

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 30, 2000

DARWIN STRATTON & SON INC.,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. WEST 2000-371-RM
	:	Order No. 7966584; 4/24/2000
	:	
	:	Docket No. WEST 2000-372-RM
	:	Citation No. 7966585; 4/22/2000
	:	
	:	Docket No. WEST 2000-373-RM
	:	Order No. 7966587; 4/22/2000
v.	:	
	:	Docket No. WEST 2000-374-RM
	:	Citation No. 7941252; 4/26/2000
	:	
	:	Docket No. WEST 2000-375-RM
	:	Order No. 7941253; 4/26/2000
	:	
	:	Docket No. WEST 2000-376-RM
	:	Order No. 7941254; 4/26/2000
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEST 2000-377-RM
ADMINISTRATION (MSHA),	:	Order No. 7941255; 4/26/2000
Respondent	:	
	:	Docket No. WEST 2000-378-RM
	:	Order No. 7941256; 4/26/2000
	:	
	:	Docket No. WEST 2000-379-RM
	:	Order No. 7941257; 4/26/2000
	:	
	:	Docket No. WEST 2000-380-RM
	:	Order No. 7941258; 4/26/2000
	:	
	:	Docket No. WEST 2000-381-RM
	:	Citation No. 7941259; 4/26/2000
	:	
	:	Docket No. WEST 2000-382-RM
	:	Order No. 7941260; 4/26/2000

: Docket No. WEST 2000-383-RM
: Citation No. 7941261; 4/26/2000
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: Docket No. WEST 2000-384-RM
: Citation No. 7941262; 4/26/2000
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: Docket No. WEST 2000-385-RM
: Order No. 7941263; 4/26/2000
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: Order No. 7941264; 4/26/2000
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: Docket No. WEST 2000-387-RM
: Order No. 7941265; 4/27/2000
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: Docket No. WEST 2000-388-RM
: Order No. 7941266; 4/26/2000
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: Docket No. WEST 2000-389-RM
: Order No. 7941267; 4/26/2000
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: Docket No. WEST 2000-390-RM
: Order No. 7941268; 4/26/2000
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: Docket No. WEST 2000-391-RM
: Citation No. 7941269; 4/27/2000
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: Docket No. WEST 2000-392-RM
: Citation No. 7941270; 4/27/2000
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: Docket No. WEST 2000-393-RM
: Order No. 7941271; 4/27/2000
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: Docket No. WEST 2000-394-RM
: Order No. 7941272; 4/27/2000
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: Docket No. WEST 2000-395-RM
: Citation No. 7941273; 4/27/2000
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: Docket No. WEST 2000-396-RM
: Citation No. 7941274; 4/27/2000

: Docket No. WEST 2000-397-RM
: Order No. 7941275; 4/27/2000
:
: Docket No. WEST 2000-398-RM
: Citation No. 7941276; 4/27/2000
:
: Docket No. WEST 2000-443-RM
: Citation No. 7966588; 4/22/2000
:
: Rattlesnake Pit
: Mine ID 42-02283

DECISION

Appearances: John Rainwater, Esq., Office of the Solicitor, U.S. Department of Labor, Denver Colorado, for Respondent.

Before: Judge Manning

These cases are before me on notices of contest filed by Darwin Stratton and Son, Inc., (“Darwin Stratton”) against the Department of Labor’s Mine Safety and Health Administration (“MSHA”), pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815(d)(the “Mine Act”). A hearing was held in Washington, Utah, on October 3, 2000, but Darwin Stratton failed to appear at the hearing. The citations and orders at issue in these proceedings were issued following MSHA’s investigation of a fatal accident that occurred at the Rattlesnake Pit on April 21, 2000. MSHA was unaware of the existence of the Rattlesnake Pit until this fatal accident.

I. FINDINGS OF FACT

The Rattlesnake Pit is a small sand and gravel mine owned and operated by Darwin Stratton near Hurricane, Utah, in Washington County. Sand and gravel is extracted from a dry stream bed, transported by truck to an adjacent wash plant, and stockpiled. The stockpiled material is fed into a hopper and conveyed to a single-deck screen where oversized material is separated. The sand is then fed into a screw classifier and mixed with water to remove unwanted material. The finished sand is sold for use in making concrete. (Tr. 14; Ex. 3).

