

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 2, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 94-699-M
Petitioner : A.C. No. 48-00152-05639
 :
v. :
 : FMC Trona Mine
FMC WYOMING CORPORATION, :
Respondent :

DECISION

Appearances: Robert Cohen, Esq., Office of the Solicitor
U.S. Department of Labor, Arlington, Virginia,
for Petitioner;
Matthew F. McNulty, P.C., 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), charged the Respondent, FMC Wyoming Corporation (FMC), the operator of the Trona Mine with the violation of two regulatory safety standards set forth in Part 57 Title 30 Code of Federal Regulations.

The operator filed a timely answer contending there were no violations of the cited safety standards. Pursuant to notice to the parties, the matter came up for hearing at Salt Lake City on April 2, 1996.

Citation No. 4405834 alleges a violation of 30 C.F.R. ' 57.14107(a) which requires the guarding of moving machine parts. At the hearing, counsel for the Secretary, after viewing pictures of the affected area, stated for the record that Citation No. 4405834 was being vacated. He explained on the record the reason why it was determined that the citation should be vacated.

The coupling and drive shaft between the motor and the hoist was indeed guarded but there was a close question whether it was adequately guarded. At the hearing, after viewing the picture of the guard and its related drive shaft and the coupling, the parties agreed the citation should be vacated.

Originally this docket included Citation No. 4125239 which charged the operator with the violation of 30 C.F.R.' 57.5050 involving exposure limits for noise. This citation was vacated by MSHA.

ORDER

Both Citation Nos. 4405834 and 4125239 are **VACATED** and this case is **DISMISSED**.

August F. Cetti
Administrative Law Judge

Distribution:

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