

CCASE:
SOL (MSHA) V. FLORIDA CRUSHED STONE
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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 Proceedings

Docket No. BARB 78-648-PM
A.C. No. 08-00024-05001

v.

Docket No. BARB 78-649-PM
A.C. No. 08-00024-05002

FLORIDA CRUSHED STONE CO.,
RESPONDENT

Brooksville Gay Quarry

DECISION

Appearances: Leo J. McGinn, Esq., Office of the Solicitor, Department of Labor, for Petitioner;
Mary L. Applegate, Esq., Holland & Knight, Tampa, Florida, for Respondent.

Before: Administrative Law Judge Michels

The above-captioned civil penalty proceedings were brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a). The Mine Safety and Health Administration (MSHA) filed petitions for the assessment of civil penalties on August 24, 1978, alleging that the Respondent committed certain violations of Chapter 30 of the Code of Federal Regulations. On September 27, 1978, Respondent filed its answers contesting the violations. A hearing was held in Tampa, Florida, on February 6, 1979, at which both sides were represented by counsel. The two dockets were consolidated for the purpose of hearing and decision (Tr. 81).

At the beginning of the hearing, MSHA counsel requested approval of settlements for the full assessed amounts for Citation Nos. 092811, alleging a violation of 30 CFR 56.14-1 assessed at \$140; 092815, alleging a violation of 30 CFR 56.12-8 assessed at \$106; and 092827, alleging a violation of 30 CFR 56.6-42 assessed at \$66. These citations are all in Docket No. BARB 78-648-PM. MSHA counsel asserted that in light of the statutory criteria and the factual circumstances involved in these three citations, he felt such settlements were appropriate (Tr. 6). Respondent's counsel concurred with this assessment (Tr. 7). After reviewing the oral representations by both parties, the settlements were approved by the undersigned. Accordingly, I hereby AFFIRM my approval of those settlements.

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Following this, both parties presented evidence regarding the eight citations which alleged violations of 30 CFR 56.9-87 (Tr. 21, 34, 53, 61, 68, 78, 88, 91). This regulation requires mobile heavy-duty equipment must be provided with audible warning devices. On the basis of the evidence presented, and in light of the statutory criteria, a decision was made from the bench to assess Citation Nos. 092808, 092809, 092820, 092824, 092825 in Docket No. BARB 78-648-PM; and Citation Nos. 092829 and 092830 in Docket No. BARB 78-649-PM at \$100 each. Citation No. 092818 in BARB 78-648-PM was assessed for \$200.

The following findings of fact were made as to each citation:

- 1) There was, in fact, a violation as admitted;
 - 2) The operator is at least medium or medium-to-large in size;
 - 3) The penalties assessed would not affect the operator's ability to continue in business;
 - 4) There is no history of previous violations;
 - 5) The operator took steps to rapidly comply after notification of the violation;
 - 6) The operator was negligent;
 - 7) The violation was serious.
- (Tr. 115-119). The decision finding eight violations of 30 CFR 56.9-87 and assessing a total penalty for these violations of \$900 is hereby AFFIRMED.

After issuing a decision from the bench on the eight violations of 30 CFR 56.9-87, as discussed above, MSHA counsel advised that the parties had negotiated a settlement of the remaining citations involved in these proceedings for the full amounts of the original assessments (Tr. 121). Since there had been no unwarranted lowering of the proposed penalties, and such a disposition assured adequate protection of the public interest, this settlement was accepted. Accordingly, I hereby AFFIRM these additional settlements for the amount of \$2,236.

In summary, the amount of \$3,176 has been assessed for Docket No. BARB 78-648-PM and \$272 has been assessed for Docket No. BARB 78-649-PM.

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It is ORDERED that Respondent, within 30 days of the date of this decision, pay the total penalties of \$3,448 assessed in these proceedings.

Franklin P. Michels
Administrative Law Judge