

CCASE:
FMC V. SOL (MSHA)
DDATE:
19840427
TTEXT:

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

FMC CORPORATION,
CONTESTANT
v.
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
RESPONDENT

CONTEST OF ORDER/CITATION

Docket No. WEST 81-264-RM
Order No. 577585; 4/7/81

Docket No. WEST 81-265-RM
Order No. 577586; 4/7/81

Docket No. WEST 82-15-RM
Order No. 578606; 9/9/81

Docket No. WEST 82-60-RM
Citation No. 578884; 11/16/81

Docket No. WEST 82-61-RM
Order No. 578885; 11/16/81

Docket No. WEST 82-62-RM
Citation No. 578907; 11/18/81

Docket No. WEST 82-121-RM
Order No. 578961; 2/10/82

Docket No. WEST 82-122-RM
Order No. 578880; 2/10/82

Docket No. WEST 82-123-RM
Order No. 578879; 2/10/82

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

FMC Mine
CIVIL PENALTY PROCEEDINGS

Docket No. WEST 82-11-M
A.C. No. 48-00152-05050 V

v.

FMC CORPORATION,
RESPONDENT

Docket No. WEST 82-64-M
A.C. No. 48-00152-05054 V

Docket No. WEST 82-134-M
A.C. No. 48-00152-05056

Docket No. WEST 82-152-M
A.C. No. 48-00152-05058 V

Docket No. WEST 83-10-M(A)
A.C. No. 48-00152-05504

FMC Mine

DECISION APPROVING SETTLEMENT

Before: Judge Kennedy

These matters came on for a prehearing/settlement conference on April 10, 1984. As a result of the scrutiny and analysis afforded at this hearing, the Secretary agreed to modification of the section 104(d) violations to section 104(a) citations and the operator agreed to a substantial increase in the penalties proposed for eight of the eleven charges. As to the remaining three, the operator requested time to submit its justification for a lesser increase in the amount of the penalty than that proposed by the trial judge.

The matter is now before me on the operator's motion to approve settlement which includes its justification for increasing the penalties on the three excepted violations from \$500 to \$1,000 instead of \$2,000. The Secretary recommends acceptance of the operator's circumstances in mitigation of the trial judge's initial proposal.

Based on a further independent evaluation of these matters, I find the settlement now proposed by both parties is in accord with the purposes and policy of the Act. Accordingly, it is ORDERED that the motion be, and hereby is, GRANTED.

It is FURTHER ORDERED that:

1. The following section 104(d) Citations/Orders be, and hereby are, modified to section 104(a) citations:

Number

577585
577586
578606
578911
578885
578967
578961
578880
578979

~1070

2. The penalties agreed upon be allocated among the violations charged as follows:

Number	Amount
577585	\$1,000
577586	1,000
578606	1,000
578911	1,000
578884	300
578885	300
578967	300
578907	150
578961	1,000
578880	1,000
578879	1,000
Total	\$8,050

3. The operator pay the total amount of the settlement agreed upon, \$8,050, on or before Friday, May 11, 1984 and that subject to payment the captioned matters be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge