 84).

Witness Speak indicated there was a hand railing around the platform. However, there was no guarding between the platform and the conveyor except at the head chute. (Tr. 113).

The platform is designed purely for maintenance. (Tr. 114). Mr. Speak believes that conveyor idlers or rollers are not considered the same as head, tail, snub, or take-up pulleys. The exposure along the belt was for two feet. (Tr. 114).

According to Corona's witness Speak, the speed of the conveyor belt is monitored to detect any slippage of the belt. (Tr. 110). The monitor device was in place at the time of a CAV inspection. (Tr. 110). A monitor of this type would not create a hazard. (Tr. 111).

DISCUSSION

The uncontroverted facts establish a violation of the regulation. A monitor to detect slippage of the belt, as discussed by Mr. Speak, would not be equivalent to an "emergency stop device," as required by the regulation.

The criteria for assessing a civil penalty has been generally discussed. However, in this case, the operator's negligence and gravity are greater than in the other citations.

A civil penalty of $100 is appropriate.

WEST 89-414-M

The parties stipulated that the previous evidence of both parties could be considered as applicable to Citation Nos. 3466372, 3466375, and 3466376. Further, the ruling on the citations in WEST 89-414 would be dispositive of these citations. (Tr. 198, 201). In addition, Exhibits P-17 and P-18 depict the conditions described in Citation No. 3466372.

On the basis of the stipulation, the three citations herein should be affirmed and a civil penalty of $25 is assessed for each violation.

WEST 89-450-M

Citation No. 3296989, issued by Mr. Carisoza, alleges a violation of 30 C.F.R. 14132(b)(1).5

While on Corona's property, Mr. Varisoza inspected a water truck for a back-up alarm. (Tr. 167). Mr. Speak stated the company owned the vehicle.

Mr. Allen, the production supervisor, stated that the truck lacked a back-up alarm. (Tr. 168). The inspector found no alarm on the vehicle and Mr. Allen agreed this was unsafe. (Tr. 168, 180).

Mr. Eaton, general superintendent, and the inspector had a heated discussion as to whether Corona was liable for the condition of a vehicle it did not own. (Tr. 168).

The vehicle was operated in the plant area where people traveled on foot. Also, the vehicle had a water tank at the back. From inside the cab it was not possible to see the total area behind the vehicle. (Tr. 170). No observers had been used when the truck was in operation. (Tr. 171).

The inspector testified as to gravity and negligence. (Tr. 172-174).

MICHAEL ALLEN, Corona's daytime production supervisor, testified. (Tr. 181). He indicated the water truck is operated and maintained by McClinton Trucking.

The witness was under the impression the truck was equipped with a backup alarm. (Tr. 182).

The company electrician located an alarm on the rear axle but it was faulty and was replaced. (Tr. 183).

Except for one occasion, the witness had never observed the truck backing up. All of Corona's equipment have backup alarms. (Tr. 184-186).

DISCUSSION

The credible evidence establishes a violation of the regulation. I reject Michael Allen's somewhat hesitant explanation that it was his "impression" that the vehicle had an alarm. Further, no defense is established merely because the truck was not owned by Corona. It is clear that Corona's employees were exposed to the hazard presented by the lack of a backup alarm.

The Secretary alleges this condition was due to the unwarrantable failure of the operator.

The Commission has set forth the parameters of the unwarrantable failure doctrine, Emery Mining Corporation, 9 FMSHRC 1997 (197); Youghiogheny and Ohio Coal Company, 9 FMSHRC 2007 (1987); Rushton Mining Company, 10 FMSHRC 249 (1988).

The record here fails to establish such aggravated conduct and the unwarrantable failure allegations are stricken.

Several facets of the civil penalty criteria have been previously discussed.

Corona was negligent since it should have known the truck lacked a backup alarm. The gravity is high since an employee in the work area could have been injured.

On balance, a civil penalty of $75 is appropriate.

Citation No. 3296990

This citation alleges a violation of 30 C.F.R. 56.14100.6

According to the inspector, the plant supervisor admitted he failed to conduct a safety inspection before he permitted the truck to be operated. (Tr. 174, 175, 179).

DISCUSSION

The uncontroverted evidence establishes that the truck was not inspected before it was placed in service.

The negligence of the plant supervisor is imputed to the company. The gravity is also high.

On balance, a civil penalty of $75 is appropriate.

WEST 89-46-M

As to six of the citations in this case, the parties renewed their agreement as they had expressed in connection with the previous self-cleaning type tail pulleys. (Tr. 203). The remaining citation is this case was litigated.

On the basis of the stipulation, I conclude that Citation Nos. 3466361, 3466363, 3466366, 3466367, 3466369, and 3466374 should be affirmed and a civil penalty of $25 should be assessed for each violation.

Citation 3466362

This citation alleges a violation of 30 C.F.R. 56.5005(b).7 (Tr. 205, 206, 210).

In the presence of the MSHA inspector, Keith Speak directed an employee to contact a certain individual in the company. Approximately 90 minutes later, the inspector saw the same employee in an affected area cleaning up silica sand spills. When questioned, the employee stated he had not been trained or fit-tested in the use of the respirator. At that point, a 104(d) order was issued and the employee was withdrawn until he was trained. (Tr. 206, 207, 212; Ex. P-20).