This pit has been operating for about five years, but MSHA was never notified of its existence. As a consequence, the pit was never inspected by MSHA. Darwin Stratton notified Utah-OSHA of the fatal accident. MSHA learned of the accident on the morning of April 22, 2000, when an official from Utah-OSHA called MSHA’s Denver office. MSHA began its investigation of the accident later that day. (Tr. 11-12).

Candi Reeve, the accident victim, was the only person working at the pit on April 21. She was fatally injured when she became entangled in the moving conveyor belt tail pulley. There was no guard present to protect persons from contacting the tail pulley. Ms. Reeve arrived at the pit early in the morning on April 21 accompanied by Todd Stratton, the foreman. (Tr. 46). Mr. Stratton re-instructed her on the operation of the front-end loader and the wash plant. He watched her work for a short period and then he left at about 8:30 a.m., leaving her alone to operate the facility. (Tr. 46-47). He also warned her to stay away from the conveyor. (Tr. 64). When Ms. Reeve failed to return to Darwin Stratton's office in Hurricane, Clayton Stratton, president of the company, asked an employee to check on her. At about 4:00 p.m., the employee observed Ms. Reeve caught in the tail pulley. He found no vital signs. County emergency personnel transported her to the Utah Medical Examiner's office. The Medical Examiner determined that her death was caused by asphyxia due to the compression of her neck by her clothing that had become entangled in the conveyor belt assembly. (Ex. 2D).

Based on its investigation, MSHA determined that the accident was caused by "management's failure to install guards on the conveyor tail pulley." (Ex 3, p.5). MSHA further determined that "[a]ssigning the inexperienced victim to work alone in an area where hazardous conditions existed without arranging for scheduled communication contact contributed to the severity of the accident." *Id.*

Darwin Stratton timely contested the citations and orders that are the subject of these proceedings, but otherwise refused to cooperate with the undersigned judge or the Department of Labor's attorney. The Secretary filed a motion to stay these proceedings until civil penalties were proposed. I also asked Darwin Stratton's representative whether he would prefer to stay these cases until MSHA proposed civil penalties for the citations and orders. (Letter dated June 28, 2000). In response, Darwin Stratton's representative objected to any stay in these proceedings and asked that the cases proceed to hearing. (Letters dated June 26 and July 6, 2000). Consequently, I denied the Secretary's motion to stay the proceedings and established a hearing date of October 3, 2000. (Order dated July 11, 2000).

Starting in July 2000, various people who purport to represent Darwin Stratton began writing letters to me stating that MSHA was without jurisdiction to inspect the Rattlesnake Pit. These letters also made demands under various state laws including the Uniform Commercial Code ("UCC"). I responded to these letters by sending several orders and letters to Darwin Stratton explaining how these proceedings would be conducted. I explained that the UCC does not apply to these proceedings and that MSHA's citations and orders raise serious issues that may have significant implications for Darwin Stratton. Darwin Stratton began refusing all mail sent from me and from the Solicitor's office. Mr. Pat Morgan, Darwin Stratton's representative, signed and dated the outside of the envelopes and returned them to me unopened. He also used rubber stamps on the outside of the envelopes with the following messages: "Without Dishonor U.C.C. 3-505" and "Refuse Mail Service to Federal Area/Possession." Darwin Stratton failed to respond to the Secretary's discovery requests, failed to respond to my orders, and also returned all documents sent by the Solicitor's office. Darwin Stratton returned the notice of hearing unopened. The outside of the envelope bears the signature of Pat Morgan.

On August 3, 2000, I sent Darwin Stratton an unmarked envelope containing a copy of all of the letters and orders that I had previously issued, along with a letter explaining Commission procedures and the importance of these cases. I used stamps for postage and supplied no return address in the hope that Mr. Morgan would open it. He returned the envelope, unopened, to the Solicitor's office marked with the same rubber stamps. All of my subsequent letters and orders were returned unopened in the same fashion.

