FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 19, 1998

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 98-14-M
Petitioner	:	A. C. No. 20-02980-05501
v.	:	
	:	Rohloff Sand & Gravel Company
ROHLOFF SAND & GRAVEL COMPANY,	:	
Respondent	:	

DECISION

Appearances: Ruben R. Chapa, Esq., Office of the Solicitor, U. S. Department of Labor, Chicago, Illinois, for the Secretary;
Luke Rohloff, President, Ms. Jody McPeak, Rohloff Sand & Gravel Company, Midland, Michigan, for Respondent.

Before: Judge Barbour

In this civil penalty proceeding, brought under section 105(d) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. ' 815(d) (the Act)), the Secretary of Labor (Secretary) on behalf of her Mine Safety and Health Administration (MSHA) seeks the assessment of civil penalties against Rohloff Sand & Gravel Company (the company) for five alleged violations of mandatory safety and health standards for surface metal and nonmetal mines. The Secretary charges the violations occurred at the company=s sand and gravel pit, located in Tuscola County, Michigan. The company raises various defenses and argues the amount of the penalties will affect adversely its ability to continue in business. The case was heard in Midland, Michigan. At the close of the hearing, the parties waived the filing of briefs and submitted the case for decision.

STIPULATIONS

The parties stipulated the Commission has jurisdiction over the proceeding; the mine is subject to the provisions of the Act; the company owns and operates the mine; the mine affects interstate commerce; the company=s employees worked a total of 1,998 man hours during 1996, and the company was not cited for any violations at its facility from September 1994 to July 1997 (Tr. 10-11; Joint Exh. 1). They also agreed that in order to abate the alleged violation of a noise standard, the company expended $237.80 for sound deadening materials and $300 for labor (Tr. 11; Joint Exh. 1).

CITATION NO.	DATE	30 C.F.R. '	PROPOSED PENALTY
4563927	9/4/96	56.5050	$50

The citation states:

> On September 4, 1996, the operator of the Northwest 95 dragline was exposed to a mixed noise level of 222.60% as measured with a noise dosimeter for a full shift. This amount exceeded the permissible exposure limit of 100% times the instrument sampling factor (1.32) for dosimeter noise sampling. This is equivalent to an 8-hour exposure at 95.7 dBA. There was no barrier between the cab and the motor nor was there an[y] sound dampening material in the cab. The [dragline] operator was wearing hearing protection (Gov. Exh. 1).

At the mine, sand and gravel is extracted by a dragline from a pond and a bank and is processed through a wash plant (Tr. 23). On September 4, 1996, MSHA Inspector James Hautamaki went to the mine to conduct a noise survey. The purpose of the survey was to determine the level of noise to which the dragline operator was exposed (Tr. 24). Terry Timmons was operating the dragline (Tr. 25, 27). (In addition to operating the dragline, Timmons served as the mine foreman.) Timmons was seated in the dragline=s cab, approximately 6 feet from the its engine (Tr. 29). He was digging sand from the pond, and he was wearing hearing protection.

The night before the inspection Hautamaki calibrated his dosimeter and sound meter (Tr. 29). Hautamaki attached the dosimeter to Timmons= clothing, as near as possible to Timmons= ear. Timmons wore the dosimeter for the full shift (Tr. 28-29). Throughout the shift, Hautamaki spot-checked the sound level with the sound meter (Tr. 28).

The dosimeter, which measured the average ambient noise to which Timmons was exposed during the course of the shift, recorded an exposure level of 222.60 percent. This meant that Timmons was exposed to an average of approximately 95.7 dBA (Tr. 32, see also Tr. 76, 77). Under section 56.5050, the sound level limit for an 8 hour shift is 90 dBA. Therefore, Hautamaki cited the company (Gov. Exh. 1).

In Hautamaki=s opinion most of the noise came from the dragline=s engine compartment. Because Timmons was wearing hearing protection, Hautamaki did not think the sound was likely to injure Timmons (Tr. 32). However, if Timmons had not been wearing protection, or if he had improperly worn it, he would have been in danger of suffering a hearing loss (Tr. 32-33).

Hautamaki maintained the company=s failure to comply with the standard was the result of its Alow@ negligence (Tr. 33). He did not think the company knew Timmons was over-exposed, and he noted the company had taken the precaution of providing Timmons with hearing protection (Tr. 38).

