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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. SE 85-135-M A.C. No. 08-00024-05512
v.	Brooksville Gay Quarry
FLORIDA CRUSHED STONE COMPANY, RESPONDENT	

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments in the amount of $6,257, for five alleged violations of certain mandatory safety standards found in Part 56, Title 30, Code of Federal Regulations.

The respondent filed a timely answer and contest, and the case was scheduled for hearing in Tampa, Florida, on May 13, 1986. However, the parties filed a motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of a settlement of the case. The citations, initial assessments, and the proposed settlement amounts are as follows:

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
2384726	3/27/85	56.3003	$6,000	$3,000
2384728	3/27/85	56.3005	$ 126	$ 126
2384729	3/27/85	56.18028(b)	$ 20	$ 20
2384875	7/23/85	56.20003(a)	$ 20	$ 20
2384876	7/23/85	56.12032	$ 91	$ 91

Discussion

The respondent has agreed to pay the full amount of the proposed civil penalty assessments for four of the citations in question. With respect to Citation No. 2384726, the record reflects that it was issued when a section of a pit wall collapsed, partially covering a power shovel and resulting in the death of the shovel operator. The inspector who issued the citation alleged that the height of the pit bench was 60 feet, and he believed that this height was excessive for the equipment being used. The cited safety standard provides in pertinent part that "the width and height of benches shall be governed by the type of equipment to be used and the operation to be performed."

With regard to the respondent's negligence for the citation in question, the respondent represents that (1) it had regular inspections of the highwall; (2) these inspections were designed, inter alia, to uncover potential hazards such as that which lead to the failure of the wall and to ensure that the width and heights of any benches was appropriate for the equipment being used and the operation being performed; (3) the wall had been inspected four times during the 9Ähour period preceding the accident including one inspection only 2 hours prior to the accident; and (4) there were no rockslides or falling rocks noted in the 24Ähours prior to the accident. MSHA has no information contrary to these representations.

Respondent represents that the defect in the highwall leading to the wall's failure was not reasonably discoverable by inspection by qualified persons. MSHA is aware of no condition which was visible prior to the accident which would have indicated the existence of the condition which lead to the wall's failure. Further, the respondent represents that, at the time of the accident, the power shovel loading rock at the base of the wall was backed away from the pit wall approximately 20 feet, and the shovel cab was not rotated. MSHA has no information contrary to these representations.

The parties agree that respondent is chargeable with only a low degree of negligence with respect to Citation No. 2384876 in that the cited condition was the result of the accidental failure to reinstall a single cover over an electrical switch, contrary to the otherwise uniform procedures of the respondent.

As to the gravity of the violations alleged in Citation Nos. 2384726, 2384728 and 2384876, the parties agree that if an injury were to result from the conditions, such injury would likely be serious or fatal and would likely affect one person.

The parties agree that Citation Nos. 2384729 and 2384875 were properly classified as "single penalty" citations in that they were not reasonably likely to result in a reasonably serious injury, and the respondent demonstrated little negligence.

The parties agree that the respondent is a medium to large mine operator subject to the Act, and that the civil penalties in question will not affect its ability to continue in business. They also agree that the respondent demonstrated good faith by terminating all of the alleged violations within the times prescribed, and that during the period March, 1983 through July, 1985, the respondent was assessed for eight violations excluding timely paid single penalty assessments. The parties also agree that approval of the proposed settlement is in the public interest and will further the intent and purpose of the Act.

Conclusion

After careful review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this case, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the motion IS GRANTED, and the settlement IS APPROVED.

ORDER

Respondent IS ORDERED to pay civil penalties in the settlement amounts shown above in satisfaction of the citations in question within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, this proceeding is DISMISSED.

George A. Koutras
Administrative Law Judge