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SOL (MSHA) V. MEDUSA CEMENT
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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.

MEDUSA CEMENT COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. LAKE 83-74-M
A.C. No. 20-02514-05501

Docket No. LAKE 83-75-M
A.C. No. 20-00038-05501

Docket No. LAKE 83-76-M
A.C. No. 20-00038-05502

Docket No. LAKE 83-77-M
A.C. No. 20-00038-05503

Docket No. LAKE 83-80-M
A.C. No. 20-00038-05504

Docket No. LAKE 83-81-M
A.C. No. 20-02514-05502

Medusa Cement Company Plant

DECISION

Appearances: Rafael Alvarez, Esq., Office of the Solicitor,
U.S. Department of Labor, Chicago, Illinois,
for Petitioner;
Ralph M. Richie, Safety Director, Medusa Cement
Company, Cleveland, Ohio, for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The above cases involve 48 alleged violations of mandatory safety standards cited during inspections in April and May, 1983. Respondent contested the penalties assessed by MSHA and the Solicitor filed proposals for penalty which were docketed in the Review Commission. Subsequently, the parties agreed to settle the violations for the amount originally assessed and motions for approval of the settlement

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agreements were submitted. The Chief Administrative Law Judge denied the settlement proposals and assigned the cases to me.

Pursuant to notice, the cases were heard in Charlevoix, Michigan, on June 21, 1984. During an on the record discussion between the representatives of both parties, including the taking of testimony from Federal Mine Inspectors Ronald J. Baril and Clyde C. Brown for Petitioner and Plant Safety Director William Nall and Safety Committee member Richard Putman for Respondent, the parties agreed to settle the violations for the penalties listed herein. I stated on the record that I would approve the settlement agreements.

FINDINGS AND CONCLUSIONS APPLICABLE TO ALL VIOLATIONS

1. Respondent owns and operates a mill in Charlevoix County, Michigan, which produces cement. It is a subsidiary of the Crane Company and is a relatively large operator. It operates the subject mill on a seasonal basis.

2. Respondent has a modest history of prior violations.

3. The penalties assessed herein will not affect Respondent's ability to continue in business.

4. Respondent admits the violations charged in the citations involved herein.

5. All of the violations involved in these proceedings were abated promptly and in good faith.

DOCKET NO. LAKE 83-74-M

Citation No. 2088977

This citation charged a violation of 30 C.F.R. 56.16-6 because of the failure to place covers over the stems of oxygen and acetylene tanks. The inspector testified that this was a technical violation and no hazard was presented. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I accepted the representations made at the hearing and approved the proposed settlement.

Citation No. 2088978

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This citation charged a violation of 30 C.F.R. 56.9-2, because a rear view mirror was missing from a haul truck. The violation was originally assessed at \$20 and the parties proposed to settle for \$50. I approved the proposed settlement.

Citation No. 2088979

This citation charged a violation of 30 C.F.R. 56.4-24(d), because of a defective fire extinguisher on a drill. The inspector testified that this was a significant and substantial violation. The violation was originally assessed at \$39, and the parties proposed to settle for \$100. I approved the proposed settlement.

Citation No. 2088980

This citation charged a violation of 30 C.F.R. 56.9-2, because a rear view mirror was missing from a haul truck. The violation was originally assessed at \$20 and the parties proposed to settle for \$50. I approved the proposed settlement.

Citation No. 2088994

This citation charged a violation of 30 C.F.R. 56.12-25 because a portable extension cord light was not grounded. The cord was used only for lighting purposes and did not present any hazard to employees. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the settlement.

Citation No. 2088995

This citation charged a violation of 30 C.F.R. 56.12-14, because an employee was moving a power shovel cable without proper protective equipment. The equipment was provided by Respondent, and the employees were instructed to use it, but the employee in question failed to use it. The violation was originally assessed at \$68 and the parties proposed to settle for \$68. I approved the settlement.

Citation No. 2088996

This citation charged a violation of 30 C.F.R. 56.12-32 because of Respondent's failure to have a cover plate on a switch box. The violation was originally assessed at \$20 and the parties proposed to settle for \$50. I approved the settlement.