MSHA Inspector Clyde Brown testified concerning the steps taken by the company to abate the condition. Brown, who had conducted approximately 100 noise surveys, went to the mine on July 1, 1997. He inspected the dragline and found the company had added a barrier between the operator=s compartment and the engine. The company also had installed acoustical insulation (Tr. 48).

Brown conducted a noise survey. He found the dragline operator was exposed to noise at 90.8 percent of the permissible limit, an exposure level equivalent to approximately 89 or 88 dBA (Tr. 49, 82). Therefore, Brown terminated the citation.

The company expended $537.80 on materials and labor to meet the noise level requirements (Joint Exh. 1, &9; Tr. 11). In Brown=s view, the barrier and insulation totally eliminated the possibility the dragline operator would suffer a hearing loss (Tr. 53).

MSHA=s Industrial hygienist George Schorr testified concerning the dangers of high noise levels and the ways in which the levels can be controlled. He explained that while he does not conduct noise inspections, he reviews the results of the inspections and offers suggestions on how to reduce noise levels (Tr. 59). In Schorr=s opinion, noise above the standard can cause both temporary and permanent hearing loss. For a permanent loss to occur the excessive notice must continue over a period of time (Tr. 66). The loss is usually at specific frequencies, which means the victim loses the ability to hear certain vowel sounds and can no longer perceive some speech patterns (Tr. 85).

On a dragline, compliance can be obtained by either reducing the time the dragline operator is exposed to the noise (Tr. 69), or by installing a barrier between the operator and the engine compartment and acoustically insulating the dragline operator=s cab, or by a combinating of both approaches (Tr. 67-69, see also Tr. 70-71). The latter measures block the noise that goes directly to the operator as well as the noise that reverberates off the interior of the cab (Tr. 67-69).

Schorr testified that all Northwest 95 draglines in MSHA=s North Central District (the Duluth district) have been brought into compliance with the noise standard (Tr. 78). He stated, AIn all cases when it comes to draglines we know . . . there are achievable controls that can reduce the noise below the permissible exposure limit@ (Id.). Schorr estimated the cost of materials necessary to achieve compliance is Aunder $1,000" (Tr. 81). He did not believe the

cost to be out of proportion to the benefit achieved because compliance protects a miner from lifelong hearing loss (Tr. 81, 83). He described installation of a barrier and insulation as Aa fairly simple fix and fairly easy to do,@ and the reduction in the noise level that the installation achieves as Afairly significant@ (Tr. 82).

Rohloff testified that it was obvious to the company the dragline was too noisy, but the company did not know its exact noise level until Hautakai conducted the survey. Nevertheless, because the company was concerned about the noise, the company purchased hearing protection, and Rohloff instructed those operating the machine to wear the protection at all times (Tr. 92-93).

THE VIOLATION, GRAVITY AND NEGLIGENCE

Section 5050(a) establishes permissible noise exposure levels based on a time-weighted average. Section 56.5050(b) requires feasible administrative or engineering controls to be used when noise exposure exceeds the permissible levels. If these measures fail to reduce noise exposure levels sufficiently, personal protection equipment must be used.

In *Callanan Industries, Inc.*, 5 FMSHRC 1900 (November 1983), the Commission held the Secretary establishes a violation of section 56.5050 by proving:

> (1) a miner=s exposure to noise levels in excess of the limits specified in the standard; (2) a technologically achievable engineering control that could be applied to the noise source; (3) the reduction in the noise level that would be obtained through implementation of the engineering control; (4) a reasoned estimate of the expected economic costs of the implementation of the control; and (5) a demonstration that the costs of the control are not wholly out of proportion to the expected benefits (5 FMSHRC 1909).

