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SOL (MSHA) V. TEXAS INDUSTRIES INC.
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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. DENV 79-160-PM
A/O No. 41-00007-05002

v.

TEXAS INDUSTRIES, INC.,
RESPONDENT

Bridgeport Quarry and Plant

DECISION APPROVING SETTLEMENT

On March 26, 1979, Petitioner filed what was, in effect, a motion for approval of settlement. This motion was denied in view of the substantial reduction in proposed penalties and the absence of sufficient explanation in the record for this reduction.

On July 2, 1979, Petitioner filed a second motion for approval of settlement, as well as the inspector's statement for each citation. As grounds for the reduction in penalties and the settlement achieved by the parties, counsel for Petitioner asserted the following:

(1) The operator has no history of previous violations,

(2) The size of the operator's business is between 200,000 and 300,000 annual hours worked by employees of the operator at the mine, and between 900,000 and 3,000,000 annual hours worked by all employees of the operator.

(3) With respect to Citation No. 154249, the amount of the assessment for the alleged violation was \$78 and the amount of the settlement is \$18. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was not likely to happen,

(c) No lost workdays likely would have happened if the event had occurred,

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(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(4) With respect to Citation No. 154250, the amount of the assessment for the alleged violation was \$78 and the amount of the settlement is \$52. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator failed to exercise reasonable care either to prevent or to correct the condition or practice which caused the violation and which was known or should have been known to exist.

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Lost workdays or restricted duty likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(5) With respect to Citation No. 154251, the amount of the assessment for the alleged violation was \$98 and the amount of the settlement is \$52. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator failed to exercise reasonable care either to prevent or to correct the condition or practice which caused the violation and which was known or should have been known to exist.

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Lost workdays or restricted duty likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

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(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(6) With respect to Citation No. 154252, the amount of the assessment for the alleged violation was \$78 and the amount of settlement is \$18. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) No lost workdays likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(7) With respect to Citation No. 154253, the amount of the assessment for the alleged violation was \$106 and the amount of the settlement is \$28. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Lost workdays or restricted duties likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

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(8) With respect to Citation No. 154254, the amount of the assessment for the alleged violation was \$170 and the amount of the settlement is \$98. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator failed to exercise reasonable care either to prevent or to correct the condition or practice which caused the violation and which was known or should have been known to exist,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Fatal injuries likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(9) With respect to Citation No. 154255, the amount of the assessment for the alleged violation was \$122 and the amount of the settlement is \$22. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonably precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Lost workdays or restricted duty likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(10) With respect to Citation No. 154256, the amount of the assessment for the alleged violation was \$106 and the amount of the settlement is \$28. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation.

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Lost workdays or restricted duty likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(11) With respect to Citation No. 154258, the amount of the assessment for the alleged violation was \$114 and the amount of the settlement is \$38. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Permanent disabling injuries likely would have happened if the event had occurred, and

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(12) With respect to Citation No. 154259, the amount of the assessment for the alleged violation was \$140 and the amount of the settlement is \$44. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

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(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Fatal injuries likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(13) With respect to Citation No. 154260, the amount of the assessment for the alleged violation was \$140 and the amount of the settlement is \$48. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Fatal injuries likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(14) With respect to Citation No. 154261, the amount of the assessment for the alleged violation was \$122 and the amount of the settlement is \$34. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Permanent disabling injuries likely would have happened if the event had occurred,

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(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(15) With respect to Citation No. 154262, the amount of the assessment for the alleged violation was \$122 and the amount of the settlement is \$40. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Permanent disabling likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator abated the violation within the time given for abatement.

(16) With respect to Citation No. 154263, the amount of the assessment for the alleged violation was \$106 and the amount of the settlement is \$40. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Permanent disabling injuries likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator abated the violation within the time given for abatement.

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(17) With respect to Citation No. 154264, the amount of the assessment for the alleged violation was \$106 and the amount of the settlement is \$36. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was not likely to happen,

(c) Permanent disabling injuries likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(18) With respect to Citation No. 154265, the amount of the assessment for the alleged violation was \$150 and the amount of the settlement is \$98. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator failed to exercise reasonable care either to prevent or to correct the condition or practice which caused the violation and which was known or should have been known to exist,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Fatal injuries likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(19) With respect to Citation No. 154266, the amount of the assessment for the alleged violation was \$106 and the amount of the settlement is \$60. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator failed to exercise reasonable care either to prevent or to correct the condition or practice which caused the violation and which was known or should have been known to exist.

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Lost workdays or restricted duties likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(20) With respect to Citation No. 154267, the amount of the assessment for the alleged violation was \$98 and the amount of the settlement is \$32. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Lost workdays or restricted duty likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator abated the violation within the time given for abatement.

(21) With respect to Citation No. 154268, the amount of the assessment for the alleged violation was \$150 and the amount of the settlement is \$38. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonable precautions to prevent the violation,

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(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Only one person would have been affected if the event had occurred, and

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

(22) With respect to Citation No. 154269, the amount of the assessment for the alleged violation was \$170 and the amount of the settlement is \$48. Petitioner believes that this settlement will effectuate the purposes of the Act and should be approved because:

(a) The operator reasonably could not have known of the violation and under the circumstances the operator had taken reasonably precautions to prevent the violation,

(b) The occurrence of the event against which the standard is directed was likely to happen,

(c) Fatal injuries likely would have happened if the event had occurred,

(d) Only one person would have been affected if the event had occurred, and

(e) The operator made special efforts to insure abatement of the violation within the time given for abatement.

In view of the above, Petitioner's motion is granted.

ORDER

It is ORDERED that the settlement reached by Petitioner and Respondent in the above-captioned proceeding is hereby APPROVED.

It is further ORDERED that Respondent pay the sum of \$872 within 30 days of the date of this decision.

Forrest E. Stewart
Administrative Law Judge