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Citation No. 2089061

This citation charged a violation of 30 C.F.R. 56.12-25 because of the failure to ground an extension cord to a water softener. The violation was originally assessed at \$39 and the parties proposed to settle for \$39. I approved the proposed settlement.

Citation No. 2089062

This citation charged a violation of 30 C.F.R. 56.12-8 because of failure to provide a bushing for a wire entering the drive motor of the crusher pan feeder. No bare wires were involved and the violation was in an area not accessible to employees. The violation was originally assessed at \$20 and the parties agreed to settle for \$20. I approved the proposed settlement.

Citation No. 2089065

This citation charged a violation of 30 C.F.R. 56.14-6 because a guard over a pinch point had been removed while the machine was operating. The violation was originally assessed at \$30 and the parties proposed to settle for \$50. I approved the proposed settlement.

Citation No. 2089066

This citation also charged a violation of 30 C.F.R. 56.14-6 because of the same condition as in the prior citation. The violation was originally assessed at \$30 and the parties proposed to settle for \$50. I approved the proposed settlement.

DOCKET NO. LAKE 83-75

Citation No. 2088998

This citation charged a violation of 30 C.F.R. 56.14-6 because of failure to have guarding on the tail pulley of the conveyor belt. The tail pulley would only be approached during greasing operations when the machine is shut down. The pinch area is guarded by location. The violation was originally assessed at \$20 and the parties proposed to settle for \$30. I approved the proposed settlement.

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Citation No. 2088999

This citation charged a violation of 30 C.F.R. 56.14-1 because of failure to provide guarding for a conveyor belt head pulley. The guard had been removed and the employee failed to replace it. The area is isolated and would be visited only for maintenance. The violation was originally assessed at \$112, and the parties proposed to settle for \$112. I approved the proposed settlement.

Citation No. 2089067

This citation charged a violation of 30 C.F.R. 56.12-16 because Respondent put drive belts on a drive motor without locking out the system. Respondent has a written lock out procedure and all employees are provided with locks. The employee involved was aware of the procedure. The violation was originally assessed at \$54, and the parties proposed to settle for \$54. I approved the proposed settlement.

Citation No. 2089068

This citation charged a violation of 30 C.F.R. 56.4-24(d) because of Respondent's failure to service fire extinguishers. The contractor who serviced the fire extinguishers for Respondent has since been replaced. The violation was originally assessed at \$85 and the parties proposed to settle for \$100. I approved the proposed settlement.

Citation No. 2089069

This citation charged a violation of 30 C.F.R. 56.11-3 because of the use of an 8 foot stepladder in bad repair. The ladder had been discarded by Respondent and placed in a refuse pile. An employee took it from the refuse pile and used it. The violation was originally assessed at \$39 and the parties proposed to settle for \$20. I approved the proposed settlement.

Citation No. 2089070

This citation charged a violation of 30 C.F.R. 56.14-6 because of a defect in the guard for the take up pulley and counterweight. Employees are not normally in the area, and the defect had apparently just occurred. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

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Citation No. 2089074

This citation charged a violation of 30 C.F.R. 56.11-2 because of a missing section on a handrail on a walkway. Maintenance has just been performed in the area and the top section of the handrail had been removed in order to perform the work. Supervisory personnel were not aware that the handrail had not been replaced. The violation was originally assessed at \$68 and the parties proposed to settle for \$68. I approved the proposed settlement.

Citation No. 2089075

This citation charged a violation of 30 C.F.R. 56.11-12 because of an opening above a conveyor through which a person could fall. The plant had just gone into production for the season and the area had not been taken care of. The violation was originally assessed at \$85 and the parties proposed to settle for \$85. I approved the proposed settlement.

Citation No. 2089076

This citation charged a violation of 30 C.F.R. 56.12-34 because of a portable light bulb hanging in the "shoot" without being guarded. The violation was originally assessed at \$68 and the parties proposed to settle for \$68. I approved the proposed settlement.

Citation No. 2089077

This citation charged a violation of 30 C.F.R. 56.11-1 because of a material build-up on a walkway. Again, the plant had just started operating, and the company had not yet completed cleaning its many walkways. The violation was originally assessed at \$85 and the parties proposed to settle for \$85. I approved the proposed settlement.