The Secretary proved all of these elements. Rohloff did not dispute the results of the noise survey conducted by Hautamaki, and the results established Timmons was exposed to an ambient noise level above that permitted by the standard (Tr. 32, 76, 77). As both the testimony and the abatement of the violation show, engineering controls to reduce the noise level were available to the company (Tr. 48). There is no suggestion the company had difficulty finding the barrier material or the acoustical insulation, and given Schorr=s testimony that no similar draglines in the district were out of compliance (Tr. 78), I conclude the materials readily were available. Further, it is clear that the barrier and the acoustical insulation produced a decrease in sound sufficient to bring the ambient noise level into compliance (Tr. 74, 78-79). Schorr testified the cost of obtaining such compliance would be under $1,000 (Tr.81), as indeed it was (Joint Exh. 1 **&** 9). The actual cost **C** $537.80 **C** resulted in a reduction of approximately 6.7 dBA (Tr. 81), well within costs the Commission has found previously to be not unreasonable (*Explosives Technologies International, Inc.*, 14 FMSHRC 59, 63-64 (January 1992); *A.H. Smith*, 6 FMSHRC 199, 203 (February 1984); *Callanan Industries, Inc.*, 5 FMSHRC 1900, 1911-12 (November 1983)).

The fact Timmons was wearing hearing protection, does not excuse the violation, but does mitigate its gravity. Hautamaki noted that without the properly worn protection Timmons would have been in danger of suffering a loss of hearing (Tr. 32). I infer from this the converse is true and that Timmons was not in danger of suffering a loss of hearing. Therefore, I conclude the violation was not serious.

I also conclude the company was negligent in allowing the violation to exist. Rohloff was candid in stating it was obvious the dragline was too noisy (Tr. 9). While purchase of the hearing protection was commendable, it was the company=s duty to have the ambient noise tested so the company could ensure compliance with section 56.5050. Instead, it waited for MSHA to test and thus failed to meet the standard of care required.

CITATION NO.	**DATE**	**30 C.F.R. '**	**PROPOSED PENALTY**
4564290	7/1/97	56.11027	$81

The citation states:

> The work platform around the plant water pump was not provided with handrails. An employee working on the platform could slip and fall into the water. An employee goes on the work platform once a day (Gov. Exh. 5).

Hautamaki testified that in June or July 1996, before the mine began operating, he went to the facility to assign it an MSHA I.D. number. While there, Timmons requested he Ajust kind of give . . . [the mine] a quick look over@ (Tr. 96). During the Alook over@ Hautamaki saw a floating pump platform on the pond. He also saw a gangplank on the bank. Hautamaki told Timmons if the platform and gang plank were going to be used by miners on a regular basis, the company needed to have handrails installed on them in order to prevent the miners from falling into the water and possibly drowning (Tr. 34, 96-97, 98-99).

When Brown inspected the mine on July 1, 1997, he observed the same platform and gangplank. Neither had handrails (Tr. 100). Irving Gilley, who was then the foreman, told Brown that due to a problem with a valve on the pump, he had to go on the platform once a shift to prime the pump (Tr. 101-102). The platform was made of steel, and measured approximately 10 feet by 12 feet. Brown estimated the water under it was 15 to 20 feet deep (Tr. 102).

Brown feared when the deck of the platform became wet from dew, rain, ice, or snow a person was likely to slip and fall into the water. Brown also believed such a slip or fall was likely to result in permanently disabling injuries (Tr. 103). Therefore, he found the lack of handrails constituted a significant and substantial contribution to a mine safety hazard (S&S) (Id.). He testified Aquite a few deaths and serious accidents [occur] on dredges and work platforms, and pump stations@ and he identified a MSHA news release, dated November 5, 1997, that noted there had been 13 drowning deaths at surface metal and nonmetal facilities since April 1996 (Id.; Gov. Exh. 6).

He regarded the company as moderately negligent in failing to install the handrails (Tr. 105). He testified Gilley told him the company had started to construct the handrails but had not finished (Tr. 107).

THE VIOLATION, S&S, GRAVITY AND NEGLIGENCE

Section 56.11027 requires Aworking platforms@ to be Aprovided with handrails.@

The floating platform was a working platform. I credit Brown=s testimony that Gilley told him the pump needed to be primed once a shift (Tr. 101-102). I therefore conclude that, at least at the time of the inspection, daily work was done on the platform. I realize Rohloff argued it was not typical for someone to go on the platform every day, that A[i]t would be more monthly@ (Tr. 171), but there is no reason why Gilley would have misstated the facts to Brown, and even if the visits were monthly, rather than daily, I still would conclude the platform was a working platform within the meaning of the standard. In my view, the visits must be much more infrequent to make the standard inapplicable (see e.g. *Empire Iron Mining Partnership* 19 FMSRHC 1912, 1920-21 (ALJ Hodgdon)).

