

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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May 21, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 2001-22-M
Petitioner	:	A.C. No. 31-02130-05502
v.	:	
	:	
MARTIN MARIETTA AGGREGATES,	:	
Respondent.	:	Franklin Quarry

DECISION

Appearances: Melody S. Wesson, and Terry Lingenfelter, U. S. Department of Labor, MSHA, Birmingham, Alabama, for the Secretary;
W. Scott Hunt, Martin Marietta Aggregates, Castle Hayne, North Carolina, for the Respondent.

Before: Judge Weisberger

This case is before me based upon a Petition for Civil Penalty filed by the Secretary of Labor alleging that Martin Marietta violated 30 C.F.R. Section 56.14132(a).

The basic underlying facts in this case are not disputed. On August 10, 2000, MSHA Inspector Darrell Brennan inspected Martin Marietta’s Franklin Quarry, an open pit quarry. He inspected a water-haul truck which was parked at a stockpile. The truck was provided with a reverse activated alarm, but it did not work. Brennan issued a citation alleging a violation of Section 56.14132(a) which provides as follows: “[m]anually-operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety feature shall be maintained in functional condition.”

Martin Marietta did not contest any of the above facts. As a defense, it argues that it was improperly cited, as the truck was not available for use on August 10. In this connection, John W. Allgood, Jr., the assistant plant manager at the quarry, indicated that on August 10 it was not intended by Martin Marietta, to use the water-haul truck, which is used to control dust on the site, inasmuch as the roads were wet, as about a half inch of rain had fallen the night of August 9 and the morning of August 10 prior to the inspection. He indicated that according to company policy, the truck is not ready to be used until a pre-shift examination is performed. Since at the time of the inspection the pre-shift had not yet been performed as the roads were still

wet, Martin Marietta had not intended to use the truck at that time. In this connection Martin Marietta further argues that since 30 C.F.R. Section 56.14100 requires a pre-shift examination of equipment before placing that equipment in operation, the haul truck could not have been put in use prior to the completion of the pre-shift examination, and it was improperly cited.

According to the unambiguous wording of Section 56.14132(a) supra, an audible warning device provided on equipment as a safety feature "... shall be maintained in functional condition." Nothing in the plain wording of Section 56.14132(a), supra, limits its applicability to self-propelled mobile equipment that is in use or available for use. To make such a ruling, as in essence urged by Martin Marietta, would have the effect of amending a regulation that is clear on its face. Accordingly, I find Martin Marietta's position to be without merit.

Further, I note that Martin Marietta's reliance on Secretary of Labor v Giant Cement Co. 13 FMSHRC 286 (Judge Melick, Feb. 25, 1991), is misplaced. In Giant Cement supra, the issue presented was whether the operator violated 30 C.F.R. Section 56.14100(b) which provides, that safety defects "... shall be corrected in a timely manner." Judge Melick held that it was premature to find a violation under Section 56.14100(b) i.e., that corrections were not made in a "timely" fashion, since a pre-shift examination had not yet been made when cited, nor was it required before the cited loader would next be operated. In contrast, the cited standard herein does not pertain to correcting safety defects in a timely manner, but requires that warning devices on mobile equipment be maintained in functional condition. Inasmuch as the evidence establishes that the alarm did not operate, it had not been maintained in functional condition, and Martin Marietta was properly cited.

According to Allgood, the truck had been used on August 9 and no defects were noted; normally a pre-shift is performed prior to use; that there was no intention to use the truck when cited as it was not needed since the roads were wet; and that it is standard procedure that if a defect is found on pre-shift examination, the equipment is tagged out and the defect is repaired. Considering these facts, which have not been rebutted by the Secretary, I find that the level of Martin Marietta's negligence was negligible. Take into account the factors set forth in Section 110(i) of the Act as stipulated to by the parties, I find that a penalty of \$25.00 is appropriate for this violation.

Order

It is **Ordered** that Martin Marietta shall, within 30 days of this Decision, pay a total civil penalty of \$25.00.

Avram Weisberger
Administrative Law Judge

Distribution List (Certified Mail)

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