Citation No. 2089078

This citation charged a violation of 30 C.F.R. 56.14-6 because of a missing guard on a tail pulley. The guard had been removed for clean up purposes and was not replaced. The violation was originally assessed at \$112 and the parties proposed to settle for \$112. I approved the proposed settlement.

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Citation No. 2089079

This citation charged a violation of 30 C.F.R. 56.11-2 because of a missing section of toeboard on a deck area. There was adequate handrailing--including a top rail and a midrail. The area was not active at the time. There was no loose material on the deck. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

Citation No. 2089043

This citation charged a violation of 30 C.F.R. 56.14-6 because of an unguarded pinch point. The violation was originally assessed at \$112 and the parties proposed to settle for \$112. I approved the proposed settlement.

Citation No. 2089044

This citation charged a violation of 30 C.F.R. 56.16-5 because compressed gas cylinders were not properly secured. The cylinders had just been used and the employees neglected to chain them up. The violation was originally assessed at \$68 and the parties proposed to settle for \$68. I approved the proposed settlement.

Citation No. 2089045

This citation charged a violation of 30 C.F.R. 56.12-34 because a portable extension cord with exposed wires and a broken light bulb in its socket was plugged in and lying on the floor. The cord had just been used by an employee and was left on the floor. The violation was originally assessed at \$136 and the parties proposed to settle for \$136. I approved the proposed settlement.

Citation No. 2089047

This citation charged a violation of 30 C.F.R. 56.14-7 because a guard on the V-belt drive was in bad repair, exposing pinch points. The area was a restricted walkway. The violation was originally assessed at \$112 and the parties proposed to settle for \$112. I approved the proposed settlement.

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Citation No. 2089048

This citation charged a violation of 30 C.F.R. 56.11-3 because of a defective ladder. Respondent asserts that the ladder belonged to construction personnel and had been left by them on the premises. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I accepted the proposed settlement.

Citation No. 2089051

This citation charged a violation of 30 C.F.R. 56.11-1 because of stored material on a walkway. The violation was originally assessed at \$85 and the parties proposed to settle for \$85. I approved the proposed settlement.

Citation No. 2089081

This citation charged a violation of 30 C.F.R. 56.12-34 because of failure to provide guarding for an extension cord light close to a walkway. Only one employee--the supervisor making an onshift examination--normally uses the walkway. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

Citation No. 2089082

This citation charged a violation of 30 C.F.R. 56.12-8 because a power cable lacked a restraining clamp. The cable was grounded and there was little likelihood of any employee receiving an electrical shock or other injury. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

DOCKET NO. LAKE 83-76-M

Citation No. 2089083

This citation charged a violation of 30 C.F.R. 56.11-1 because of a buildup of cement on the stairway and the walkway at the bottom of the transfer elevator. The buildup was of loose material and was not large. The violation was originally assessed at \$85 and the parties proposed to settle for \$85. I approved the proposed settlement.

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Citation No. 2089085

This citation charged a violation of 30 C.F.R. 56.11-12 because of the absence of a cover plate for a fuel oil pump pit. This was not a travelway but was out in a field and any employee travelling in the area would be looking for the pit. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

DOCKET NO. LAKE 83-77-M

Citation No. 2089071

This citation charged a violation of 30 C.F.R. 56.9-7 because the emergency stop cord on a conveyor was not properly located. The discussion brought out that the cord was within 12 inches of the pinch point and this conforms to present MSHA District policy. I determined that no violation was shown and vacated the citation.

Citation No. 2089072

This citation charged a violation of 30 C.F.R. 56.9-7 because an accessible stop cord was not present along the entire length of the conveyor. Here the stop cord was 21 inches from the pinch point. The violation was originally assessed at \$20 and the parties proposed to settle for \$100. I approved the proposed settlement.

Citation No. 2089000

This citation charged a violation of 30 C.F.R. 56.9-7 because emergency stop devices on both sides of a conveyor belt were 21 inches from the pinch points. The violation was originally assessed at \$20 and the parties proposed to settle for \$100. I approved the proposed settlement.

