

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

September 22, 1999

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| SECRETARY OF LABOR, | : | CIVIL PENALTY PROCEEDING |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), | : | Docket No. CENT 98-199-M |
| Petitioner | : | A. C. No. 41-01477-05533 |
| v. | : | |
| | : | Beck Quarry |
| VALLEY CALICHE PRODUCTS, INC., | : | |
| Respondent | : | |

DECISION

Appearances: Ernest A. Burford, Esq., Office of the Solicitor, U. S. Department of Labor,
Dallas, Texas, for the Secretary;
Hector J. Torres, Esq., Atlas & Hall, L.L.P., McAllen, Texas, for the Respondent.

Before: Judge Weisberger

Statement of the Case

This case is before me based on a Petition for Assessment of penalty filed by the Secretary of Labor ("Secretary") alleging that Valley Caliche Products, Inc. ("Valley Caliche") violated 30 C.F.R. §§ 56.14107(a), and 56.20003(a).

Subsequent to a notice, this matter was set for hearing, and was heard on March 23-25, 1999. Subsequent to the hearing, the Parties engaged in extensive discussions regarding settlement. On September 15, 1999, pursuant to a previously issued order, the Secretary filed a statement indicating that the parties had not reached an agreement resolving all of the issues in the case, but agree that ". . . the only factual and legal issues remaining in dispute concern the amount and the special assessment of the penalty and the degree of negligence assigned to each citation." Accordingly, based upon the Parties' agreement, and the evidence of record, I find that Valley Caliche did violate 30 C.F.R. §§ 56.14107(a) and 56.2003(a), and that these violations were significant and substantial.

Penalty

Citation No. 4447248

Subsequent to an investigation of a fatality that had occurred at Valley Caliche's Beck Quarry on March 24, 1997, MSHA Inspector Ronald M. Mesa issued Citation No. 4447248 alleging a violation of 30 C.F.R. § 56.14107(a) in that, in essence, the guard that was in place on the east side of the tail pulley for the No. 38 conveyor belt was not adequate to prevent access to the pinch point.

It is not contested that the violation was significant and substantial. Further, the violative condition could have led to contact with a hazardous pinch point. Also, a fatality did occur. I conclude that the gravity of the violation was relatively high.

The unguarded area at issue, located along the east side of the conveyor belt No. 38, was more than 5 feet above the ground. According to Robert H. Thompson, Valley Caliche's president and general manager, and Samuel Bazan, Valley Caliche's foreman, the area between the west side of conveyor No. 35, and the east side of conveyor No. 38 is not used as a travelway. Further, although the conveyor belt at issue has to be adjusted regularly to keep its alignment straight, and to prevent material from falling off the belt, it may be properly aligned by adjusting either the screw located on the west side of the belt, or the screw located on the east side of the belt. Hence, it is not necessary to go to the east side of belt No. 38 in order to align the belt. Further, the adjustment screw on the east side is located outside the guarded area. Moreover, although the equipment at issue had been installed, according to Thompson, in late 1986 or early 1987, no citations for the violative condition were issued in an MSHA inspection 5 weeks prior to the accident at issue. Within this context, I find that the level of Valley Caliche's negligence to have been low. Considering the remaining factors set forth in section 110(i) of the Federal Mine Safety and Health Act of 1997("the Act"), I find that a penalty of \$5,000.00 is appropriate for this violation.

Citation No. 4447249

Mesa also issued Citation No. 4447249 alleging that material had accumulated in the area between conveyor Nos. 35 and 38 in violation of section 56.20003(a), supra. Taking into account that it is not contested that the violation was significant and substantial, I find that the level of gravity of this violation was relatively high. According to Sergio Verastegui, and Jose Facundo, Valley Caliche's belt cleaners, the belt at issue goes out of alignment three to four times a day which causes spillage of material that they have to clean up to two to three times a day. However, according to Bazan, material can fall on the floor within minutes if the belt is not in proper alignment. Additionally, there is no evidence in the record as to how long the accumulated material at issue had been in existence prior to the accident. In this connection, Thompson testified that, based on interviews, the pile was not in existence at 8:45 a.m., when the area was inspected the morning of the accident. Within this context, I conclude that the level of Valley Caliche's negligence was low. Taking into account the remaining factors set forth in

section 110(i) of the Act, I conclude that a penalty of \$2,000.00 is appropriate for this violation.

ORDER

It is **ORDERED** that Citation Nos. 4447248 and 4447249 be **AFFIRMED**. It is **FURTHER ORDERED** that, within 30 days of this Decision, Valley Caliche shall pay a total civil penalty of \$7,000.00.

Avram Weisberger
Administrative Law Judge
703-756-6215

Distribution:

Ernest A. Burford, Esq., Office of the Solicitor, U. S. Department of Labor, 525 Griffin Street, Suite 501, Dallas, TX 75202 (Certified Mail)

Hector J. Torres, Esq., Atlas & Hall, L.L.P., 818 Pecan, McAllen, TX 78501 (Certified Mail)

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