

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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August 16, 1995

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 95-16-M
Petitioner	:	A. C. No. 25-01065-05519
v.	:	
	:	Pit No. 2
FRICK SAND & GRAVEL, INC.,	:	
Respondent	:	

DECISION

Appearances: Kristi L. Floyd, Esq., Office of the Solicitor,
U. S. Department of Labor, Denver, Colorado, and
Dennis J. Tobin, Conference and Litigation
Administration, Grand Junction, Colorado, for the
Secretary;
Thomas E. Frick, President, Frick Sand & Gravel,
Before: Judge Maurer

STATEMENT OF THE CASE

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq., the "Act," charging Frick Sand & Gravel, Inc., with two violations of the regulatory standards found in Part 56, Title 30, Code of Federal Regulations. The general issues before me are whether the respondent violated the cited regulatory standards and, if so, the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

Pursuant to notice, the case was heard at Colby, Kansas, on June 1, 1995. At the hearing, Inspector Steve Ryan testified for the Secretary of Labor. Mr. Thomas Frick, the President of Frick Sand & Gravel, Inc., testified for respondent.

STIPULATIONS

At the hearing the parties entered the following stipulations into the record (Joint Ex. No. 1):

1. Frick Sand & Gravel, Inc. is engaged in mining and selling of sand and gravel in the United States, and its mining operations affect interstate commerce.

2. Frick Sand & Gravel, Inc. is the owner and operator of Pit No. 2 Mine, MSHA I.D. No. 25-01065.

3. Frick Sand & Gravel, 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").

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

5. The subject citations/orders were properly served by a duly authorized representative of the Secretary upon an agent of respondent on the dates and places stated therein, and may be admitted into evidence for the purpose of establishing their issuance, and not for the truthfulness or relevancy 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 penalties will not affect respondent's ability to continue in business.

8. The operator demonstrated good faith in abating the violation relating to Citation No. 4332411.

9. The operator did not abate the violation in Citation No. 4332414 in a timely manner and a 104(b) order was issued. The violation was subsequently abated.

10. Frick Sand & Gravel, Inc. is a small mine operator with 15,746 hours of production in 1993.

11. 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.

DISCUSSION, FINDINGS AND CONCLUSIONS

Citation No. 4332411

Citation No. 4332411, issued on March 21, 1994, alleges a violation of the standard found at 30 C.F.R. ' 56.14100(b)¹ and charges as follows:

The brake lights on the Cat 966C F.E.L. were not operational. The wiring had been broken and seemed to have been that way for some time. Defects on machinery that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to a person.

Mr. Frick admits the brakes lights were inoperative and also admits that that is a violation of 30 C.F.R. ' 56.14100(b).

Accordingly, I find a violation of the mandatory standard as cited and assess the proposed civil penalty amount of \$50.

Citation No. 4332414

Citation No. 4332414, issued on March 22, 1994, alleges a violation of the standard found at 30 C.F.R. ' 56.18010² and charges as follows:

Neither the pit foreman or any of the employees

^{1/} 30 C.F.R. ' 56.14100 (b) provides:

Defects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.

^{2/} 30 C.F.R. ' 56.18010 provides:

Selected supervisors shall be trained in first aid. First aid training shall be made available to all interested employees.

have been trained in first aid. Selected supervisors and all interested employees shall be trained in first aid to help minimize as much as possible the severity of possible injuries at the pit.

Mr. Frick admits his pit foreman did not have the required first aid training. He also admits that that is a violation of 30 C.F.R. ' 56.18010.

His only problem with this citation is that the inspector did not give him enough time to get his foreman trained, given the paucity of evening training classes in their area of the country.

A woman teaches the first aid course on an irregular basis in the evenings, based on demand for it. That is, if she schedules a course, but only two or three persons enroll, she cancels and reschedules the course at a later date. This happened many times in this situation according to Mr. Frick.

I am going to affirm the citation, but reduce the proposed civil penalty in this instance from \$195 to \$50, based on the fact that I find credible Mr. Frick's claim that he did the best he could to get the first available evening first aid class set up for his pit foreman.

ORDER

1. Citation Nos. 4332411 and 4332414 **ARE AFFIRMED.**
2. Frick Sand & Gravel, Inc. **IS ORDERED TO PAY** the Secretary of Labor a civil penalty of \$100 within 30 days of the date of this decision.

Roy J. Maurer
Administrative Law Judge

Distribution:

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