

CCASE:

U S BORAX & CHEMICAL V. SOL (MSHA)

SOL (MSHA) V. U S BORAX & CHEMICAL

SOL (MSHA) V. A.E. FRENCH

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TTEXT:

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

UNITED STATES BORAX AND  
CHEMICAL CORPORATION,  
APPLICANT  
v.

APPLICATION FOR REVIEW

Docket No. WEST 82-144-RM  
Citation No. 385177; 2/26/82

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

Docket No. WEST 82-145-RM  
Order No. 371298; 3/9/82

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

CIVIL PENALTY PROCEEDING

Docket No. WEST 82-187-M  
A/O No. 04-03886-05019 F

Boron Mill Mine

UNITED STATES BORAX AND  
CHEMICAL CORPORATION,  
RESPONDENT

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

CIVIL PENALTY PROCEEDING

Docket No. WEST 83-100-M  
A.C. No. 04-03886-05501 A

Boron Mill

ALFRED E. FRENCH,  
RESPONDENT

DECISION APPROVING SETTLEMENT  
AND DISMISSING PROCEEDINGS

Before: Judge Broderick

On February 20, 1985, the parties submitted a Joint Motion for the Approval of Civil Penalty Proceedings and Withdrawal of Contest and Application for Review. With the motion, they submitted a copy of the MSHA Investigation Report of March 26, 1982, on the fatal accident occurring at the U.S. Borax facility on February 26, 1982, and a copy of a

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computer printout showing U.S. Borax's history of paid violations during the 2-year period prior to the alleged violation which is the subject of these proceedings.

On February 26, 1982, a miner at the subject mine contacted a bare power conductor while cleaning a transformer. He suffered critical electrical burns and died on March 3, 1982.

MSHA conducted an investigation of the accident following which it issued a citation alleging a violation of 30 C.F.R. 55.12-17 and an order of withdrawal for an imminent danger. The standard allegedly violated, provides that power circuits shall be deenergized before work is done on them, warning signs shall be posted and switches shall be locked out to prevent power circuits from being energized without the knowledge of individuals working on them. The imminent danger was described in the withdrawal order as resulting from insufficiently supervised and trained laborers being assigned to cleaning substations with high potential voltage present. The citation and the withdrawal order have been challenged by U.S. Borax in these proceedings.

The Secretary filed a civil penalty proceeding against U.S. Borax charging a violation of 30 C.F.R. 55.12-17 and proposed a civil penalty of \$10,000. It filed a civil penalty proceeding against Alfred E. French, an electrical foreman at U.S. Borax, alleging that as an agent of U.S. Borax, he knowingly authorized, ordered, or carried out the violation of 30 C.F.R. 55.12-17. It proposed a penalty of \$2,500 against French.

The settlement agreement of which the motion seeks approval, provides for the payment by U.S. Borax of a civil penalty in the amount of \$6,000 and by French in the amount of \$1,500. It further provides that the settlement shall not be deemed as an admission by U.S. Borax or French of a violation of the Act or any mandatory standard.

The motion states that the Secretary agreed to the settlement in part because of the unavailability of a witness, MSHA electrical inspector Billy Boult who was the chief investigator of the fatal accident. Inspector Boult has suffered a heart attack and was advised by his physician that testifying would cause a strain on his heart.

The history of prior violations shows that U.S. Borax had 87 paid violations in the 24-month period prior to the violation at issue here. None of the prior violations involved 30 C.F.R. 55.12-17.

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I have considered the motion in light of the criteria in section 110(i) of the Act, and conclude that the settlement is in the public interest and should be approved.

Therefore, IT IS ORDERED that the settlement agreement is APPROVED. It is FURTHER ORDERED that U.S. Borax shall within 30 days of the date of this order pay the amount of \$6,000 as a civil penalty for the violation alleged against it. IT IS FURTHER ORDERED that Alfred French shall within 30 days of the date of this order pay the amount of \$1,500 as a civil penalty for the violation against him.

Upon the payment of these penalties, Docket Nos. WEST 82-187-M and WEST 83-100-M are DISMISSED.

On motion of U.S. Borax, the contest proceeding and Application for Review docketed as WEST 82-144-RM and WEST 82-145-RM are withdrawn and DISMISSED.

James A. Broderick  
Administrative Law Judge