

CCASE:
SOL (MSHA) V. SUN SUPPLY
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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

v.

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 80-425-M

MINE: White Marble

SUN LANDSCAPING & SUPPLY COMPANY,
RESPONDENT

Appearances:

Marshall P. Salzman, Esq., Office of Daniel W. Teehan, Regional Solicitor,
United States Department of Labor, San Francisco, California,
For the Petitioner

Before: Judge John J. Morris

DECISION

The Secretary of Labor, on behalf of the Federal Mine Safety and Health Administration, (MSHA), charges respondent with violating three safety regulations adopted under the authority of the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq.

After notice to the parties a hearing on the merits was held in Phoenix, Arizona on August 31, 1982. Respondent, who was represented by counsel, did not appear at the hearing.

JURISDICTION

At the request of petitioner the Judge took official notice of the decision of Sun Landscaping and Supply Company, 2 FMSHRC 975 (1980).

The foregoing case adjudicated that respondent at this location was subject to the Federal Mine Safety and Health Act. On the basis of such official notice and with the evidence in this case showing the mine was in operation at the time of the inspection respondent is held to be subject to the Act.

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ISSUES

The issues are whether respondent violated the regulations and, if so, what penalties are appropriate.

CITATION 383496

This citation alleges a violation of Title 30, Code of Federal Regulations Section 50.40(b), which provides as follows:

(b) Each operator shall maintain a copy of each report submitted under 50.30 at the mine office closest to the mine for five years after submission. Upon request by the Mining Enforcement and Safety Administration, an operator shall make a copy of any report submitted under 50.20 or 50.30 available to MESA for inspection or copying.

The evidence shows that respondent did not have the quarterly report form (Tr. 6).

This citation should be affirmed.

CITATION 383498

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 55.15-1 which provides as follows:

55.15 Personal protection

55.15-1 Mandatory. Adequate first-aid materials, including stretchers and blankets, shall be provided at places convenient to all working areas. Water or neutralizing agents shall be available where corrosive chemicals or other harmful substances are stored, handled or used.

The evidence shows the facility did not have stretchers and blankets (Tr. 6).

This citation should be affirmed.

CITATION 383500

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 65.13-21 which provides as follows:

65.13-21 Mandatory. Except where automatic shutoff valves are used, safety chains or other suitable locking devices shall be used at connections to machines of high-pressure hose lines of 3/4 inch inside diameter or larger, and between high-pressure hose lines of 3/4 inch inside diameter or larger, where a connection failure would create a hazard.

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The evidence shows that the two inch high pressure air hose at the double connection between the compressor and the drilling machine did not have a safety chain or locking device (Tr. 7). The pressure in the hose was 100 psi (Tr. 7).

The citation should be affirmed.

CIVIL PENALTIES

Petitioner proposes penalties of \$40, \$72, and \$72, respectively, for the foregoing violations.

The criteria for assessing civil penalties are contained in 30 U.S.C. 820(i).

The public record here shows that respondent, a small company, has a prior history of 18 violations (Tr. 4). Statutory good faith is not appropriate here since the violations were not abated by affirmative action (Tr. 4-5). One of the violations in the prior case involving this respondent was a violation of 30 C.F.R. 55.13-21 in that the hose coupling did not have a safety chain, Sun Landscaping, 2 FMSHRC at 980.

Considering all of the statutory criteria I deem that the proposed civil penalties are appropriate.

Based on the foregoing findings of fact and conclusions of law I enter the following:

ORDER

1. Citation 383496 and the proposed penalty of \$40 are affirmed.
2. Citation 383498 and the proposed penalty of \$72 are affirmed.
3. Citation 383500 and the proposed penalty of \$72 are affirmed.
4. Respondent is ordered to pay the amount of \$184 within 30 days of the date of this order.

John J. Morris
Administrative Law Judge