

CCASE:  
SOL (MSHA) V. IMC FERTILIZER  
DDATE:  
19890424  
TTEXT:

~706

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. SE 88-94-M  
A.C. No. 08-00176-05509

v.

Clear Springs Mine & Mill

IMC FERTILIZER, INC.,  
RESPONDENT

DECISION

Appearances: Ken S. Welsch, Esq., Office of the Solicitor, U.S.  
Department of Labor, Atlanta, Georgia, for the  
Secretary of Labor (Secretary); George L. Bushn,  
Safety Director, for IMC Fertilizer, Inc. (IMC).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for two alleged violations of 30 C.F.R. 56.9003, cited on June 28, 1988, because a Caterpillar front end loader and a Clark front end loader had inadequate brakes. Pursuant to notice, the case was called for hearing in Tampa, Florida, on March 16, 1989. Lawrence L. Richardson testified on behalf of the Secretary; Clarence L. Williamson, Charles Brown, Jessie Perez and Ed Gilmore testified on behalf of IMC. At the conclusion of the hearing the parties argued their positions on the record, and waived the right to file post-hearing briefs. I have considered the entire record and the contentions of the parties, and make the following decision.

FINDINGS OF FACT

IMC is the owner and operator of a phosphate mine in Polk County, Florida known as the Clear Springs Mine. The operation of the mine affects interstate commerce. IMC is a large operator. During 1987, 284,195 man hours of work were reported at the Clear Springs Mine. During the 24 month period from August 9, 1986 to August 8, 1988, seven citations were issued charging violations at the mine, including the two contested herein. Two have been paid. This history is not such that penalties otherwise

~707

appropriate should be increased because of it. The violations involved in this proceeding were promptly abated by IMC.

Lawrence L. Richardson, a Federal mine inspector made an inspection of the subject mine on June 28, 1988. Richardson has been a Federal mine inspector for approximately eleven years. Prior to that time, he worked in the mining industry in Florida for about 32 years. He has operated heavy equipment including front end loaders, has been employed as a mine superintendent and has owned his own contracting business. During his eleven years with MSHA, he has inspected the brakes of thousands of front end loaders.

CITATION 3249791-980 CATERPILLAR FRONT END LOADER

On June 28, 1988, IMC's 980 Caterpillar front end loader was in a holding area undergoing repairs for a faulty electrical light system. Inspector Richardson inspected the brakes, which were air over hydraulic, the back up alarm, the horn and the windshield wipers. He asked the mechanic to start the loader and drive forward until the inspector dropped his hand and then to apply the brakes. The loader came to a "slow stop." Before the brakes were applied the loader was travelling at about 10 miles an hour. After the brakes were applied it travelled 7 to 8 feet. The inspector asked the loader operator if the brakes felt "spongy" and the operator replied "yes." Inspector Richardson issued the subject citation charging that the brakes were not adequate. Approximately one quart of hydraulic brake fluid was added to the reservoir. The machine has two reservoirs, each holding about two quarts of fluid. The brakes were then tested in the same manner as previously, and the vehicle stopped in 2 to 3 feet. The violation was considered abated, and the citation was terminated. IMC's witnesses testified that the stopping distance was approximately the same on both tests. The operator of the vehicle was on sick leave and did not testify. However, a written statement taken from him by IMC Safety Supervisor Williamson was admitted into evidence. I am accepting as factual the testimony of Inspector Richardson based on his experience and expertise in performing the inspection.

CITATION 3249795 CLARK 275 FRONT END LOADER

On June 28, 1988, Inspector Richardson inspected the brakes on IMC's Clark 275 loader in the same manner as the 980 Caterpillar. The 275 loader is a much larger piece of equipment--perhaps twice as large as the Caterpillar. Again the vehicle stopped in approximately 7 to 8 feet after the brakes were applied. Again, in answer to the Inspector's question, the loader operator stated that the brakes felt spongy. The 275 Clark is equipped with an all air brake system; the brake pedal

~708

is spring loaded. The mechanic adjusted the brakes--tightening the adjuster on one wheel by a half turn, and on the other wheels by a quarter turn. Thereafter, the brakes were tested in the same manner, the brakes locked, and the machine stopped in two or three feet. I accept the Inspector's testimony as factual for the same reasons I accepted his testimony concerning the stopping distances for the Caterpillar loader.

#### REGULATION

At the time the citations were issued, 30 C.F.R. 56.9003 provided as follows:

Powered mobile equipment shall be provided with adequate brakes.

#### ISSUES

1. Whether the brakes on the cited equipment were adequate?
2. If violations are established, what are the appropriate penalties?
3. If violations are established, were they significant and substantial?

#### CONCLUSIONS OF LAW

Respondent at all relevant times was subject to the Federal Mine Safety and Health Act in the operation of the subject mine, and I have jurisdiction over the parties and subject matter of this proceeding.

I have accepted the Inspector's testimony as to the results of the tests he made on the two pieces of equipment: the equipment could be stopped in 7 to 8 feet prior to abatement and in 2 to 3 feet after abatement (the addition of fluid in the case of the Caterpillar; the adjustments in the case of the Clark). IMC's witnesses were of the opinion that brakes which stopped the equipment in 7 to 8 feet were adequate. They deny that the adding of fluid or the adjustment performed had any effect on the brakes' adequacy. Although the matter is not free from doubt, I am accepting the Inspector's opinion that the brakes on both pieces of equipment were inadequate when he tested them and issued the citations. I base this conclusion largely on the Inspector's extensive experience in the industry and as a Federal inspector.

However, the Secretary has not carried her burden of establishing that the violations were significant and substantial.

~709

The inadequacy of the brakes was marginal. There is no evidence in the record that in the case of either of the loaders, there was a reasonably likelihood of a serious injury. The violations were, however, of moderate seriousness. Because of the size of the equipment, it is important that adequate brakes be maintained at all times. There is no evidence that the violations resulted from IMC's negligence. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for each violation is \$50.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED:

1. Citations 3249791 and 3249795 are AFFIRMED, but the significant and substantial finding is VACATED.

2. Respondent shall within 30 days of the date of this decision pay the following civil penalties:

CITATION	PENALTY
3249791	\$ 50
3249795	50
TOTAL	\$100

James A. Broderick  
Administrative Law Judge