

CCASE:
SOL (MSHA) V. ZEUS CORP. & AMISTAD FEUL
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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: CENT 81-248
A/O No: 41-02876-03012 V

v.

Little Bull Creek Mine

ZEUS CORPORATION,
RESPONDENT

SECRETARY OF LABOR, ET AL
PETITIONER

Civil Penalty Proceeding

Docket No: CENT 81-252
A/O No: 41-02876-03011 V

v.

AMISTAD FUEL CORPORATION,
RESPONDENT

DECISION

Appearance: George Collins, Esq., Office of the Solicitor, U.S.
Department of Labor, 555 Griffin Square Building,
Dallas, TX 75202 David M. Williams, Esq., P.O.B.
242, San Saba, TX 76877

Before: Judge Moore

At the hearing the parties agreed that under the Commission's National Gypsum decision, 3 FMSHRC 822 (1981) the two violations involved in the citations in these cases would not be considered significant and substantial. Consequently, the citations would not have triggered the special assessments procedure if they had been issued after that decision.

The narrative statements accompanying the special assessments are not contained in the file but the attorneys, with the obvious agreement of the inspector explained the situation. This was an experimental mine in west Texas and the company was unable to obtain the certification of electrical inspectors to make the examinations required by 30 C.F.R. 77.502-2. The examinations were in fact made by competent electricians but none had yet met the definition of "qualified person" contained in 30 C.F.R. 77.103.

The special assessments were \$1,000 for each violation. The parties proposed that I modify the citations to eliminate the significant and substantial findings, affirm the citations as modified and assess a penalty of \$20 for each violation. In the interest of uniformity of

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treatment, inasmuch as that is the way the matter would be handled if the same violations were discovered today, I agreed to accept the proposal.

The two citations are therefore modified to eliminate the significant and substantial findings and as modified they are affirmed. As to the civil penalty, I find there was no hazard, that the history of prior violations was small and that there was good faith abatement. In the circumstances I find no negligence and although the record does not contain the size of the company or operation, I do not believe that that criterion matters in the circumstances of this case.

Respondents are accordingly ORDERED to pay a civil penalty to MSHA in the total sum of \$40. The payment is to be made within 30 days.

Charles C. Moore, Jr.,
Administrative Law Judge