On August 28, 2000, the Secretary filed a motion for expedited hearing on the basis that Darwin Stratton had not abated one of the citations in these cases. When an MSHA inspector returned to the pit in June, another individual was working alone. One of the citations in this case cited Darwin Stratton for allowing a miner to work alone without meeting the requirements set forth at 30 C.F.R. §56.18020. MSHA issued a follow-up citation under section 104(a) so that it could issue a section 104(b) order and assess daily penalties under section 110(b) of the Mine Act if the condition was not abated.

On September 1, 2000, I issued a notice of hearing site in which I set out the exact location for the hearing to commence at 9 a.m. on October 3. I sent a copy of this notice to Pat Morgan and to the two individuals who had sent me letters: "Johnpatrick: Morgan" of Fredonia, Arizona, and "Clayton-Todd: Stratton" of La Verkin, Utah. In each instance, the notice of hearing site was returned unopened. The outside of the envelopes addressed to Pat Morgan and Todd Stratton ("Clayton-Todd: Stratton") bear the signature of the addressee and the same rubber stamps. In the meantime, representatives of Darwin Stratton continued to send letters holding me and the Secretary in default for failing to respond to their letters.

The hearing commenced at 9 a.m. on October 3, 2000, in Washington, Utah, as scheduled. Mr. Rainwater appeared on behalf of the Secretary of Labor but no representatives for Darwin Stratton appeared at the hearing. Mr. Rainwater advised me that he had not been able to make contact with anyone from Darwin Stratton since he first discussed the cases with representatives of Darwin Stratton soon after it contested the citations and orders.

II. DISCUSSION WITH FINDINGS AND CONCLUSIONS

I hold that MSHA has jurisdiction to inspect the Rattlesnake Pit. The facilities at that pit easily fit within the definition of "coal or other mine" in section 3(h)(1) of the Mine Act. Minerals are extracted from the earth, the extracted minerals are milled at the wash plant, and the resulting product is sold to customers. The milling consists of separating the sand from the unusable material and then cleaning the sand. The functions performed at this pit are the same as are typically found at sand and gravel pits throughout the country. Courts and the Commission have consistently held that sand and gravel pits are subject to MSHA jurisdiction. Because the products of this pit enter or affect commerce, the pit is subject to the provisions of the Mine Act in accordance with section 4 of that act.

I made every attempt to ensure that Darwin Stratton was served with notice of the hearing. Darwin Stratton specifically requested that these cases not be stayed and asked that the

cases proceed to hearing. Yet, it refused to accept any mail from my office or from the Secretary. The citations and orders issued by MSHA raise serious safety issues at the pit. Its failure to cooperate raises questions about its commitment to the safety of its employees.

Under 29 C.F.R. §2700.66(b), I could have simply held Darwin Stratton in default at the commencement of the hearing and dismissed these proceedings with prejudice. Because the cases involve a fatality and the citations and orders raise serious safety issues, I felt it was important to hear the testimony of the MSHA inspectors and to review the exhibits prepared by the Secretary. Consequently, the hearing proceeded without Darwin Stratton being present. A summary of the evidence and my findings with respect to the citations and orders are set forth below.

A. Accident Investigation

1. Citation No. 7966585; WEST 2000-372-RM

This citation, as modified, alleges a violation of 30 C.F.R. §56.14107(a) as follows:

A wash plant operator was fatally injured at this mine on April 21, 2000, when she was caught in the unguarded tail pulley for the wash plant feed conveyor. The mine operator stated that the pulley was never guarded. This tail pulley was located at ground level....

MSHA Inspector Dennis Harsh determined that the violation was serious, was of a significant and substantial nature (“S&S”), and was caused by Darwin Stratton’s unwarrantable failure to comply with the standard. Section 56.14107(a) provides, in pertinent part, that “[m]oving machine parts shall be guarded to protect persons from contacting ... drive, head, tail, and takeup pulleys, ... and similar moving machine parts that can cause injury.”