A violation is properly designated S&S if Abased upon the particular facts surrounding the violation there exists a reasonable likelihood the hazard contributed to will result in an injury or illness of a reasonably serious nature@ (*Cement Division, National Gypsum Co.*, 3 FMSHRC 825 (April 1981)). To establish the S&S nature of a violation, the Secretary must prove:

> (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard **C** that is, a measure of danger to safety **C** contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature (*Mathies Coal Co.*, 6 FMSRHC 1, 3-4 (January 1984)).

Evaluation of the reasonable likelihood of injury, is made in the context of Acontinued mining operations@ (*U.S. Steel Mining Co.*, 6 FMSHRC 1573, 1574 (July 1984)).

I have concluded there was a violation. I also conclude there was a discrete safety hazard contributed to by the violation, in that without a handrail around the platform, the likelihood was increased that a miner who slipped or fell would tumble from the platform into the pond. The miner, who would be wearing work shoes and work clothing, would be weighed down. The water around the platform was too deep to stand. The miner could drown **C** a reasonably serious result, to say the least. I further conclude the Secretary proved there was a reasonably likelihood a miner would fall and drown. As mining operations continued through inclement and increasingly cold weather, it became more and more likely a miner would slip and fall into the pond and there were few other miners present who could help the victim.

In addition to being of an S&S nature, the violation was serious. The gravity of a violation is judged by the injury that can result from it and the possibility of the injury occurring. Here, the injury **C** death by drowning **C** was of the upmost gravity and was more than a possibility.

I accept Hautamaki=s testimony that approximately one year before the citation issued, he told Timmons handrails would be needed (Tr. 34, 96-97, 98-99). Timmons was the agent of the company. Thus, the company knew what was required well in advance of Brown=s inspection. The fact the handrails were not installed on July 1, 1997, can only be attributed to the company=s negligence.

CITATION NO.	**DATE**	**30 C.F.R. '**	**PROPOSED PENALTY**
4564287	6/30/97	56.18010	$50

The citation states:

> There was no one on the property currently trained in first aid. If an injury were to occur, the severity could be compounded by an untrained person (Gov. Exh. 7).

Brown testified he asked Gilley whether anyone at the mine was trained to provide first aid. Gilley responded Timmons had been trained, but after Timmons left, no one with current training worked at the mine (Tr. 109). Brown believed failing to have an employee at the mine who was currently trained in first aid was a violation of section 56.18010 (Tr. 109-110; Gov. Exh. 7). Brown considered it unlikely the lack of training would lead to an injury. He also believed the company, through Rohloff or Gilley, should have known no person was trained and should have corrected the problem (Tr. 110-111, 113).

Rohloff testified he was unaware of the requirement to have a trained person present at the mine during all working shifts (Tr. 116). Rohloff speculated the requirements of section 56.18010 Aprobably were discussed with . . . Timmons@ (Tr. 116), but that Timmons left the company in December 1996, more than 6 months before the citation was issued (Id.).

Upon becoming aware of the requirement, Rohloff made it company policy to train all employees at the mine (Tr. 116). Rohloff stated the closest ambulance service was 10 miles from the mine, and the closest major city, Saginaw, had a helicopter Amedivac@ service (Tr. 118).

THE VIOLATION. GRAVITY AND NEGLIGENCE

The standard requires an individual capable of providing first aid to be present at the facility on all working shifts. In addition, the individual=s training must be current. There is no doubt the violation existed. Brown was told by Gilley that no person at the mine had up-to-date training (Tr. 109), and Rohloff stated he was unaware of the requirement. (Tr. 116).

Brown did not think the violation was serious, and neither do I. There is no indication the mine had a history of accidents requiring the administration of first aid to miners. Nor is there any indication the mine contained hazards more dangerous than those faced by miners at similar facilities. According to Rohloff, Gilley once had been certified as trained in first aid, but his certification had lapsed (Tr. 151). I take Rohloff at his word, and I believe Gilley=s prior training diminished whatever hazard resulted from the violation. Moreover, any gravity was mitigated further by the facility being within 10 miles of ambulance service and within range of a Amedivac@ service.

The company obviously was negligent. Rohloff admitted he was unaware of the requirement (Tr. 116). Rohloff was responsible for knowing what was needed to comply. In failing to make certain a miner with current training was present at the mine when it was in operation, he exhibited a lack of the care required of him.

