

CCASE:

SOL (MSHA) v. EXPLOSIVES TECHNOLOGIES INTERNATIONAL

DDATE:

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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

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

v.

EXPLOSIVES TECHNOLOGIES
INTERNATIONAL, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 90-95-M
A.C. No. 34-01285-05502 AFS

Meridian Aggregates Co.

DECISION

Appearances: Janice L. Holmes, Esq., Office of the Solicitor,
U.S. Department of Labor, Dallas, Texas, for the
Secretary of Labor (Secretary);
Volker E. Schmidt, President, Explosives
Technologies International, Inc., for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for two alleged violations of mandatory health and safety standards. Pursuant to notice, the case was called for hearing in Kansas City, Missouri, on December 13, 1990. Norman LaValle, Richard Goff, and Steve Viles testified on behalf of the Secretary. Volker Schmidt testified on behalf of Respondent. At the completion of the hearing, both parties argued their positions on the record and waived the right to file post hearing briefs. I have considered the entire record and the contentions of the parties in making the following decision.

FINDINGS OF FACT

1. In November 1989 and January 1990, Respondent was a contractor at the site of a mine owned and operated by Meridian Aggregates. Meridian produced crushed granite. Respondent did drilling under contract with Meridian.

2. Respondent's operation is small. Between May 17, 1989 and the date of the citations involved herein, three violations were issued to Respondent at the Meridian facility. This history is not such that penalties otherwise appropriate should be increased because of it.

3. On November 21, 1989, Federal Mine Inspector Norman LaValle conducted a noise survey at the Meridian Aggregates Mine. He attached a dosimeter to the operator of an Atlas Copco 712 drill employed by Respondent. It disclosed noise exposure of 2.94 times the exposure limit, equivalent to 98 dba for an 8 hour shift. A citation was issued for a violation of 30 C.F.R. 56.5050(b).

4. On January 10, 1990, a compliance assistance inspection was conducted by Inspector LaValle and MSHA District health specialist Steve Viles. Viles was of the opinion that a noise barrier shield could be used on the Atlas Copco 712 drill to reduce the noise exposure for the drill operator.

5. Respondent leased the Atlas Copco Drill from the Mining Supply and Equipment Company, paying \$5500 per month.

6. The operator of the drill was wearing personal hearing protection at the time the citation was issued.

7. The citation was terminated on January 10, 1990. The Atlas Copco was replaced by another drill and Respondent informed MSHA that the Atlas Copco would be removed from the property.

8. On January 10, 1990, the boom support structure of Respondent's Robbins Drill had cracks in the metal. The drill was not being operated at the time. Its clutch was being repaired. A citation was issued for a violation of 30 C.F.R. 56.7002.

9. The cracks in the structure had been present for some time, as there was oil and grease found in the crack.

10. The citation was terminated February 26, 1990 after the boom support structure was repaired by welding it.

REGULATIONS

30 C.F.R. 56.5050 provides that when an employee's noise exposure exceeds the equivalent of 90 dBA per 8 hours of exposure, "feasible administrative or engineering controls shall be utilized. If such controls fail to reduce exposure to within permissible levels, personal protection equipment shall be provided and used "

30 C.F.R. 56.7002 provides as follows:

Equipment defects affecting safety shall be corrected before the equipment is used.

CONCLUSIONS OF LAW

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1. Meridian Aggregates is a mine and Respondent is an independent contractor performing services at the mine. Therefore it is an operator. I have jurisdiction over the parties and subject matter of this proceeding.

2. On November 21, 1989, a drill operator employed by Respondent was exposed to a noise level in excess of that specified in the table contained in 30 C.F.R. 56.5050.

3. There were feasible administrative and engineering controls which could have been utilized to reduce the noise level to which the employee was exposed.

4. The fact that the drill was not owned but was leased by Respondent is not a defense to a charge of violation of the noise standard. The evidence establishes a violation of 30 C.F.R. 56.5050(b).

5. The violation was not serious. It resulted from Respondent's ordinary negligence. It was abated within the time set for termination as extended. I conclude that an appropriate penalty for the violation is \$50.

6. On January 10, 1990, there were cracks in the metal of a drill boom support structure. The drill was not being operated at the time the condition was discovered because its clutch was being repaired. The cracks had existed for some time. The evidence establishes a violation of 30 C.F.R. 56.7002.

7. The violation was not serious. It resulted from Respondent's ordinary negligence. It was abated within the time set for termination. I conclude that an appropriate penalty for the violation is \$50.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED:

1. Citations 3283281 and 3271867 are AFFIRMED.

2. Respondent shall within 30 days of the date of this decision pay the Secretary the sum of \$100 for the violations found herein.

James A. Broderick
Administrative Law Judge