

CCASE:
SOL (MSHA) V. ARIZONA CRUSHING
DDATE:
19801224
TTEXT:

~3736

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

ARIZONA CRUSHING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 79-195-M

A/O NO. 02-01642-05001

MINE: PORTABLE CRUSHER

DECISION

APPEARANCES:

Sandra Rogers, Esq., Office of Daniel Teehan, Regional Solicitor,
United States Department of Labor, San Francisco, California
for Petitioner

Peter J. Ranke, Comptroller, appearing pro se, Phoenix, Arizona
for the Respondent

Before: Judge John J. Morris

Petitioner, the Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges that respondent, ARIZONA CRUSHING, failed to guard its conveyor equipment, thereby exposing its employees to hazardous pinch points. MSHA asserts ARIZONA CRUSHING thereby violated 30 CFR 56.14-1, (FOOTNOTE 1) a regulation promulgated under the authority of the Federal Mine Health and Safety Act (amended 1977), 30 U.S.C. 801 et seq.

ISSUES

The issues are whether MSHA has jurisdiction and whether the violations occurred.

CONTENTIONS

ARIZONA CRUSHING contends that Congress did not intend to include sand and gravel operations in the scope of the Act. I disagree. The legislative history indicates otherwise. In reviewing the safety record for metal and nonmetal mining, the United States House of Representatives included data on the number of fatalities occurring in open pit, sand and gravel mines, stone quarries, and mills. House Report No. 95-312, 95th Cong. 1st Sess. 6 (1977). Congress also directed that any doubts over the extent of MSHA's jurisdiction are to be resolved in favor of inclusion within the Act. Senate Report No. 95-181 95th Cong. 1st Sess. 14 (1977).

The determination that sand and gravel pits are under the jurisdiction of the Act has been upheld in recent decisions. *Marshall v. Stoudt's Ferry Preparation Co.*, 602 F.2d 589 (3rd Cir. 1979), Cert. denied, 444 U. S. 1015 (1980); *Marshall v. Cedar Lake Sand and Gravel Co.* 480 F. Supp. 171 (E. D. Wisc. 1979); *Marshall v. Wallach Concrete Products, Inc., et al*, Docket No. 79-422 ~~AAAAAA~~F. Supp. ~~AAAAAA~~(D.C. N.M. 1980).

PENDING LEGISLATION

ARIZONA CRUSHING asserts there is legislation pending in the United States Congress that would remove MSHA's jurisdiction over sand and gravel operations.

As of the date of this decision no legislation has been passed that would affect MSHA's jurisdiction. Accordingly, such argument is overruled.

FINDINGS OF FACT

Citation 379481

1. The return roller of the primary feed conveyor was unguarded (Tr. 10 - 12, P-1).
2. The three foot long pinch points were 5 to 5 1/2 feet above the ground (Tr. 12, P-1).
3. When the conveyor was operating the cleanup man or workers observing the plant would be in close proximity to the hazardous pinch point (Tr. 12 - 15).

CITATION 379482

4. The pinch points of the warp drive on the primary feed conveyor were guarded at the front but not at the sides (Tr. 16 - 18, P3, P4, P5).

5. Workers could come between the guard and the motor within six inches of the pinch points during maintenance and cleaning operations (Tr. 23).

CITATION 379484

At the commencement of the trial petitioner moved to vacate this citation for the alleged violation of 30 C.F.R. 56.14-1 (Tr. 5).

The motion to vacate was granted at trial and is formalized in this decision.

CITATION 379485

6. The west side of the V belt on the primary feed conveyer was guarded but there was an exposed pinch point between the guard and the motor (Tr. 23, P6).

7. Workers had access to this area and could come in contact with the V belt drive (Tr. 23).

CITATION 379486

8. The El Jay rock belt tail pulley was unguarded (Tr. 25 - 29, P8).

9. A portion of the tail pulley was guarded but there were unguarded pinch points at the bottom of the frame (Tr. 26 - 27).

10. Workers by using a walkway or path could come within a few inches of the pinch points (Tr. 28, P8).

ALL CITATIONS

11. Before the inspection ARIZONA CRUSHING had removed its conveyer equipment because a large amount of water was being released into the riverbed.

12. The inspection occurred as ARIZONA CRUSHING was reassembling its equipment.

13. The guards had not yet been reinstalled and the equipment was being tested.

ARIZONA CRUSHING asserts it should not be cited because its workers were not crushing rock but were merely reassembling the equipment. I find the facts supporting ARIZONA CRUSHING's view but I do not concur that such facts establish a defense. It is undisputed that the equipment was running and being tested (Tr. 76). In various ways the workers were exposed to the hazards prohibited by the standard. (Findings of Fact, paragraphs 3, 5, 7, 10).

To synthesize this decision: pinch points must be guarded whenever the workers, in the normal course of their duties, are in close proximity to the hazards.

CIVIL PENALTIES

ARIZONA CRUSHING asserts that the negligence assessed for Citation 379485 is unduly high. I disagree, the condition is obvious and the photograph of the condition indicates ready exposure to the pinch point (P6).

However, in connection with the civil penalties, MSHA's proposed assessment does not credit ARIZONA CRUSHING for its immediate abatement of the conditions. Further, it is company policy to immediately comply with all MSHA directives. In view of the above factors and in consideration of the remaining statutory criteria, (FOOTNOTE 2) I conclude that the proposed civil penalties should be reduced as set forth in the order of this decision.

ORDER

Based on the foregoing findings of fact, conclusions of law, and motion I enter the following order:

1. Citation 379481 is affirmed and a penalty of \$14.00 is assessed.
2. Citation 379482 is affirmed and a penalty of \$14.00 is assessed.
3. Citation 379484 and all penalties therefor are vacated.
4. Citation 379485 is affirmed and a penalty of \$17.00 is assessed.
5. Citation 379486 is affirmed and a penalty of \$18 is assessed.

John J. Morris
Administrative Law Judge

~FOOTNOTE-ONE

1 The cited standard provides as follows:

GUARDS

56.14-1 MANDATORY. Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

~FOOTNOTE TWO

2 30 USC 820(i)