Citation No. 2089041

This citation charged a violation of 30 C.F.R. 56.14-6 because the drive chain of an elevator was unguarded. The guard had been removed for repairs. The area had been roped off but was still accessible to employees. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

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Citation No. 2089042

This citation charged a violation of 30 C.F.R. 56.9-11 because of a shattered windshield on a front-end loader. The damaged had occurred on the same shift as the inspection. The violation was originally assessed at \$136 and the parties proposed to settle for \$136. I approved the proposed settlement.

Citation No. 2089046

This citation charged a violation of 30 C.F.R. 56.14-6 because of a missing guard on a rotary feed drive. The violation was originally assessed at \$112 and the parties proposed to settle for \$112. I approved the proposed settlement.

Citation No. 2089049

This citation charged a violation of 30 C.F.R. 56.11-12 because a section of a wall had fallen and was not cleaned up. Employees did not travel in the area. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

Citation No. 2089050

This citation charged a violation of 30 C.F.R. 56.20-3(a) because of material spilled on a walkway. This was hardened material and had apparently been present for some time. The violation was originally assessed at \$119 and the parties proposed to settle for \$119. I approved the proposed settlement.

Citation No. 2089080

This citation charged a violation of 30 C.F.R. 56.20-3(a) because of equipment being present on walkways presenting tripping hazards. The violation was originally assessed at \$85 and the parties proposed to settle for \$85. I approved the proposed settlement.

Citation No. 2089084

This citation charged a violation of 30 C.F.R. 56.12-8 because power cables were out of restraining clamps. The cables were in good condition and were

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grounded. Employees do not travel the area. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

Citation No. 2089086

This citation charged a violation of 30 C.F.R. 56.9-7 because the emergency stop devices on a conveyor belt were not operating. The violation was originally assessed at \$119 and the parties proposed to settle for \$119. I approved the proposed settlement.

DOCKET NO. LAKE 83-80-M

Citation No. 2089073

This citation charged a violation of 30 C.F.R. 56.16-6 because of failure to cover the stems of compressed gas cylinders in a truck. The violation was originally assessed at \$39 and the parties proposed to settle for \$56. I approved the proposed settlement.

DOCKET NO. LAKE 83-81-M

Citation No. 2088997

This citation charged a violation of 30 C.F.R. 56.14-1 because of the failure to provide guarding for the counterweight wheel at the No. 2 shaker stream. This was not a normal travelway and the only employees who would go in the area would be a supervisor for onshift examinations and an employee to do greasing. The machine would be deenergized for greasing. The violation was originally assessed at \$20 and the parties proposed to settle for \$20. I approved the proposed settlement.

Citation No. 2089063

This citation charged a violation of 30 C.F.R. 56.4-24(d) because of failure to properly maintain and service a fire extinguisher. The violation was originally assessed at \$39 and the parties proposed to settle for \$100. I approved the proposed settlement.

Citation No. 2089064

This citation charged a violation of 30 C.F.R. 56.11-1 because of material spilled along the walkway at the conveyor. Clean up had begun of this area. The

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violation was originally assessed at \$39 and the parties proposed to settle for \$39. I approved the proposed settlement.

ORDER

I have considered and approved the proposed settlements in the light of the criteria in section 110(i) of the Act. Respondent is ORDERED to pay within 30 days of the date of this decision the following civil penalties:

CITATION NO.	PENALTY
2088977	\$ 20
2088978	50
2088979	100
2088980	50
2088994	20
2088995	68
2088996	50
2089061	39
2089062	20
2089065	50
2089066	50
2088998	30
2088999	112
2089067	54
2089068	100
2089069	20
2089070	20
2089074	68
2089075	85
2089076	68
2089077	85
2089078	112
2089079	20
2089043	112
2089044	68
2089045	136
2089047	112
2089048	20
2089051	85
2089081	20
2089082	20
2089083	85
2089085	20
2089071	vacated 0
2089072	100

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2089000	100
2089041	20
2089042	136
2089046	112
2089049	20
2089050	119
2089080	85
2089084	20
2089086	119
2089073	56
2088997	20
2089063	100
2089064	39

Total \$3,015

James A. Broderick
Administrative Law Judge