

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE
DENVER, COLORADO 80204

24 JUN 1980

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),)	
)	CIVIL PENALTY PROCEEDING
Petitioner,)	DOCKET NO. CENT 79-3-M
)	
v.)	A/O NO. 29-01580-05001
)	
MORTON BROTHERS,)	MINE: DONNA MOUNTAIN
)	
Respondent.)	

DECISION AND ORDER

Appearances:

Robert L. Sims, Esq., Office of the Solicitor, United States Department of Labor, Suite 501, 555 Griffin Square Building, Dallas, Texas 75202
for Petitioner

Wayne E. Bingham, Esq., PICKERING AND BINGHAM, 920 Ortiz, N.E., Albuquerque, New Mexico 87108
for Respondent

Before: Judge Jon D. Boltz

STATEMENT OF THE CASE

This proceeding arose through initiation of an enforcement action brought pursuant to section 105 of the Federal Mine Safety and Health Act of 1977. 30 U.S.C. § 801 et seq. (1978) [hereinafter cited as "the 1977 Act" or "the Act"]. The matter came on for hearing, pursuant to notice, on May 13, 1980, in Albuquerque, New Mexico. Prior to hearing, the parties entered into a settlement agreement based upon stipulations. At the hearing, the parties read the stipulations into the record and moved for approval of the settlement agreement. I granted the motion from the bench and this Decision and Order is issued to affirm my prior bench decision.

DISCUSSION

In support of the proposed settlement the parties have taken into account, and submitted information concerning, the six statutory criteria set forth in section 110(i) of the Act.*

From the record, it appears that Respondent operates a nonmetallic open pit mine. In the year preceding the date of inspection, 5,255 production tons were mined at this particular mine. The production of the controlling company is 11,179 production tons per year. The record further discloses that Respondent does not have a history of previous violations. Additionally, the parties have stipulated that payment of the proposed penalties, or of the settlement figures, will not adversely affect the operator's ability to continue in business.

Citation No. 161094

This citation alleges a violation of 30 CFR § 55.11-12. That standard governs travelways and includes the mandate that openings near travelways through which men or materials may fall shall be protected. The citation alleges that such an opening, where a person could fall into a jaw crusher, was not protected. The parties stipulate that ordinary negligence on the part of the operator occasioned a potentially fatal hazard. The Secretary proposes that a penalty of \$30 be assessed, reduced from \$38, based upon the extraordinary good faith demonstrated by Respondent in correcting the cited condition.

* Section 110(i) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 820(i), reads in pertinent part:

"* * * In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity-of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. * * *"

Citation No. 161095

This citation alleges a violation of 30 CFR § 55.12-08. That standard governs electricity and includes the mandate that power wires shall be insulated adequately where they pass into or out of electrical compartments and that the holes shall be substantially bushed with insulated bushings. The citation alleges that energized power wires entering a certain motor were not passing through insulated bushings. The parties stipulate that ordinary negligence on the part of the operator Occasioned a potentially debilitating hazard. The Secretary proposes that a penalty of \$21 be assessed, reduced from \$26, based upon the good faith demonstrated by Respondent in correcting the cited condition.

Citation No. 161096

This citation alleges a **violation** of 30 CFR § 55.9-87. That standard governs loading, hauling and dumping and includes the mandate that heavy duty mobile equipment shall be provided with audible warning devices and that where the operator has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm or an observer to direct travel. The citation alleges that a certain front end loader, from which the operator had a partially obstructed view to the rear, was not equipped with an automatic reverse signal alarm or an observer to direct travel. The parties stipulate that ordinary negligence on the part of the operator occasioned a potentially debilitating hazard. The Secretary proposes that a penalty of \$30 be assessed, reduced from \$40, based upon the good faith demonstrated by Respondent in correcting the cited condition.

Citation No. 161097

This citation alleges a violation of 30 CFR § 55.18-12. That standard governs safety programs and includes the mandate that emergency telephone numbers shall be posted at appropriate telephones. The Petitioner believes that this citation was not properly cited, based upon the facts available at the time of the inspection,

and moves for permission to withdraw this citation.


Citation No. 161111

This citation alleges a violation of 30 CFR § 55.5-50(b). That standard governs physical agents and includes the mandate that noise exposures in excess of specified limits shall be controlled by feasible administrative or engineering controls. The citation alleges that noise dosimeter readings in excess of the specified limits were not controlled by feasible administrative or engineering controls. The parties stipulate that ordinary negligence on the part of the operator occasioned a potentially permanent and disabling hazard. The Secretary proposes that a penalty of \$30 be assessed, reduced from \$34, based upon the good faith demonstrated by Respondent in Correcting the cited condition.

After careful review and consideration of the argument in support of the proposed settlement, and taking into account those factors required to be considered by section 110(i) of the Act, I conclude and find that the proposed settlement should be approved.

ORDER

Accordingly, the motion for approval of the settlement agreement granted from the bench is hereby AFFIRMED. It is ORDERED that Respondent shall pay the affirmed penalty of \$111 within thirty days of the date of this Decision and Order.


Jón D. Boltz
Administrative Law Judge

Distribution:

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