

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3993/FAX 303-844-5268

August 21, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 93-452-M
Petitioner : A.C. No. 42-01975-05504
: :
v. : Lakeview Rock Products
: :
LAKEVIEW ROCK PRODUCTS, INC., :
Respondent :

DECISION

Appearances: Ann Noble, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
Gary V. Smith, North Salt Lake City, Utah,
for Respondent.

Before: Judge Cetti

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq., the "Act". The Secretary of Labor on behalf of the Mine Safety and Health Administration (MSHA), seeks civil penalties from Respondent Lakeview Rock Products, Inc., ("Lakeview") for the alleged violation of four mine safety standards found in Part 56, Title 30, Code of Federal Regulations.

Lakeview filed a timely answer contesting the existence of each of the violations and the assessment of penalties. Pursuant to notice to the parties the case was heard at Salt Lake City, Utah. Oral and documentary evidence was presented and the matter submitted for decision.

Stipulations

At the hearing the parties entered the following stipulations into the record:

1. Lakeview Rock Products, Inc., is engaged in mining and selling of sand and gravel in the United States and its mining operations affect interstate commerce.

2. Lakeview Rock Products, Inc., is the owner and operator of Lakeview Rock Products, Inc., MSHA I.D. No. 42-01975.

3. Lakeview Rock Products, 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 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 operator demonstrated good faith in abating the violations.

8. Lakeview Rock Products, Inc., is a small mine operator with 8,720 hours of work in 1992.

9. 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.

10. The issue regarding Citation No. 4120260 is whether a portion of the berm at the grizzly was missing or inadequate.

11. A ramp ran from the plant area to the primary plant feed. Tracked vehicles used this ramp. The issue with regard to Citation No. 4120281 is whether the berms for the ramp were improperly missing or inadequate.

12. The V-belt drive and feeder chain on the primary crusher were not guarded at the time of the inspection. The issue, with regard to Citation No. 4120282, is whether such guarding was required.

13. The tail pulley on the stacker conveyor belt was not guarded at the time of the inspection. The issue, with regard to Citation No. 4120283, is whether such guarding was required.

Citation No. 4120260

This citation alleges a violation of 30 C.F.R. ' 56.8300(a). The citation reads as follows:

The berm at the primary grizzly was not maintained in a condition to prevent equipment from dropping over the retaining wall. A 10-foot section of the berm was missing on the south side of the approach.

It is unlikely that a vehicle would drop over the retaining wall, since the missing berm was located near the grizzly and the equipment was nearly stopped at that point.

The cited safety standard provides:

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

Inspector Pennington testified that he observed a rubber tired front-end loader pick up material and carry it to the primary grizzly. The approach to this grizzly had a berm consisting of a retaining wall constructed with dirt and concrete blocks. The purpose of the berm was to protect vehicles and machinery using this approach from the hazard of a 10 to 13 foot drop-off. Inspector Pennington testified there was a 10-foot section with no berm along the south side of the approach. Pennington conceded that it was unlikely that a vehicle would drop over the edge since the missing section of berm was located near the grizzly where the front-end loader bringing material to dump in the grizzly slows to a near stop.

Respondent presented evidence that the loader was wider than the missing 10-foot section of berm and that an accident was unlikely. Respondent promptly abated the violation within 20 minutes after the citation was issued.

I find there was a violation of the cited safety standard; that there was no reasonable likelihood that the hazard contributed to would result in an injury. Since injury was unlikely, the inspector properly issued the citation as a 104(a) violation that was not significant and substantial.

Upon consideration of the penalty criteria set forth in section 110(a) of the Act I find the MSHA proposed penalty of \$50.00 is the appropriate penalty for this non-S&S, 104(a) violation of this safety standard.

Citation No. 4120281

This citation also alleges a violation of 30 C.F.R. ' 56.900(a) regarding berms. The citation reads as follows:

A 50-foot section of the berm was missing from the ramp. The missing berm was located on the south side of the ramp and the maximum drop-off was approximately 10 feet. The drop-off was a gradual slope and it is unlikely that a serious injury would occur if a vehicle should leave the roadway.

Inspector Pennington testified that there was a 50-foot section without a berm near the bottom half of the 100-foot long ramp. The ramp extended from the bottom area of the pit to the primary feeder located at a higher level. There was a 10-foot drop from the edge of the ramp along the section that was cited for not having a berm.

On cross-examination, the inspector agreed that the ramp was used only occasionally and that the drop-off was not vertical. The drop-off was sloped two to one. The inspector conceded that injury was unlikely.

The evidence presented established a violation of the cited safety standard. The inspector properly evaluated the violation as non-significant and substantial and Respondent's negligence was moderate. I have considered the statutory criteria in section 110(a) of the Act and find that the MSHA \$50.00 proposed penalty is the appropriate penalty for this non-S&S violation of the cited safety standard.

Citation No. 4120282

This citation alleges a violation of 30 C.F.R. ' 56.14107(a).

The citation reads as follows:

The V-belt drive and feeder chain was not guarded on the primary crusher. The exposed

pinch points were located 4 feet from a travelway and 5 feet above the ground.

Employees do not enter into this area when the plant is running. Their (sic) is a danger of being struck by falling rock from the grizzly located above the feeder. Employees are aware of the hazards and stay out of the area.

30 C.F.R. ' 56.14107 subsections (a) and (b) provide as follows:

' 56.14107 Moving machine parts.

(a) Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, couplings, shafts, fan blades, and similar moving parts that can cause injury.

(b) Guards shall not be required where the exposed moving parts are at least seven feet away from walking or working surfaces.

Inspector Pennington testified that there was a feeder chain and a V-belt drive on the primary crusher. Neither had a guard. The exposed pinch points were located four feet from a travelway and five and one-half feet above the ground. The inspector acknowledged that if an employee were to enter the area where he would be exposed to the hazard of the pinch points there is a danger he would be struck by falling oversize rocks. These rocks fall down a distance of about 10-feet from the top of the grizzly whenever the machinery is operating. Employees are aware of this hazard and consequently never enter this area when the plant is running.

The inspector testified that the alleged violation was abated not by guarding the pinch points but by cleaning out the rock pile below the grizzly. The inspector freely admitted that when the rocks that were piled on the ground below the grizzly were cleaned out there was a distance of seven feet from the ground to the pinch points. The inspector further explained that the rocks that had fallen from the top of the grizzly had accumulated so that it sloped up about five feet above ground level. The inspector took his four foot measurement from the top of the rock pile to the pinch point.

Scott Hughes, the pit manager, at the site for the last 12 years was called by Respondent. He testified whenever the plant is operating there are rocks falling 8 to 10 feet from the top of the grizzly to the area below where the unguarded pinch points are located.

Mr. Hughes testified the pinch point on the V-belt and pulley drive and the chain feeder are approximately 10 feet above the ground level. No employee has been in that area when the plant is operating during the 12 years he has been at the pit. When Inspector Pennington showed up for the inspection, Respondent shut everything down including all the machinery so Mr. Pennington could conduct his inspection without any interference.

At the end of each shift the rocks below the pinch points are cleaned out by use of a rubber tired loader with full overhead protection. There is no manual cleaning of the area below the pinch points.

Mr. Hughes also testified that the V-belt and chain drive assembly are maintenance free. They do not use grease or any other lubricant. He also stated that to even try to get close to the pinch points an employee would have to climb the rock pile on his hands and knees and if he attempted to do this while the machinery was running he would also be exposed to the hazard of being struck by the oversize rocks falling from the top of the grizzly.

Subsection (b) of the 30 C.F.R. ' 56.14107 clearly states that guards shall not be required where the moving parts are at least seven feet away from walking or working surfaces. On the basis of the testimony of both the inspector and plant manager and also the photograph of the rocks below the pinch point introduced as Petitioner's exhibit 3, I find the rock pile below the exposed pinch point is not a "walking" or "working surface" within the meaning of the cited safety standard. The unguarded exposed moving parts were at least seven feet from walking or working surfaces and thus clearly falls within the exclusion of the need to guard specified in subsection (b) of the cited safety standard. For this reason Citation No. 4120282 is vacated.

Citation No. 4120283

This citation issued under 104(a) of the Act alleges a violation of 30 C.F.R. ' 56.14107(a).

The citation reads as follows:

The tail pulley on the stacker conveyor belt was not guarded. This pulley was a smooth drum type and located approximately 3 feet above the ground. The exposed pinch point was created where the return conveyor belt meets the tail pulley. It is unlikely that an incident would occur since employees do not enter the area when the plant is running. There is a fall of rock hazard from the primary grizzly located near-by.

30 C.F.R. ' 56.14107 subsection (a) and (b) provide as follows:

' 56.14107 Moving machine parts.

(a) Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, couplings, shafts, fan blades, and similar moving parts that can cause injury.

(b) Guards shall not be required where the exposed moving parts are at least seven feet away from walking or working surfaces.

It is undisputed that the tail pulley for the stacker conveyor belt did not have a guard. The tail pulley was flat and the conveyor belt was 30 to 36 inches wide. There was an exposed pinch point between the return conveyor belt and the tail pulley.

The inspector testified he believed it was unlikely that anyone would enter the area where they would be exposed to the hazard of the unguarded pulley because of the hazard of being hit by rocks falling down from the top of the grizzly whenever the machinery is operating.

The cited violation was abated by installing a guard over the tail pulley. The inspector evaluated the Respondent's negligence as moderate.

On cross-examination the inspector testified that a person could walk up to the unguarded tail pulley and that his 3-foot measurement was taken from the ground to the pinch point and not from the top of any build-up. This was confirmed by the notes he took during his inspection.

Mr. Smith, the plant manager, testified that he believes the inspector took the 3-foot measurement from the top of the build-up to the tail pulley and not from the ground. He stated the pulley "is about seven feet above the ground."

I credit the testimony of Inspector Pennington and find the cited safety standard was violated since the tail pulley had no guard and the unguarded tail pulley was less than seven feet from a walking surface. I also agree with the inspector that the operator's negligence was no more than moderate. Upon consideration of the statutory criteria in section 110(i) of the Act I find the appropriate penalty for this violation is the MSHA proposed penalty of \$50.00.

ORDER

Based upon the foregoing findings and conclusions it is **ORDERED** that:

1. Citation No. 4120260 is **AFFIRMED** and a civil penalty of \$50.00 is assessed for this violation.
2. Citation No. 4120821 is **AFFIRMED** and a penalty of \$50.00 is assessed.
3. Citation No. 4120282 along with its proposed penalty is **VACATED**.
4. Citation No. 4120283 is **AFFIRMED** and a penalty of \$50.00 is assessed.
5. **RESPONDENT SHALL PAY** a civil penalty of \$150.00 to MSHA within 40 days of this decision. Upon receipt of payment this case is dismissed.

August F. Cetti
Administrative Law Judge

Distribution:

Ann Noble, Esq., Office of the Solicitor, U.S. Department of
Labor, 1999 Broadway, Suite 1600, Denver, CO 80202-5716
(Certified Mail)

Mr. Gary V. Smith, LAKEVIEW ROCK PRODUCTS, INC., 900 North
Redwood Road, North Salt Lake, UT 84054 (Certified Mail)

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