CITATION NO.	DATE	30 C.F.R. '	PROPOSED PENALTY
4564289	6/30/97	12028	$50

The citation states:

> The continuity and resistance of the grounding system was not tested annually. Testing the grounding system would ensure a low resistance path for fault current (Gov. Exh. 8).

In 1996, before the plant went into production, Hautamaki discussed the need for continuity and resistance testing with Timmons. Huatamaki told Timmons testing needed to be done before the plant began operating and yearly thereafter (Tr. 134-135)).

On June 30, 1997, the plant was operating (Tr. 130-131). During an inspection on that date, Brown discussed continuity and resistance testing with Gilley. Gilley told Brown he did not know how to test the continuity and resistance of the ground system, and therefore it had not been done (Tr. 123, 125-126).

Were this all of the testimony regarding the alleged violation, I would find the Secretary met her burden of proof. However, there is more. The record is clear that at some point after installation of the grounding system and prior to June 30, 1997, continuity and resistance testing was performed.

Judge: Do you know if continuity and resistance testing had been conducted previously at this facility?

Inspector Brown: [B]efore we go to a property we go over the previous inspection. And that box [on the form an inspector reviews prior to conducting an inspection]. . . said continuity and resistance yes or no, it said yes, ... It was prior to my inspection. Somebody had done a continuity and resistance test (Tr. 131).

THE VIOLATION

The standard requires testing of the continuity and resistance of grounding systems immediately after installation Aand annually thereafter@ (30 C.F.R. '56.12028). The Secretary established through Brown=s testimony that Gilley did not know of any tests that had been conducted and that Gilley did not know how to conduct the required tests (Tr. 123, 125-126). However, the Secretary=s allegation is, AThe continuity and resistance of the grounding system was not tested annually@ (Gov. Exh. 8). To meet her burden of proof, the Secretary had to establish no tests were conducted within a year of the previous tests. She did not establish when the prior tests were conducted. Therefore, I cannot find the tests were not conducted annually.

CITATION NO.	DATE	30 C.F.R. '	PROPOSED PENALTY
4564291	7/1/97	15001	$50

The citation states:

A stretcher and blanket [were] not provided as part of the first aid supply (Gov. Exh. 9)

Section 56.15001 specifies the first aid materials an operator must provide. The materials include stretchers and blankets. Brown testified on July 1, 1997, Gilley looked for, and could not find, a stretcher or a blanket at the mine (Tr. 138). Brown too did not see the items (Tr. 139). Brown thought the missing equipment was not likely to cause an injury. Brown found the company negligently failed to provide them (Tr. 139).

Rohloff maintained the company had designated two sheets of plywood as stretchers (Tr. 143-147). They were located in the tool trailer (Tr. 148). In addition, there was a piece of cloth, Aa curtain of some sort,@ that was intended to serve as a blanket (Tr. 143). However, Rohloff also testified Gilley may not have known the location of the plywood pieces and may not have known the cloth could be used a blanket because Gilley was not Aup to speed@ at the time of the inspection (Tr. 147).

THE VIOLATION, GRAVITY AND NEGLIGENCE

Section 56.15001 states in pertinent part, AAdequate first-aid materials, including stretchers and blankets, shall be provided at places convenient to all working areas.@ Brown did not see a stretcher and blanket, and his testimony that Gilley looked for and could not find them was not disputed (Tr. 138-139). I need not reach the question of whether the plywood boards and the cloth actually were on-site and if so were Aadequate,@ because the fact Gilley could not locate them establishes the violation. To Aprovide@ something, is to make it available (AProvide@ WWWebster Dictionary, http://www.m-w.com/cgi-bindictionary). Gilley represented the company at the work site. He could not make available items he could not find.

The violation was not serious. There is no indication in the record the company had a history of accidents. Moreover, as Rohloff pointed out, much of the time there were only two people at the site. If one were injured, the utility of a stretcher would have been negligible. Nevertheless, reasonable care, which the company failed to exercise, required the first aid items be provided.

OTHER CIVIL PENALTY CRITERIA

HISTORY OF PREVIOUS VIOLATIONS

The company has no applicable history of previous violations (Joint Exh. 1 &7).