Exhibit P-20, page 24, addresses procedures for use of the respirator and proper test fillings. (Tr. 209). The ANSI standard indicates training for an employee should take place where respiratory protection is required. (Tr. 209).

The dust exposure at the site was excessive. (Tr. 215).

In prior uncontested citations Corona's employees were exposed to .51 and 2.78 milligrams per cubic meter. (Tr. 217).

In June 1989 the inspector, in a usual check, found parts of the system had been worn through. In addition, in some places material was spilling and leaking. (Tr. 221).

KEITH SPEAK indicated that a labor agency provides laborers to assist plant personnel. (Tr. 224).

The MSHA inspectors and the new employee arrived together. Mr. Speak sent the employee to the maintenance shop. He had no way of knowing the employee would later be at the screen house and untrained. (Tr. 225). He had, not knowingly, sent the employee into an area under citation. (Tr. 225). In short, he did not believe the company's actions were unwarrantable. (Tr. 226). If the employee had arrived in normal circumstances, he would have been trained by video tapes in Mr. Speak's possession. (Tr. 227).

Mr. Speak didn't direct the employee to stay in certain areas, nor did he give any directions to the foreman. (Tr. 228). He was also aware that prior respirator citations had been issued to the company. (Tr. 229; Ex. P-22).

Exhibit P-22, a memorandum dated May 16 or 17, indicates Corona was experiencing problems with employees fully complying with respirator training of the silica dust program. (Tr. 234). However, Corona was having difficulty finding qualified people to hire. (Tr. 235). The company has a high turnover rate in its workforce. (Tr. 237).

All of the areas in the plant are currently in compliance in a recent dust sampling. (Tr. 240).

DISCUSSION

The inspector's evidence establishes Corona violated the Act. Corona's evidence does not establish a contrary view. The citation should affirmed.

I find Mr. Speak's testimony to be credible and no unwarrantable failure has been established as required by the Commission rulings. Such allegations are stricken.

The facts establish Corona was negligent, but the exposure to the dust was only for a short time. In view of the minimal exposure, I consider the gravity to be low.

On balance, a civil penalty of $100 is appropriate.

WEST 90-22-M

Citation No. 3466380 alleges a violation of 30 C.F.R. 50.20.

At the hearing, petitioner moved to vacate the citation.

For good cause shown, the motion should be granted.

In view of the foregoing findings of fact and conclusions of law, I enter the following:

ORDER

The following citations are AFFIRMED and the penalties as indicated are ASSESSED.

1. WEST 89-413-M

Citation Nos.	Penalty
3296982	$ 50
3296996	$ 25
3466364	$ 25
3466365	$ 25
3466368	$ 50
3466370	$ 25
3466371	$ 25
3296997	$100

2. WEST 89-414-M

Citation Nos.	Penalty
3466372	$ 25
3466375	$ 25
3466376	$ 25

3. WEST 89-450-M

Citation Nos.	Penalty
3296989	$ 75
3296990	$ 75

4. WEST 89-460

Citation Nos.	Penalty
3466361	$ 25
3466363	$ 25
3466366	$ 25
3466367	$ 25
3466369	$ 25
3466374	$ 25
3466362	$100

Citation No. 3466380 and all penalties therefor are VACATED.

John J. Morris
Administrative Law Judge

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FOOTNOTES START HERE

1. 56.9300 Berms or guardrails.

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

2. 56.14107. Moving machine parts.

(a) Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, couplings, shafts, fan blades, and similar moving parts that can cause injury.

(b) Guards shall not be required where the exposed moving parts are at least seven feet away from walking or working surfaces.

3. This regulation provides as follows:

56.14001 Moving machine parts.
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.

4. 56.14109 Unguarded conveyors with adjacent travelways.
Unguarded conveyors next to the travelways shall be equipped with--

(a) Emergency stop devices which are located so that a person falling on or against the conveyor can readily deactivate the conveyor drive motor; . . .

5. 56.14132 Horns and backup alarms.

(b)(1) When the operator has an obstructed view to the rear, self-propelled mobile equipment shall have--
(i) An automatic reverse-activated signal alarm; . . .

6. The cited standard provides:

56.14100 Safety defects; examination, correction and records.

(1) Self-propelled mobile equipment to be used during a shift shall be inspected by the equipment operator

before being placed in operation on that shift.

7. The relevant portion of the cited standard reads:

56.5005 Control of exposure to airborne contaminants. Control or employee exposure to harmful airborne contaminants shall be, insofar as feasible, by prevention of contamination, removal by exhaust ventilation, or by dilution with uncontaminated air. However, where accepted engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment. Whenever respiratory protective equipment is used a program for selection, maintenance, training, fitting, supervision, cleaning, and use shall meet the following minimum requirements:

(b) A respirator program consistent with the requirements of ANSI z88.2-1969, published by the American National Standards Institute and entitled "American National Standards Practices for Respiratory Protection ANSI z88.2-1969," approved August 11, 1969, which is hereby incorporated by reference and made a part hereof. This publication may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, or may be examined in any Metal and Nonmetal Mine Safety and Health District or Subdivision Office of the Mine Safety and Health Administration.