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MSHA V. CAPITOL AGGREGATES
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 4, 1982
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. CENT 79-300-M

CAPITOL AGGREGATES, INC.

DECISION

This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq., (Supp. III 1979). The only issue on review is whether a ramp used at a facility of Capitol Aggregates, Inc., is an elevated roadway within the meaning of 30 C.F.R. § 56.9-22. 1/ The cited standard provides that "berms or guards shall be provides on the outer bank of elevated roadways." The administrative law judge¹ found the ramp was an elevated roadway and that the standard applied. 2/ For the reasons that follow, we affirm.

The citation at issue states:

The elevated ramp leading to the solid fuel loading hopper was not equipped with a berm or guard creating a hazard for the operator on the front-end loader in case of running off the ramp.

The parties stipulated that the ramp in question was approximately thirty feet long and four feet high at the highest point, and that it was used by a caterpillar front-end loader for dumping petroleum coke into a solid fuel loading hopper.

In finding that the ramp was an elevated roadway the judge referred to dictionary definitions of "ramp," "road," and "roadway," 3/ and the

1/ Capitol does not challenge the fact that the ramp was "elevated," rather it asserts the ramp is not a "roadway" subject to the standard.

2/ The judge's decision is reported at 3 FMSHRC 1684 (1981).

3/ The judge cited definitions in Webster's Third New International Dictionary: "roadways:" A strip of land through which a road is constructed and which is physically altered; "road:" An open way or public passage for vehicles, persons and animals ... a private way. The judge also cited the definition of "ramp" in Webster's New Collegiate Dictionary (1979): A sloping way: as a sloping low walk or

roadway leading from one level to another. 3 FMSHRC at 1688 (emphasis added).

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fact that "this 'ramp' was used to drive a piece of machinery back and forth over the structure." 3 FMSHRC at 1688. Further, on the basis of our decision in Cleveland Cliffs Iron Co., 3 FMSHRC 291 (February 1981), the judge rejected Capitol's argument that the standard applies only to roadways with one outer bank. Accordingly, the judge concluded that Capitol violated section 56.9-22 by failing to provide berms on the ramp.

We affirm the judge's conclusion that the ramp at issue is an elevated roadway within the meaning of the cited standard. Contrary to Capitol's assertion, this conclusion does not require an impermissible stretching of the standard. Rather, as indicated by the dictionary definitions relied upon by the judge, the conclusion that some ramps are elevated roadways is rooted in common usage. Furthermore, in light of the nature of the use of the ramp at issue and the purpose of the cited standard, the conclusion flows from a common sense application of the standard to the facts of record. Cf. Burgess Mining and Construction Corp., 3 FMSHRC 296 (February 1981)(bridge is an elevated roadway); El Paso Rock Quarries, Inc., 3 FMSHRC 35 (January 1981)(bench is an elevated roadway). We also hold that the judge properly relied on our decision in Cleveland Cliffs Iron Co. in rejecting the argument that 30 C.F.R. § 56.9-22 applies only to elevated roadways with one outer bank.

Finally, we reject Capitol's argument that the presence of 30 C.F.R. § 56.9-63 precludes application of the cited standard.

Section 56.9-63 provides:

Ramps and dumps should be of solid construction, of ample width, have ample side clearance and headroom, and be kept reasonably free of spillage.

"Elevated roadways" is a general descriptive term that encompasses a variety of more specific applications. See Burgess, supra; El Paso, supra. Although 30 C.F.R. § 56.9-63 further addresses certain safety requirements for a particular type of elevated roadway, it does not purport to exclusively set forth all safety requirements pertaining to ramps. In particular, it does not address the obvious hazard of travelling over the elevated sides of a ramp, nor does it in any way suggest that section 56.9-22's general requirement of berms on elevated roadways is not applicable. In this situation we conclude that it is appropriate to apply section 56.9-22 to the ramp involved. See H.B. Zachry Co. v. OSHRC, 638 F.2d 812, 817-818 (5th Cir. 1981).

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Accordingly, the decision of the administrative law judge is affirmed.

4/ Capitol's pending motion to disregard the Secretary's brief is denied.

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