

CCASE:  
SOL (MSHA) v. CUSTOM CRUSHING  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
The Federal Building  
Room 280, 1244 Speer Boulevard  
Denver, CO 80204

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

CIVIL PENALTY PROCEEDING  
Docket No. WEST 90-184-M  
A.C. No. 42-01816-05507

v.

CUSTOM CRUSHING INC.,  
RESPONDENT

Custom Crushing # 1

DECISION

Appearances: Susan J. Eckert, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
Steve Zabriskie, President, Custom Crushing Inc.,  
Taylorsville, Utah,  
pro se.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration ("MSHA") charges Respondent Custom Crushing, Inc., with violating safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq. (the "Act").

A hearing on the merits was held in Salt Lake City, Utah, on April 30, 1991. The parties waived the filing of post-trial briefs.

STIPULATION

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

1. Custom Crushing, Inc., is engaged in the mining of sand and gravel in the United States, and its mining operations affect interstate commerce.

2. Custom Crushing, Inc., is the owner and operator of the Custom Crushing #1 Portable Crusher, MSHA I.D. No. 42-01816-05507.

3. Custom Crushing, Inc., is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. (the "Act").

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4. The Administrative Law Judge has jurisdiction in this matter.

5. The subject citations were properly served by a duly authorized representative of the Secretary upon an agent of respondent on the date and place stated therein, and may be admitted into evidence for the purpose of establishing their issuance, and not for the truthfulness or relevance of any statements asserted therein.

6. The exhibits to be offered by Respondent and the Secretary are stipulated to be authentic, but no stipulation is made as to their relevance or the truth of the matters asserted therein.

7. The proposed penalty will not affect Respondent's ability to continue in business.

8. The Operator demonstrated good faith in abating the violations.

9. Custom Crushing, Inc., is a small operator of a sand and gravel portable crusher with 7,952 control hours worked in 1989.

10. The certified copy of the MSHA Assessed Violations History accurately reflects the history of this mine for the two years prior to the date of the citations.  
Citation No. 2652565

In this citation, MSHA charges respondent with violating 30 C.F.R. 56.12002. (Footnote 1)

The evidence is uncontroverted: On March 6, 1990, MSHA Inspector James Skinner, an electrical and hoisting specialist, inspected Respondent.

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The Operator's electrical control panels were located in the control trailer. The electrical panels, opened by the Inspector, housed protective breakers for individual circuits of the electrical motors throughout the plant.

Each panel is six feet high and two to three feet wide. (Exs. P-2 and P-3 are photographs of the outer doors of the panels.)

After opening the door, the Inspector observed two rows of circuit breakers with holes where a circuit breaker had been removed and a hole had been cut (Tr. 17). After the panel doors to the energized panels were closed, the Operator objected to their being reopened. As a result, no inside measurements were made and no photographs of the interior were taken.

Exhibit P-4 is an illustration of a circuit breaker panel taken from the National Electrical Code book (NEC), 1990 Edition.

Due to the holes, Respondent's panel was unlike those illustrated in the NEC. (Tr. 19). The holes in the inner panel were about 3 to 4 inches. As a result of the described condition, a worker could come into contact with a three-phase 480 volt current. (Tr. 22). If a worker would touch one of the busses and be grounded, he would receive a 277-volt shock. Voltage as low as 48 can be fatal. (Tr. 23).

The design for electrical panels is approved by a national organization, the National Electrical Manufacturers Association (NEMA). The NEMA approves of bare busses but an inner covering panel or "dead front" is required. Respondent's inner panel had been altered. (Tr. 28).

In the Inspector's opinion, the violation occurred because the circuit breakers had been altered from the original design. The change was where a circuit breaker had been removed, leaving a hole, and at least one hole had been cut in the panel. (Tr. 33, 34). The alteration of the dead front panel left holes in it. (Tr. 35).

The violation was abated by posting signs on the outside panel stating that the doors should not be opened unless the generator was de-energized. (Tr. 36).

