

CCASE:  
FMC CORP. V. SOL (MSHA)  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

FMC CORPORATION,

APPLICANT

Notice of Contest

Docket No. WEST 79-419-RM

v.

Citation No. 575882;

August 24, 1979

SECRETARY OF LABOR,

MINE SAFETY AND HEALTH

ADMINISTRATION (MSHA),

FMC Mine

RESPONDENT

ORDER APPROVING SETTLEMENT

AND

DISMISSING THE PROCEEDING

On September 24, 1979, FMC Corporation (Applicant) filed a notice of contest in the above-captioned proceeding pursuant to section 105 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815 (1978). Subsequent thereto, an answer was filed by the Mine Safety and Health Administration (MSHA).

Pursuant to notices of hearing, the hearing convened at 1 p.m., Tuesday, November 6, 1979, in Salt Lake City, Utah, at which time counsel for both parties apprised the Judge that a settlement had been negotiated in the form of an agreement by the Applicant to withdraw its notice of contest in return for certain stipulations.

The agreement was filed subsequent to the hearing in the form of a document styled "stipulation of settlement and joint motion to approve settlement agreement." This document, filed on January 7, 1980, states the following:

Applicant and respondent, by and through their respective counsel of record, hereby stipulate to the following facts and agree as follows:

1. On August 24, 1979, an inspector of the Mine Safety and Health Administration ("MSHA"), United States Department of Labor, issued Citation No. 0575882 to FMC Corporation for violation of the Health and Safety Standard contained in 30 C.F.R. 57.4-29 ("Standard 4-29").

2. MSHA has not and does not intend to interpret Standard 4-29 to require that fire extinguishing equipment be located within arm's length of a welder during all welding

and cutting operations regardless of the fire hazard, or lack thereof, presented by all circumstances at the work site.

3. MSHA intends to use as a guideline for the enforcement of Standard 4-29 that fire extinguishing equipment should be located within 50 feet of a welder during welding and cutting operations unless the familiarity of the welder with fire extinguishing equipment locations or an immediate fire hazard peculiar to the work site warrants a closer placement of the fire extinguishing equipment.

4. Citation No. 0575882 issued by MSHA Inspector William W. Potter on August 24, 1979, was properly issued based upon the facts then known to the inspector. Additional facts, however, have subsequently been made known to MSHA which demonstrate that FMC Corporation was in compliance with the application and guidelines described in Paragraphs 2 and 3 above at the time the Citation was issued. Therefore, it now appears that Citation No. 0575882 should be withdrawn.

5. FMC Corporation hereby agrees to withdraw its Notice of Contest.

6. MSHA hereby agrees to withdraw Citation No. 0575882. Based upon the foregoing Stipulation, the parties jointly move the Commission to approve this Settlement Agreement.

Based on the representations made by counsel for the parties, it appears that a disposition approving the settlement will adequately protect the public interest. Accordingly, the settlement negotiated by the parties is herewith APPROVED and the above-captioned proceeding is herewith DISMISSED.

John F. Cook  
Administrative Law Judge