I find that the Secretary established a violation based on the testimony of Inspector Harsh as corroborated by the photographs introduced at the hearing. Both sides of the tail pulley are shown in photograph Nos. 7, 8, and 8A in Exhibit 1. No guard was present at the tail pulley. (Tr. 38). The tail pulley is accessible and is not seven or more feet away from a walking or working surface. (Tr. 39). The feeder bin (“hopper”) and its support structure above the belt limited the work area around the tail pulley. Clearance between the hopper frame and the belt assembly on the north side of the tail pulley where the accident occurred was about 32 inches. One would have to walk close to the belt or through the support frame for the hopper to access the area. (Ex. 1, photo 6; Ex. 3 p. 4). It is not clear why Ms. Reeve was working in the immediate area of the tail pulley but it is clear that she was close enough to become entangled. (Tr. 40-41). There was spillage in the area of the tail pulley. Ms. Reeve’s lunch was still in her truck, so the accident may have occurred relatively early in her shift. (Tr. 49). Darwin Stratton representatives told Inspector Harsh that it did not believe that the exposed tail pulley presented a hazard because the belt moved slowly. (Tr. 43). The safety standard does not provide an exception for slow moving belts. Slow moving pulleys and belts can injure miners if their clothing becomes entangled or if their hands or feet get close to the moving parts.

I also find that the Secretary established that the violation was serious and S&S. An S&S violation is described in section 104(d)(1) of the Mine Act as a violation “of such nature as could significantly and substantially contribute to the cause and effect of a ... mine safety or health hazard.” A violation is properly designated S&S “if based upon the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature.” *National Gypsum Co.*, 3 FMSHRC 822, 825 (April 1981). In *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (January 1984), the Commission set out a four-part test for analyzing S&S issues. Evaluation of the criteria is made assuming “continued normal mining operations.” *U.S. Steel Mining Co.*, 6 FMSHRC 1573, 1574 (July 1984). The question of whether a particular violation is S&S must be based on the particular facts surrounding the violation. *Texasgulf, Inc.*, 10 FMSHRC 498 (April 1988).

The Secretary must establish: (1) the underlying violation of the safety standard; (2) a discrete safety hazard, a measure of danger to safety, 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. The Secretary is not required to show that it is more probable than not that an injury will result from the violation. *U.S. Steel Mining Co.*, 18 FMSHRC 862, 865 (June 1996).

I find that the Secretary met all four elements of the Commission’s S&S test. A violation existed that created a discrete safety hazard. There was a reasonable likelihood that the hazard contributed to by the violation would result in an injury, assuming continued normal operations. Finally, there was a reasonable likelihood that any injury would be of a reasonably serious nature. The cited condition had existed for a considerable length of time and it was only a matter of time before someone was seriously injured by the hazard presented. The violation was very serious.

Finally, I conclude that the violation was the result of Darwin Stratton’s unwarrantable failure to comply with the safety standard. The Commission held that unwarrantable failure is aggravated conduct constituting more than ordinary negligence. *Emery Mining Corp.*, 9 FMSHRC 1997, 2004 (December 1987). Unwarrantable failure is characterized by such conduct as “reckless disregard,” “intentional misconduct,” “indifference,” or a “serious lack of reasonable care.” *Id.* at 2003-04; *Rochester & Pittsburgh Coal Co.*, 13 FMSHRC 189, 193-94 (February 1991). The Commission stated that “a number of factors are relevant in determining whether a violation is the result of an operator’s unwarrantable failure, such as the extensiveness of the violation, the length of time that the violative condition has existed, the operator’s efforts to eliminate the violative condition, and whether an operator has been placed on notice that greater efforts are necessary for compliance.” *Mullins and Sons Coal Co., Inc.*, 16 FMSHRC 192, 195 (February 1994)(citation omitted). The Commission also takes into consideration the mine operator’s knowledge of the existence of the dangerous condition. *Cyprus Plateau Mining Corp.*, 16 FMSHRC 1604, 1608 (August 1994).

The tail pulley had never been guarded at the pit. (Tr. 42-43). The violation was so obvious that I can say without hesitation that if the Rattlesnake Pit had ever been inspected by MSHA, the condition would have been cited by the MSHA inspector and this accident would

have never occurred. Darwin Stratton knew that the tail pulley was not guarded and did nothing to correct the condition. The fact that Todd Stratton warned Ms. Reeve to stay away from the conveyor indicates that he knew of the hazard. For the reasons stated above, this citation is affirmed, as modified by MSHA.