SIZE OF BUSINESS

Counsel for the Secretary agreed the company is small in size (Joint Exh. 1 &5; Tr. 15).

ABILITY TO CONTINUE IN BUSINESS

The burden is on the operator to come forward with proof the size of any penalty assessed will affect its ability to continue in business. The company offered a financial statement prepared by the company=s CPA (Resp. Exh. 2). The statement, which is dated February 9, 1998, is the latest available (Tr. 158). The statement was complied from information presented by the company. Accordingly, the CPA does not express assurance as to fiscal conclusions drawn from the information (Resp. Exh. 2 at 1). Nevertheless, Rohloff, a generally reliable witness, was asked under oath if he attested to the veracity of the report, and he stated he did (Tr. 159). Further, Jody McPeak, who acts as bookkeeper for the company, also stated the report was accurate to the best of her knowledge (Tr. 168-169). There is no reason why the company would falsify the report which was not prepared for the hearing, and I credit its accuracy.

The report indicates that as of December 31, 1997, the company had a gross profit on sales of $37,816, and general and administrative expenses of $42,798 (Resp. Exh. 2 at 3). Thus, the company lost $4,982 for the 9 months ending December 31(Id.; Tr. 159). More to the point,

the report shows the company is carrying a long term debt of $321,594 (Id. at 2), $212,691 of which is owed to Michigan National Bank. Rohloff testified that instead of calling the note and sending the company into bankruptcy, the bank agreed to a one year extension on the note (Tr. 164). Rohloff also testified the company has a current contract from which it expects a small profit of $2,500 (Tr. 165-166). Rohloff, who does not take a salary from the company (Tr. 164, 166), described the company as Afinancially strapped@ (Tr. 163). McPeak characterized it as Arunning on empty@ (Tr. 167).

I conclude from the report and the testimony of Rohloff and McPeak that the company is indeed struggling to survive, and I find the amount of the penalties assessed will adversely affect the company=s ability to continue in business. Accordingly, I will reduce by half what I would assess otherwise.

GOOD FAITH IN ATTEMPTING TO ACHIEVE RAPID COMPLIANCE

All of the violations were abated within a time that was acceptable to MSHA, and I find the company exhibited good faith in attempting to achieve rapid compliance.

CIVIL PENALTY ASSESSMENTS

CITATION NO.	DATE	30 C.F.R. '	PROPOSED PENALTY	ASSESSMENT
4563927	9/4/96	56.5050	$50	$25

The violation was not serious and the company was negligent. These criteria and the company=s history of previous violations, its size, and its good faith abatement normally would warrant a penalty of $50. However, because an assessment of such size would adversely affect the company=s ability to continue in business, I find a $25 penalty is appropriate.

CITATION NO.	DATE	30 C.F.R. '	PROPOSED PENALTY	ASSESSMENT
4564290	7/1/97	56.11027	$81	$62

The violation was serious and the company was negligent. These criteria and those referenced above normally would warrant a penalty of $125. However, I find a $62 penalty is appropriate.

CITATION NO.	DATE	30 C.F.R. '	PROPOSED PENALTY	ASSESSMENT
4564287	6/30/97	56.18010	$50	$25

The violation was not serious and the company was negligent. These criteria and those referenced above normally would warrant a penalty of $50. However, I find a penalty of $25 is appropriate.

CITATION NO.	DATE	30 C.F.R. '	PROPOSED PENALTY	ASSESSMENT
4564289	6/30/97	12028	$50	$0

The Secretary did not prove the violation.

CITATION NO.	DATE	30 C.F.R. '	PROPOSED PENALTY	ASSESSMENT
4564291	7/1/97	15001	$50	$25

The violation was not serious and the company was negligent. These criteria and those referenced above normally would warrant a penalty of $50. However, I find a penalty of $25 is appropriate.

ORDER

Citation No. 4564289 is **VACATED.** Within 30 days, the company **WILL PAY** civil penalties of $136. Upon payment of the assessed penalties, this proceed is **DISMISSED.**

David Barbour
Administrative Law Judge

Distribution:

Ruben R. Chapa, Esq., Office of the Solicitor, U. S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, IL 60604 (Certified Mail)

Luke F. Rohloff, President, Rohloff Sand & Gravel Company, P. O. Box 2715, Midland, MI 48641-2715 (Certified Mail)

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