

CCASE:
SOL (MSHA) V. HYANNIS SAND & GRAVEL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceeding

Docket No. YORK 80-39-M
A/O No. 19-00557-05005

v.

Falmouth Pit and Mill

HYANNIS SAND & GRAVEL,
INCORPORATED,
RESPONDENT

DECISION

Appearances: Frederick Dashiell, Esq., Office of the Solicitor,
U.S. Department of Labor, Boston, Massachusetts,
for Petitioner, MSHA Paul Lorusso, Hyannis Sand
and Gravel., Inc., Hyannis, Massachusetts, for
Respondent, Hyannis Sand and Gravel, Inc.

ORDER TO PAY

Before: Judge Merlin

The above-captioned case is a petition for the assessment of
civil penalties filed by MSHA against Hyannis Sand and Gravel,
Incorporated.

At the hearing on June 2, 1980, the parties agreed to the
following stipulations:

- (1) The operator has a relatively small history.
- (2) All the alleged violations were abated in good
faith.
- (3) The operator is small in size, since it has only
between nine and fourteen employees.
- (4) The imposition of any penalties herein will not
affect the operator's ability to continue in business
(Tr. 3-4).

At the hearing, the Solicitor submitted a motion to approve
settlements for all the violations contained in this petition. I
approved settlements regarding twelve of these violations after
having reviewed the Solicitor's motion and typewritten summaries
of these violations (Tr. 5).

With regard to citation 218912 and the related 104(b)
withdrawal order 202766 originally assessed at \$690, the
Solicitor in his motion

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recommended a reduction to \$420. Even the reduced amount was far higher than the other assessments. Obviously, the original assessment and even the reduced amount were based upon the fact that a withdrawal order had been issued. However, the Solicitor admitted that respondent had not intentionally disregarded the Act and that it was confused as to what exactly was required for proper abatement. Although respondent did take steps to abate the citation which it sincerely believed would constitute compliance it did not learn its abatement was inadequate until the order issued. In light of these circumstances and bearing in mind all the statutory criteria, from the bench I assessed a penalty of \$170 for this violation.

ORDER

The rulings issued from the bench on June 2, 1980, are hereby AFFIRMED.

The operator is ORDERED to pay \$1,400 in fourteen weekly installments of \$100 apiece beginning from the date of the issuance of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge