

CCASE:

SOL (MSHA) V. RIVERSIDE CEMENT

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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. WEST 79-45-M
A/O No. 04-00011-05001

v.

Docket No. WEST 79-46-M
A/O No. 04-00011-05002

RIVERSIDE CEMENT COMPANY,
RESPONDENT

Docket No. WEST 79-47-M
A/O No. 04-0011-05003

Oro Grande Plant

DECISION

Appearances: Alan Raznick, Esq., Office of the Solicitor, United States
Department of Labor, San Francisco, California, for Petitioner,
MSHA
D. Marshall Nelson, Esq., Riverside Cement Company, Newport
Beach, California, for Respondent, Riverside Cement Company

Before: Judge Merlin

The above captioned cases are petitions for the assessment
of civil penalties filed by the Mine Safety and Health
Administration against Riverside Cement Company. A hearing was
held on November 27, 1979.

At the hearing, the Solicitor moved to vacate six citations,
stating that after reviewing the evidence available to MSHA
regarding these citations, he had determined that MSHA could not
prove the existence of the citations or the conditions that were
cited in the citations. The citations MSHA moved to vacate were:
375084, 375091, 375092, 375505, 375513, and 375119. From the
bench I granted the motion to vacate.

The Solicitor then moved that the remaining citations in
these cases be settled for 100 percent of the assessed penalty,
an amount totaling \$510. He explained that after reviewing the
evidence he had concluded that moderate gravity and ordinary
negligence were involved. I accepted the Solicitor's
representations after I had independently reviewed each and every
one of the citations. I pointed out that the assessed amounts
were low but that I kept in mind that the Act was being newly
applied to an operation such as this.

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ORDER

The decision granting the Solicitor's motion to vacate citations 375084, 375091, 375092, 375505, 375513 and 375119 is hereby AFFIRMED;

The acceptance of settlements in the amount of \$510 for citations 375097, 375506, 375107, 375110, 375114, 375120, 375525, 375085, 375089, 375093, 375095, 375104, 375499 and 375501 is hereby AFFIRMED; the operator is ORDERED to pay \$510 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge