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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. WILK 79-35-PM
A.O. No. 36-03429-05002

v.

Spring House Quarry & Plant

GILL QUARRIES, INC.,
RESPONDENT

DECISION

Appearances: David Street, Esq., Office of the Solicitor, U.S.
Department of Labor, Philadelphia, Pennsylvania, for
Petitioner
Richard F. Brown, Sales Manager, Gill Quarries, Inc.,
for Respondent

Before: Chief Administrative Law Judge Broderick

Statement of the Case

This case was commenced by a petition for the assesement of a civil penalty alleging a single violation on April 18, 1978, of the mandatory standard contained in 30 CFR 56.5-50(b). The parties stipulated that Respondent's operations were covered by the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., and that on April 18, 1978, the noise level in the hearing zone of the sampled employee was higher than the noise level permitted by 30 CFR 56.5-50. They further stipulated that the employee was wearing ear muffs.

The case was called for hearing on the merits on May 23, 1979, in Philadelphia, Pennsylvania.

Stephen Moyer, a federal mine inspector, testified for petitioner. Richard F. Brown, Sales Manager of Gill Quarries, Inc., testified for Respondent.

Regulation

30 CFR 56.5-50 provides in part:

Mandatory. (a) No employee shall be permitted an exposure to noise in excess of that specified in the

table below. Noise level measurements shall be made using a sound level meter meeting specifications for type 2 meters contained in American National Standards Institute (ANSI) Standard S1.4-1971, "General Purpose Sound Level Meters," approved April 27, 1971, which is hereby incorporated by reference and made a part hereof, or by a dosimeter with similar accuracy. This publication may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, or may be examined in any Metal and Nonmetal Mine Health and Safety District or Subdistrict Office of the Mining Enforcement and Safety Administration.

PERMISSIBLE NOISE EXPOSURES

Duration per day, hours of exposure	Sound level dBA, slow response
8	90
6	92
4	95
3	97
2	100
1-1/2	102
1	105
1/2	110
1/4 or less	115

No exposure shall exceed 115 dBA. Impact or impulsive noises shall not exceed 140 dB, peak sound pressure level.

Note: When the daily noise exposure is composed of two or more periods of noise exposure at different levels, their combined effect shall be considered rather than the individual effect of each.

* * * * *

(b) When employees' exposure exceeds that listed in the above table, feasible administrative or engineering controls shall be utilized. If such controls fail to reduce exposure to within permissible levels, personal protection equipment shall be provided and used to reduce sound levels to within the levels of the table.

Findings and Conclusions

At the close of the hearing, the parties were given the opportunity to orally state their positions on the issues, and I issued a decision from the bench as follows:

JUDGE BRODERICK: All right. In the case of Secretary of Labor, Mine Safety and Health Administration versus Gill Quarries, Incorporated, Docket No. WILK 79-35-PM, based upon the evidence presented this morning, I make the following findings of fact:

Number One, on April 18, 1978, Respondent, Gill Quarries, Incorporated, was the operator of a crush-stone quarry in Montgomery County, Pennsylvania, known as the Spring House Quarry and Plant.

Number Two, on April 18, 1978, Respondent's operation affected interstate commerce. The operation was of moderate size.

Number Three, on April 18, 1978, the noise level survey was made at Respondent's operation by Federal Mine Inspector Stephen Moyer. A noise level reading was made of the primary crusher operator on that date showing exposure to noise of 156-percent of the allowable limit. this translates to be between 93.0 and 93.5 decibels for an eight-hour period.

Number Four, at the time of the survey, the employee affected, the primary crusher operator, was wearing earmuffs which, while worn, reduced the noise level to which he was exposed to permissible limits.

Number Five, there are feasible engineering controls which could be utilized in Respondent's operation to reduce the noise level exposure from the primary crusher operator to within permissible limits. Respondent has not utilized these feasible engineering controls.

Therefore, I find that the Respondent on April 18, 1978, was in violation of the mandatory standard contained in 30 CFR 56.5-50.

Number Six, the violation was moderately serious because of the possibility of permanent hearing loss to the exposed employee. The seriousness was diminished because the exposed employee was wearing ear protection at the time of the inspection.

Number Seven, Respondent was aware of the excessive noise exposure to which this employee was subjected and had not utilized the feasible engineering controls to reduce them. Therefore, I find that Respondent was negligent and the negligence contributed to this violation.

Number Eight, Respondent did not show good faith in promptly abating the citation after it was issued. This is based upon his failure to utilize the feasible engineering controls to reduce exposure. Based on the foregoing findings of fact and conclusions, and considering the criteria set out in Section 110 I of the Act, I assess a penalty of \$100 for the violation which I have found. A written decision confirming this order, this decision, will be issued, and the Respondent will be directed in the written decision to pay within 30-days of the date of the issuance of the decision.

That will complete the record in this case.

ORDER

The bench decision is confirmed. Respondent is ordered to pay the sum of \$100 for the violation found therein within 30 days from the date of the issuance of this written decision.

James A. Broderick
Chief Administrative Law Judge