2. Order No. 7966587; WEST 2000-373-RM

This order alleges a violation of 30 C.F.R. §56.18020 as follows:

A plant operator was fatally injured at this mine on April 21, 2000, when she was caught in the unguarded wash plant feed conveyer tail pulley. The wash plant operator was assigned, required, or allowed to perform work alone where hazardous conditions existed. The conveyor tail pulley was not guarded and additional safety hazards existed which were cited separately....

Inspector Harsh determined that the violation was serious, was S&S, and was caused by Darwin Stratton's unwarrantable failure to comply with the standard. Section 56.18020 provides that "[n]o employee shall be assigned, or allowed, or required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen."

I find that the Secretary established a violation. Ms. Reeve was 18 years old and had about two weeks of mining experience.¹ She had never been assigned to work alone at the pit before this date. (Tr. 46-47). Her only means of communication was a two-way radio in her truck. (Tr. 48). This truck was parked about 150 feet from the accident site. Although the pit was close to a highway, no representatives from Darwin Stratton checked on her between 8:30 a.m. and about 4 p.m. (Tr. 48-49). She was the only person at the pit for the entire period. Inspector Harsh testified that it is not unusual for people to work alone at wash plants. (Tr. 62-63). In such instances, MSHA requires that the mine establish a means by which the employee can communicate with others in the company. *Id.* If Ms. Reeve had been wearing a communication device, she may have been able to get help when she first became entangled. (Tr. 49-50).

There have been few Commission decisions on "working alone" standards. In *Old Ben Coal Co.*, 4 FMSHRC 1800 (October 1982), the Commission reviewed section 77.1700, a similar standard for surface coal mines. In that case the Commission held that when an employee is working alone there must be a means of "communication or contact of a regular and dependable nature commensurate with the risk present in a particular situation." *Id.* at 1803. In *Cotter*

¹ Inspector Harsh testified that Darwin Stratton representatives were rather evasive when questioned about Ms. Reeve's experience. (Tr. 46). Inspector Harsh estimated that she had about two weeks experience based on the information given to him. (Tr. 60-61). Ms. Reeve was Clayton Stratton's niece and Todd Stratton's cousin.

Corp.

not prohibit working alone. In interpreting the predecessor standard, the Commission held that hazardous conditions within the meaning of the regulation are associated with that task.” The need not be continual, was sufficient to satisfy the protective purposes of the standard.”

Although the language of the standard cited in this case differs from the standard cited in , the basic principles are the same. I find that hazardous conditions were associated with of a guard on the tail pulley. (Tr. 47). Other hazards were present as described in the other experience, the potential hazard was considerable. (Tr. 50). Ms. Reeve did not have any means help could not be heard. (Tr. 45). She did not have a communication device on her person. No insufficient to satisfy the protective purposes of the standard. I find that these conditions present

I also find that the violation was S&S. There existed a reasonable likelihood that the nature. In reaching this conclusion, I have considered the experience of the employee, the nature of an emergency. The radio in the truck was insufficient to meet the requirements of the standard

Finally, I find that the violation was the result of Darwin Stratton’s unwarrantable failure at operating the wash plant and that she would be working alone for the entire shift. The operator accident occurred unless she could make it to her truck. Darwin Stratton’s aggravated conduct is been entangled in the conveyor belt assembly for a considerable length of time. If a means of the reasons stated above, this order is affirmed as written.

² As
Citation
6).
penalties.

Citation No. 7966588; WEST 2000-443-RM

This citation, as modified, alleges a violation of 30 C.F.R. §50.10 as follows:

A fatal accident occurred at this operation on April 21, 2000. The operator failed to notify MSHA of the fatality despite operating another mine in the area and having knowledge of the reporting requirements.

Inspector Harsh determined that the violation was not serious, was not S&S, and was the result of Darwin Stratton's high negligence. Section 50.10 provides that a mine operator must immediately contact MSHA if an accident occurs at its mine. Section 50.2(h) defines "accident" to include the "death of an individual at a mine."

