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SOL (MSHA) V. C & C CRUSHED STONE
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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 PROCEEDINGS Docket No. CENT 90-21-M A.C. No. 41-03425-05506
v.	Docket No. CENT 90-68-M A.C. No. 41-03425-05507
C & C CRUSHED STONE, INC., RESPONDENT	C & C Quarry

DECISION

Appearances: Sarah D. Smith, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, for the Petitioner;
Mr. Carl Chaney, C & C Crushed Stone, Inc., Route 1, Box 16, Burton, Texas, for the Respondent.

Before: Judge Fauver

The Secretary seeks civil penalties for eight alleged safety violations under 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

Having considered the hearing evidence and the record as a whole, I find that a preponderance of the substantial, reliable, and probative evidence establishes the following Findings of Fact and additional findings of fact in the Discussion below:

FINDINGS OF FACT

1. Respondent owns and operates a quarry and plant, known as C & C Quarry, in Washington County, Texas, where it mines, processes and sells crushed stone with a regular and substantial effect on interstate commerce.

2. Respondent is a small size mine operator.

August 9, 1989, Inspection

3. Federal Mine Inspector Robert R. Lemasters inspected the quarry and plant around 8:30 a.m., August 9, 1989. When he reached the scale house, the plant was operating, producing crushed stone. In a few minutes, the plant conveyor and crushing operation was turned off. When Inspector Lemasters reached the conveyor and stone-crushing operation at the plant, he found that the guards for the tail pulley on the main feed conveyor, for the tail pulley on the sand belt, for the V-belt drive on the stockpile belt, and for the conveyor to the shaker, were removed from the machinery. They were nearby, but had been removed and not reinstalled.

4. Because of the missing guards, Inspector Lemasters issued Citation Nos. 3282571, 3282572, 3282573, and 3282574, each charging a violation of 30 C.F.R. 56.14112(b), which provides:

> (b) Guards shall be securely in place while machinery is being operated, except when testing or making adjustments which cannot be performed without removal of the guard.

5. The missing guards were designed to guard pinch points of moving belts, axles, and other moving parts. Employees regularly cleaned up spillage in close proximity to the pinch points while the machinery was running. Without the guards, the employees were exposed to a substantial and significant hazard of becoming entangled in the moving parts or coming into contact with them, with a reasonable likelihood of serious injury.

6. Respondent's president, manager and principal owner -- Mr. Carl Chaney -- knew about the requirements of 30 C.F.R. 56.14112(b), and in prior inspections had been cautioned by MSHA inspectors to keep the guards on the machinery whenever the machinery was operating.

7. The plant had recently been shut down for repair of an engine, but the repair work had been completed before August 9, 1989, and the plant was operating on August 9, 1989.

8. When Inspector Lemasters saw the plant operations on August 9, 1989, Respondent was not running the conveyor and crusher operation in order to test or adjust the equipment, but was running it to produce crushed stone.

9. Inspector Lemasters observed that the Euclid R-25 end dump truck No. 1 did not have adequate brakes. He issued Citation No. 3282575 for this condition, charging a violation of 30 C.F.R. 56.14101(a), which provides

56.14101 Brakes

(a) Minimum requirements. (1) Self-propelled mobile equipment shall be equipped with a service brake system capable of stopping and holding the equipment with its typical load on the maximum grade it travels. This standard does not apply to equipment which is not originally equipped with brakes unless the manner in which the equipment is being operated requires the use of brakes for safe operation. This standard does not apply to rail equipment

(2) If equipped on self-propelled mobile equipment, parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels.

10. The dump truck was used on a steep ramp and other grades. Its defective brakes created a serious hazard to the driver and others.

11. Inspector Lemasters observed that Euclid R-25 end dump truck No. 2 did not have an operable backup alarm. This defect created a serious hazard of striking a pedestrian or vehicle while operating the dump truck in reverse. The inspector issued Citation No. 3282576, charging a violation of 30 C.F.R. 56.14132(b), which provides that, when the driver has an obstructed view to the rear, self-propelled mobile equipment shall have an audible backup alarm or an observer to signal when it is safe to backup. The dump truck had a substantial area of obstructed view to the rear, and Respondent did not use an observer to signal the driver when operating in reverse.

