

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1244 SPEER BOULEVARD #280  
DENVER, CO 80204-3582  
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May 28, 1996

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 93-62-M
Petitioner	:	A.C. No. 04-03404-05509
	:	
v.	:	Docket No. WEST 93-406-M
	:	A.C. No. 04-03404-05510
CONTRACTORS SAND & GRAVEL	:	
SUPPLY, INCORPORATED,	:	Docket No. WEST 93-407-M
Respondent	:	A.C. No. 04-03404-05511
	:	
	:	Docket No. WEST 93-463-M
	:	A.C. No. 04-03404-05512
	:	
	:	Scott River Plant
	:	
	:	Docket No. WEST 93-117-M
	:	A.C. No. 04-04679-05506
	:	
	:	Docket No. WEST 93-141-M
	:	A.C. No. 04-04679-05507
	:	
	:	Docket No. WEST 93-408-M
	:	A.C. No. 04-04679-05508
	:	
	:	Docket No. WEST 93-409-M
	:	A.C. No. 04-04679-05509
	:	
	:	Docket No. WEST 93-462-M
	:	A.C. No. 04-04679-05510
	:	
	:	Montague Plant

**DECISION AFTER REMAND APPROVING SETTLEMENT**

**Before: Judge Cetti**

These consolidated civil penalty proceedings are before me upon petitions for assessment of civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq., (Mine Act). The Secretary of Labor on behalf of the Mine Safety and Health Administration, charged the

operator of the Scott River Plant and Montague Plant with numerous violations of safety standards set forth in Part 56, Title 30, Code of Federal Regulations.

A Default Decision was issued July 21, 1994, when there was no response to my Show Cause Order. Thereafter, the Commission reopened the matter and vacated the Default Decision and remanded the matter to this Judge.

Respondent then obtained counsel who filed a timely answer contesting the alleged violations. The matter was set for hearing which had to be canceled because of the medical condition of the principal witness. The parties then filed cross motions for summary decision. On March 25, 1996, I issued a Summary Decision vacating Citation No. 3911909 in Docket Nos. WEST 93-462-M and WEST 94-409-M and dismissing WEST 94-409-M.

At this time, the remaining consolidated cases are before me on petitions for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815(d). The parties, by counsel, filed an amended motion to approve a settlement agreement of all the remaining citations. Under the proffered settlement there is a reduction in the amount of the proposed penalties for 12 of the citations and no changes in the original proposed penalties for 15 of the citations as follows:

<u>Citation No.</u>	<u>Health and Safety Standard Cited (CFR Title 30)</u>	<u>Original Proposed Penalty</u>	<u>Proposed Amended Penalty</u>
3911911	56.14107(a)	\$3,000.00	\$ 100.00
3636680	56.12013	267.00	100.00
3911916	56.12013	1,457.00	100.00
3911919	56.14132(b)(1)	987.00	100.00
3636674	56.14109(b)	168.00	100.00
3636675	56.14107(a)	220.00	100.00
3636676	56.14109	168.00	100.00
3914031	56.5050(b)	50.00	50.00
3911912	56.4200	50.00	50.00
3911914	56.4402	50.00	50.00
3911917	56.12013	50.00	50.00
3913895	56.12028	382.00	100.00
3913890	56.14112	147.00	100.00
3913891	56.14112(a)	147.00	100.00
3913892	56.15001	50.00	50.00
3913893	56.18002	50.00	50.00
3913894	56.14100	50.00	50.00
3913897	56.14107	50.00	50.00

3913883	56.15001	50.00	50.00
3911799	56.12041	50.00	50.00
3911903	56.12032	50.00	50.00
3911907	56.14107(a)	119.00	100.00
3911901	56.4200	50.00	50.00
3911904	56.14107(a)	50.00	50.00
3911905	56.14109(b)	50.00	50.00
3911902	56.12013	50.00	50.00
3911906	56.12020	337.00	100.00
		TOTAL	\$1,950.00

Under the proffered settlement agreement it is also agreed that, with the exception of those claims for fees and expenses set forth in Docket No. EAJ 96-3 filed with the Commission on April 24, 1996, each side shall bear its own costs and legal fees.

I have considered the representations and documentation including the pleadings, the detailed responses to the prehearing orders, the affidavits and various transcripts of the depositions submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

**WHEREFORE**, the motion for approval of settlement is **GRANTED**, and it is **ORDERED** that Respondent, Contractors Sand and Gravel Supply, Inc., **PAY** a penalty of \$1,950.00 to the Secretary of Labor within 30 days of this decision.

Payment shall be made to the Office of Assessments, Mine Safety and Health Administration, P.O. Box 160250-M, Pittsburgh, Pennsylvania 15251. Upon receipt of payment, the above-captioned proceedings are dismissed.

August F. Cetti  
Administrative Law Judge

Distribution:

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