The Secretary established a violation of this regulation. Darwin Stratton did not notify MSHA of the fatal accident. MSHA was advised of the accident by the State of Utah's occupational safety and health agency. I also find that Darwin Stratton's negligence was high. Darwin Stratton operates the Airport Pit in the same county. (Tr. 67). Because the Airport Pit had been previously inspected by MSHA, Darwin Stratton was aware or should have been aware of the reporting requirements under section 50.10. For the reasons stated above, this citation is affirmed as modified.

B. Regular Inspection

The remainder of the citations and orders in these proceedings were issued during a regular inspection conducted by MSHA Inspector Richard Arquette during the accident investigation.³ These citations and orders are affirmed in all respects as written or modified.

1. Failure to Notify MSHA of Operation

Inspector Arquette issued Order No. 7941258 and Citation No. 7941259 because Darwin Stratton failed to notify MSHA that it was operating the Rattlesnake Pit. The inspector alleged a violation of section 56.1000 in the unwarrantable failure order and a violation of section 41.11 in the section 104(a) citation. Section 41.11 requires operators to file a legal identity report providing information on their ownership with the MSHA district manager. Section 56.1000 requires operators to notify the local MSHA office when it starts and stops its operations.

The Darwin Stratton failed to comply with the regulations. (Tr. 90-91, 93-94). Although MSHA was aware of Darwin Stratton's Airport Pit, MSHA did not know that the Rattlesnake Pit existed. Darwin Stratton previously filed a legal identity report for the Airport Pit but not for the Rattlesnake Pit. As a consequence, the Rattlesnake Pit was never inspected for compliance with

³ Inspector Harsh also issued Order No. 7966584 under section 103(k) of the Mine Act. Darwin Stratton contested the order in WEST 2000-371-RM. This order is affirmed.

MSHA safety standards. If Darwin Stratton had complied with sections 41.11 and 56.1000, MSHA would have inspected the Rattlesnake Pit prior to the fatal accident. (Tr. 97). These violations are serious and Darwin Stratton's negligence was high. The citation and order are affirmed as modified by MSHA.

2. Workplace Examinations

Inspector Arquette issued Order No. 7941260 because workplace examinations were not being conducted by a competent person at least once each shift as required by section 56.18002. He determined that the violation was S&S and was the result of the operator's unwarrantable failure to comply with the standard. (Tr. 97).

Compliance with this standard is important because such examinations may reveal hazardous conditions. The operator should have known of this requirement because of its experience at its Airport Pit. This violation was S&S and was the result of the operator's unwarrantable failure. The order is affirmed as modified.

Order No. 7941263 alleges that equipment defect records were not being kept for the front-end loader. Inspector Arquette testified that Darwin Stratton had not been making the examinations required under section 56.14100. (Tr. 103-04). Compliance with this standard is important because such examinations may reveal hazardous conditions. The operator should have known of this requirement because of its experience at its Airport Pit. This violation was S&S and was the result of the operator's unwarrantable failure. The order is affirmed as written.

3. Electrical Violations

Inspector Arquette issued 12 citations and orders alleging violations of MSHA's electrical standards. Inspector Arquette has an electrical background and was concerned about the pit's electrical system. (Tr. 71). Citation No. 7941252 states that the pit's "electrical system from the portable [generator] to the electrical equipment was not provided with a ground" in violation of section 56.12025. The citation also states that the electrical system was not provided with an overcurrent device. When the inspector tested the system, he found that the electrical system was not properly grounded. (Tr. 75-76). A fault in the system could have transferred current to the frames of electrical equipment and seriously injured or killed an employee. I affirm this S&S citation.

Order No. 7941275 states that the operator had not been testing the continuity and resistance of grounding systems at the pit in violation of section 56.12028. (Tr. 141-42). Such testing would have revealed that the electrical system at the wash plant was not grounded. I affirm this unwarrantable failure order.

Order No. 7941268 states that the electrical control panels at the pit were not labeled to show what equipment each switch controls in violation of section 56.12018. Inspector Arquette testified that the representative of the operator had a difficult time determining which switches to

throw to shut down particular pieces of equipment. (Tr. 118-19). He had to follow the electrical cables along the ground from the equipment to the control panel to make this determination. In the event of an emergency, an employee would not be able to quickly shut down equipment. I affirm this order as modified by MSHA. I also find that the Secretary established that the violation was a result of the operator's unwarrantable failure.

