

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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August 9, 1995

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 95-25-M
Petitioner	:	A.C. No. 45-03300-05502
v.	:	
	:	Docket No. WEST 95-50-M
ASSOCIATED SAND & GRAVEL	:	A.C. No. 45-03300-05503
COMPANY, INC.,	:	
Respondent	:	Butler Pit Wash Plant

## DECISION

Appearances: Matthew L. Vadnal, Esq., Office of the Solicitor, U.S. Department of Labor, Seattle, Washington; Paul A. Belanger, Conference and Litigation Representative, Mine Safety and Health Vacaville, California, for Petitioner; Brent Eddings, Safety Manager, Associated Sand for Respondent.

Before: Judge Amchan

At the outset of the hearing in this matter, the Secretary withdrew Citation No. 4341895 and the corresponding \$500 proposed penalty. This was the only item in Docket No. WEST 95-50-M. Towards the end of the hearing, Respondent withdrew its contest to the \$50 penalty proposed for Citation No. 4341891 in Docket No. WEST 95-25-M. Remaining are two \$50 penalties proposed for Citation Nos. 4341893 and 4341894.

The first of these citations was issued because a 110 volt electrical outlet in Respondent's maintenance shop was not effectively grounded. The second was issued because the oil

storage area on the outside of this shop was not posted with signs prohibiting smoking and open flames (Tr. 30-37, 65).

Respondent does not dispute the existence of the violative conditions (Tr. 65). It contends, however, that the citations and proposed penalties should be vacated because the shop area was not part of its mine and therefore not subject to MSHA jurisdiction.

The MSHA inspection of the shop area at the Butler Pit

On July 12, 1994, MSHA Inspector James Hudgins issued the instant citations at a worksite in Burlington, Washington. At that site Respondent maintains a sand and gravel pit, facilities for sizing aggregate, a wash plant to rinse material that is to be used in the production of concrete, a ready-mix concrete plant and an asphalt plant (Tr. 16-17).

Hudgins inspected the sand and gravel pit and the wash plant. He did not inspect the concrete or asphalt production facilities because he concluded that they were not subject to MSHA jurisdiction (Tr. 18). He decided to inspect the maintenance shop because James Salley, Respondent's concrete dispatcher, told him that mining equipment was repaired in this building (Tr. 43, 65)<sup>1</sup>.

The maintenance shop is next to the asphalt plant, approximately 100 yards from the sand and gravel pit (Tr. 43). Hudgins observed a front-end loader partially inside this building (Tr. 44-45). Respondent's employees were fixing a horn and a parking brake which Hudgins had cited at the wash plant

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<sup>1</sup> Respondent contends that Mr. Salley was not knowledgeable about its mining operations and suggests that he may have exceeded the scope of his authority in discussing the repair of mining equipment with Inspector Hudgins (Tr. 59-60). However, Respondent never contradicted Salley's statement to Hudgins that mining equipment was repaired in the shop (Tr. 43). I conclude therefore that mining equipment was repaired in this shop on occasions other than the day of the inspection.

(Tr. 45).

The maintenance shop was built to service the concrete and asphalt production facilities at the site. Respondent contends that very little work is performed on mining equipment in this shop. Most repairs on mining equipment are performed outdoors or at Respondent's Everett, Washington maintenance facility (Tr. 57, 73-75).

At Everett, Respondent has different maintenance facilities for its mining and non-mining operations. This was done in part to avoid having the same facility subject to inspection by MSHA and the State of Washington's OSHA program (Tr. 73-75).

Respondent's maintenance shop is within the  
jurisdiction of MSHA

In a recent case, the Review Commission held that a garage used by an operator's sand and gravel mine and its asphalt plant was subject to Mine Act jurisdiction, W. J. Bokus Industries, Inc., 16 FMSHRC 704 (April 1994). I consider that decision to be controlling in the instant case.

In W. J. Bokus, the garage was used primarily for the support of the asphalt plant. However, employees of both the asphalt plant and the sand and gravel mine used the garage to store, repair and maintain equipment. Crushing and screening equipment for the sand and gravel operation was also manufactured in the garage.

The use of the garage by the mining operation in W. J. Bokus appears to be more substantial than Respondent's use of the maintenance shop in this case. However, I do not see this as a factor which would enable me to distinguish the Commission decision in that case from the instant one. To the contrary, the Commission decision stands for the proposition that if a facility is used in support of mining activities to any extent, MSHA may choose to assert its jurisdiction.

Miners employed by Respondent were at least potentially exposed to the hazards created by the violations cited by Inspector Hudgins. The legislative history of the Act states that, "[w]hat is considered a mine and to be regulated under this Act [shall] be resolved in favor of ... coverage of the Act." S. Rep. No. 181, 95th Cong., 1st Sess. 14 (1977), Legislative History of the Federal Mine Safety and Health Act of 1977, at 602 (1978). Thus, I find that the maintenance shop at the Butler Pit is subject to the Act.

**ORDER**

Docket No. WEST 95-50-M is **DISMISSED**. Citation Nos. 4341893, 4341894 and 4341891 in Docket No. WEST 95-25-M are affirmed. A \$50 civil penalty is assessed for each of these violations. These penalties shall be paid within 30 days of this decision.

Arthur J. Amchan  
Administrative Law Judge

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