

CCASE:
SOL (MSHA) V. NUGENT SAND
DDATE:
19830831
TTEXT:

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. LAKE 83-57-M
A.C. No. 20-00801-05501

v.

Nugent Sand Mine

NUGENT SAND COMPANY, INC.,
RESPONDENT

FURTHER ORDER TO SUBMIT INFORMATION

On August 8, 1983, I issued an order disapproving the Solicitor's motion for settlement with respect to three of the six violations involved in this matter. With respect to these three which are assessed at \$20 apiece, I ordered the Solicitor to submit additional information sufficient for me to determine whether the proposed penalties are justified.

The Solicitor has now submitted an amended motion. Unfortunately, this motion also is inadequate. With respect to Citation No. 2088974, absence of a fire extinguisher on a front-end loader, the Solicitor advises that there was no likelihood of injury and a moderate degree of negligence. He does not, however, furnish any reasons to support these conclusions. Indeed, the relevant boxes on the citation are not even checked. I have previously stated that the mere checking of the boxes does not constitute a sufficient basis upon which I could approve settlement. However, the absence of even these checks leads me to wonder how the Solicitor reached the conclusions set forth in this motion.

With respect to Citation No. 2088975, the absence of a guard on a take-up pulley, the Solicitor advises that there was a low degree of negligence and no likelihood of injury. However, once again no reasons were given to support these conclusions. Moreover, the boxes were not even checked on the citation form. The same is also true of Citation No. 2088976 with respect to which the Solicitor states there is low negligence and no likelihood of injury.

~1513

I very much regret having to send this case back to the Solicitor. However, the Commission has its statutory responsibilities to fulfill and cannot rubber stamp bare conclusions especially where as here, the citations on their face do not appear to support the Solicitor's representations.

Accordingly, the amended settlement motion is disapproved and the Solicitor is Ordered to furnish further information within 30 days of the date of this order adequate for me to determine whether the three proposed \$20 penalties are justified.

Paul Merlin
Chief Administrative Law Judge