Citation Nos. 7941269, 7941273, and 7941274, and Order Nos. 7941266, 7941271, and 7941272 all concern electrical circuits for equipment at the mine. They allege violations of sections 56.12001 and 56.12002. In each instance, Inspector Arquette observed defects in these circuits. Motor starters, fuses, and circuit breakers were not the correct size and heater elements (overcurrent devices) were installed incorrectly. (Tr. 109-13, 121-40). I credit the testimony of Inspector Arquette with respect to these citations and orders. Each citation and order is affirmed as written by Inspector Arquette or subsequently modified by MSHA.

Citation No. 7941276 states that the cabinets for the motor controllers were not designed to be used outside but were made to be used in areas where they would not be exposed to the elements. The citation alleges a violation of section 56.12041. Inspector Arquette testified that this condition created an electric shock hazard because water could get into the electrical circuits. (Tr. 142-44). This citation is affirmed as written.

Order No. 7941267 states that the power cable entering the motor for the sand screw was not equipped with a bushing or fitting. About eight inches of the electrical conductors inside the cable were exposed to mechanical damage. (Tr. 114-17). This condition created an electric shock hazard. The Secretary established a violation of section 56.12004 and the order is affirmed as written.

Citation No. 7941270 states that splices and repairs on the power cable for the screen motor were not mechanically strong, properly insulated, or sufficiently protected against damage, in violation of section 56.12013. Inspector Arquette testified that the cited condition created a shock hazard. (Tr. 128-30). This citation is affirmed.

4. Other Citations and Orders

Inspector Arquette issued nine other citations and orders. These citations and orders allege violations of various safety standards. The violations include inadequate berms on elevated roadways, several fire hazards, inadequate guarding on the screen feed belt, inadequate first aid supplies, and equipment defects that affect safety. Based on the evidence presented at the hearing, all of these citations and orders are affirmed as written or modified. All of the citations and orders at issue in these cases are listed below.

III. LIST OF CITATIONS AND ORDERS AFFIRMED

The following citations and orders are affirmed as written by Inspectors Harsh and Arquette or, if subsequently modified by MSHA, they are affirmed as modified. This list includes all modifications.

	<u>30 C.F.R. §</u>	<u>30 U.S.C. §</u>
Order No. 7966584	N/A	§813(k)
Citation No. 7966585	56.14107	§814(d)(1)
Order No. 7966587	56.18020	§814(d)(1)
Citation No. 7966588	50.10	§814(a)
Citation No. 7941252	56.12025	§814(a)
Order No. 7941253	56.9300(b)	§814(d)(1)
Order No. 7941254	56.9300(b)	§814(d)(1)
Order No. 7941255	56.4101	§814(d)(1)
Order No. 7941256	56.4102	§814(d)(1)
Order No. 7941257	56.20008	§814(d)(1)
Order No. 7941258	56.1000	§814(d)(1)
Citation No. 7941259	41.11	§814(a)
Order No. 7941260	56.18002	§814(d)(1)
Citation No. 7941261	56.14107(a)	§814(a)
Citation No. 7941262	56.14132(a)	§814(a)
Order No. 7941263	56.14100(d)	§814(d)(1)
Order No. 7941264	56.15001	§814(d)(1)
Order No. 7941265	56.11002	§814(d)(1)
Order No. 7941266	56.12002	§814(d)(1)
Order No. 7941267	56.12004	§814(d)(1)
Order No. 7941268	56.12018	§814(d)(1)
Citation No. 7941269	56.12001	§814(a)
Citation No. 7941270	56.12013	§814(a)
Order No. 7941271	56.12001	§814(d)(1)
Order No. 7941272	56.12001	§814(d)(1)
Citation No. 7941273	56.12002	§814(a)
Citation No. 7941274	56.12002	§814(a)
Order No. 7941275	56.12028	§814(d)(1)
Citation No. 7941276	56.12041	§814(a)

IV. ORDER

For the reasons set above, each citation and order listed above is **AFFIRMED WITH PREJUDICE** and these proceedings are **DISMISSED**.

Richard W. Manning
Administrative Law Judge

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