

CCASE:
SOL (MSHA) v. SOMIS SAND
DDATE:
19811223
TTEXT:

~2826

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

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

v.

RICHARD M. ATKINSON,
DOING BUSINESS AS
SOMIS SAND & ROCK CO.,
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 80-467-M

A/C No. 04-01951-05003

MINE: Balcolm Canyon Plant

Appearances: Theresa Kalinski Esq.
Office of the Solicitor
United States Department of Labor
Room 3247 Federal Building
300 North Los Angeles Street
Los Angeles, California 90012,
For the Petitioner
Annie Verdries Esq.
4115 East Live Oak Avenue, Suite 108
Arcadia, California 91006,
For the Respondent

Before: Judge Jon D. Boltz

DECISION AND ORDER

The Petitioner filed a petition proposing that civil penalties be assessed against the Respondent for the alleged violation of five regulations promulgated pursuant to the Federal Mine Safety and Health Act of 1977 ("Act"). The alleged violations took place at Respondent's sand and rock operation on April 2 and April 3, 1980. In its answer, the Respondent generally denied the allegations of the Petitioner.

At the commencement of the hearing on the issues, counsel for the Petitioner stated that the parties had reached a proposed settlement of all issues. Based upon statements of counsel for the Petitioner, I make the following findings:

1. Respondent has a history of eight assessed violations.
2. Respondent is a small operator with production of 11,943 tons per year.

~2827

3. The proposed penalties will not impair the ability of the Respondent to continue in business.

4. There was demonstrated good faith by the Respondent in achieving rapid compliance after notification of the alleged violations.

Considering the above findings, the statements filed by counsel for the parties, as well as the proposal for settlement as stated by counsel for the Petitioner, I find that the proposal for settlement should be approved.

Citation No. 384514

A violation of 30 C.F.R. 56.11-12 was alleged as a result of an unsafe travelway in that there was an open hole approximately 18" x 18" in the work deck at the discharge hopper. A worker could have fallen into it and been injured. Respondent's statement is that there was a support platform approximately 3 inches under the deck which contained the opening, thereby preventing men and material from falling into and being injured by the opening. The parties agreed that a penalty of \$70.00 would be reasonable for the violation.

Citation No. 384516

This citation alleges a violation of 30 C.F.R. 56.4-11. The Petitioner alleges that the power supply to a cone crusher, that had been removed, had three bare leads coming out of the cable. There was a shock hazard because this cable could have been contacted by persons working in the area. The Respondent's statement is that the circuits were deenergized. The parties stipulate that a reasonable penalty would be \$90.00.

Citation No. 384517

This citation alleges a violation of 30 C.F.R. 56.9-7. It is alleged that the walkway side of the gravel conveyor was not provided with adequate guarding or an emergency stop device along the length of the elevated conveyor. The Respondent's statement is that parts of the existing guards were temporarily removed for cleaning and repair work. The parties have agreed that a reasonable penalty for the violation would be \$65.00.

Citation No. 384518

A violation of 30 C.F.R. 56.12-32 is cited. The Petitioner alleges that there was wiring coming out of the junction box on the southeast support leg of the dry plaster sand storage bin. This condition presented a potential shock hazard to persons coming into contact with the structure. The Respondent's statement is that the equipment involved was situated in an abandoned part of the mine. All lines were deenergized and the wires were taped off and had been isolated. No employees were working in the abandoned section of the mine. The parties stipulate that proposed penalty of \$65.00 would be reasonable.

~2828

Citation No. 384529

Petitioner alleges a violation of 30 C.F.R. 50.40(b) and specifically alleges that records, including quarterly reports and accident reports, were not being maintained at the mine office located on the property. Respondent's statement is that the reports were temporarily transferred to the main office for information necessary to answer allegations contained in a complaint filed by MSHA against the mine operator. The parties agree that a penalty assessment of \$10.00 would be reasonable.

The foregoing penalty assessments total \$300.00. The parties further stipulate that to ease the difficulty of making payment in full immediately, four consecutive monthly installments of \$75.00 each will be paid commencing December 15, 1981. The final monthly installment will thus be paid March 15, 1982, making a total of \$300.00.

From the bench I approve the proposed settlement, including the method of payment. This approval was made after considering the statutory criteria set forth in section 110(i) of the Act.

ORDER

The settlement approved from the bench is hereby AFFIRMED.

The Respondent is ORDERED to pay civil penalties in the total amount of \$300.00. This judgment is to be satisfied by paying monthly installments of \$75.00 each, commencing December 15, 1981, and on the 15th day of each month thereafter, including March 15, 1982, until a total of \$300.00 has been paid.

Jon D. Boltz
Administrative Law Judge