December 13, 1989, Inspection

12. Federal Mine Inspector Steven R. Kirk inspected the quarry and plant around 1:30 p.m. on December 13, 1989. He observed the conveyor and crusher operating and producing crushed stone. Guards were missing for the tail pulley on the twin jaw crusher return conveyor and for the tail pulley for the discharge conveyor belt. The inspector issued Citation Nos. 3445581 and 3445582, charging violations of 30 C.F.R. 56.14112(b).

13. The missing guards were designed to guard pinch points of moving belts, axles, and other moving parts. Employees regularly cleaned up spillage in close proximity to the pinch points while the machinery was running. Without the guards, the employees were exposed to a substantial and significant hazard of becoming entangled in the moving parts or coming into contact with them, with a reasonable likelihood of serious injury.

DISCUSSION WITH FURTHER FINDINGS

Mr. Chaney was not at the plant when Inspector Lemasters observed the plant operating and observed the missing guards on August 9, 1989. He suggested at the hearing that the plant was in the process of starting up on August 9, and was not operational on that date. However, he did not present any witnesses to prove that contention and Inspector Lemasters gave eye-witness testimony that the plant was operating and producing crushed stone.

The inspector's testimony is supported by the undisputed evidence that in the next inspection, on December 13, 1989, the plant was operating and guards were missing, indicating a pattern that Respondent was not careful about keeping the guards installed when the plant was operating.

Respondent has demonstrated a poor safety attitude respecting the guard safety standard in 30 C.F.R. 56.14112(b). Mr. Chaney's attitude appears to be that the guards are not necessary because his employees are not "so ignorant that they would put their fingers in moving parts." This opinion overlooks the serious risk of an employee falling or otherwise accidentally coming into contact with an exposed moving part. Accidents are not simply a test of alertness, but may happen to anyone if safety standards are not followed.

Considering the prior notice given to Mr. Chaney concerning the guard safety standard in inspections before August 9, 1989, and considering all of the criteria for civil penalties in 110(i) of the Act, I find that the government's proposed penalties for the August 9, 1989, violations of 30 C.F.R. 56.14112(b) are reasonable.

The violations of vehicle safety standards on August 9, 1989, i.e., the defective brakes and backup alarm, are serious and due to plain negligence. Both violations were readily detectable by ordinary care in checking the vehicles. The penalties proposed by the government for these violations are reasonable.

The two remaining violations -- missing guards on tail pulleys on December 13, 1989 -- reflect a very poor safety attitude by the operator concerning the safety guard standard. Although Respondent may not agree with the wisdom of the statute or of this particular safety standard, it is not at liberty to violate the guard safety standard in a "catch as catch can" approach to MSHA inspections. It must be deterred from violating the safety standards when an MSHA inspector is not on the scene. The unnecessary and unjustified risk to its employees in this case warrants a deterrent penalty higher than the penalties proposed by MSHA. Considering this and all the criteria for

civil penalties in 110(i) of the Act, I find that a civil penalty of $200 for each of the two December 13, 1989, violations is appropriate.

In summary, Respondent is assessed the following civil penalties:

Citation	Civil Penalty
3282571	$ 74
3282572	$ 74
3282573	$ 74
3282574	$ 74
3282575	$ 91
3282576	$ 91
3445581	$200
3445582	$200
	$878

CONCLUSIONS OF LAW

1. The judge has jurisdiction in these proceedings.

2. Respondent violated the safety standards as alleged in Citation Nos. 3282571, 3282572, 3282573, 3282574, 3282575, 3282576, 3445581, and 3445582.

ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay the above civil penalties of $878 within 30 days of the date of this decision.

William Fauver
Administrative Law Judge