STEVE ZABRISKIE, President of Respondent, submitted photographs of the electrical panel. However, the witness did not rebut the testimony of Inspector Skinner concerning the holes in the inner electrical panel. He further confirmed that a worker could be shocked if he contacted the wires in the holes cut in the panel. (Tr. 65).

DISCUSSION

It is uncontroverted that the electrical panel in Respondent's control trailer had been altered. The focus of MSHA's regulation 56.12002 is that the electrical controls were not of "approved design and construction."

Inspector Skinner testified the design for such panels is approved by NEMA. While Nema approves bare busses, they must be covered. The "dead front" inner panel is a NEMA feature. (Tr. 28).

The design of the internal cover of Respondent's panel board had been altered. (Tr. 33). Figure 384-3 of Exhibit P-4 shows a panelboard. The panelboard in the illustration is without openings such as those at Respondent's electrical panel.

Section 56.12002 must be construed in light of its underlying purpose--the protection of miners exposed to the equipment's use. That purpose was plainly set forth in the Secretary's statement of purpose and scope of the Part 56 standards, which provided: "The purpose of these standards is the protection of life, the promotion of health and safety, and the prevention of accidents." 30 U.S.C. 56.1. Any overly narrow or restrictive reading of the scope of Section 56.12002 cannot be reconciled with that statement of purpose or with the fundamental protective ends of the Mine Act itself, as set forth in the Mine Act. See 30 U.S.C. 801(a), (d), and (e). Compare *Ideal Cement Company*, 12 FMSHRC 2409 (1990). No doubt, the purpose of an inner panel without holes is to protect a miner from coming in contact with live busses and terminals.

On the record here, Citation No. 2652565 should be affirmed. Citation No. 2652567

This citation alleges a violation of 30 C.F.R. 56.15004. (Footnote 2)

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The evidence is uncontroverted: On the following day, during the inspection, Mr. Skinner observed the crusher operator in the wooden booth near the primary jaw-crusher. The Operator was not wearing safety glasses nor did he have eye protection while his head was outside of the window opening. (Tr. 40, 42). His head was in this position for about five minutes. (Tr. 43). The jaw-crusher, which can throw rock splinters, was three to four feet below the employee. (Tr. 44; Exs. R-1 and R-2 show the booth and employee.) Upon being questioned, the employee said he had eye glasses but he was unable to produce them.

The violation was abated when the employee was provided with glasses. (Tr. 45).

Witness Zabriskie offered photographs (Exs. R-1, R-2) and basically confirmed Inspector Skinner's testimony. (Tr. 55-57).

#### DISCUSSION

The uncontroverted evidence establishes that the crusher operator was leaning outside of the booth. In this position, he was three to five feet above the jaw-crusher. The hazard of flying rock splinters was apparent.

The factual situation establishes a violation of 30 C.F.R. 56.15005 and Citation No. 2652567 should be affirmed.

#### CIVIL PENALTIES

The statutory criteria to assess civil penalties is contained in Section 110(i) of the Act, 30 U.S.C. 820(i).

The Operator's history is very favorable. In the two years ending March 5, 1990, the company received no citations. In the period before March 6, 1988, there were nine citations.

The parties have stipulated that Respondent is a small operator and the proposed penalties will not affect its ability to continue in business.

The Operator was negligent as to both citations since it should have known of the violations.

The gravity was moderate though remote. Severe injuries could occur if the circumstances were ideal.

Respondent promptly abated the violations.

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On balance, a civil penalty of \$50 is appropriate for each violation.

Accordingly, I enter the following:

ORDER

1. Citation No. 2652565 is AFFIRMED and a civil penalty of \$50 is ASSESSED.

2. Citation No. 2652567 is AFFIRMED and a civil penalty of \$50 is ASSESSED.

John J. Morris  
Administrative Law Judge

1. The cited regulation provides as follows:

56.12002 Controls and switches.

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.

2. The cited regulation provides:

56.15004 Eye protection.

All persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine or plant where a hazard exists which could cause injury to unprotected eyes.