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SOL (MSHA) v. ROSS ISLAND SAND & GRAVEL
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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. WEST 83-111-M A.C. No. 35-00540-05501
v.	Ross Island Plant
ROSS ISLAND SAND & GRAVEL COMPANY, RESPONDENT	

DISAPPROVAL OF SETTLEMENT

ORDER OF ASSIGNMENT

On September 28, 1983, I ordered the Solicitor to submit additional information to support the proposed settlements of $20 apiece for the two violations involved in this matter. The Solicitor has now responded.

With respect to Citation No. 2225917 the Solicitor advises as follows:

> In regard to this citation, detailing the fact that a work deck area behind a screen where the scalper machine was located, was being littered with wood and other debris, a violation of 30 CFR 56.11.1, if the inspector were to testify he would state in regard to negligence: that the negligence involved was ordinary negligence. The wood scattered around the workplace was obvious and was the result of the company's failure to correct said condition.
>
> In regard to the gravity of the situation, the inspector would testify that there were approximately two or three persons working in the area and it was probable that they would trip or fall. The type of injury that might occur is unpredictable as it would depend entirely on the nature of the fall, but was unlikely to cause lost work days or restricted duty.

With respect to Citation No. 2225918 the Solicitor advises as follows:

> In regard to Citation 2225918 detailing the fact that an acetylene bottle, located in the welding bay, was not secured, a violation of 30 CFR 56.16-5, if the inspector were to testify, he would state in regard to negligence: that the negligence involved was ordinary negligence, in that the operator failed to exercise reasonable care to prevent and correct the condition. The bottle was in plain view and obviously unsecured.
>
> In regard to the gravity of the situation, the inspector would testify that there were two to three men working in the area all the time doing welding or working at the front end of a loader. The probability of an accident occurring was "probable' because although there was no flammable material around, there remains the possibility of pressure accumulating and the bottle acting like a trajectory. The gravity of an injury if it were to occur would be unpredictable depending upon the length of time the bottle was unsecured and the direction it took. It would be expected that a minimal number of days would be lost or work restricted.

In light of the foregoing, I am unable to approve $20 settlements for either of these violations. Although the operator is small and without a prior history, gravity and negligence in both instances appear at first blush to be much greater than would be consistent with $20 penalties. At the very least, the inspector's statements raise questions which should be resolved at hearing.

Accordingly, the motion for settlement is Denied. This case is hereby assigned to Administrative Law Judge Virgil E. Vail.

~1823

All future communications regarding this case should be addressed to Judge Vail at the following address:

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Paul Merlin
Chief Administrative Law Judge