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SOL (MSHA) V. DELTA 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 PROCEEDINGS

Docket No. WEST 85-139-M
A.C. No. 05-00967-05504

v.

Docket No. WEST 85-145-M
A.C. No. 05-00967-05505

DELTA SAND AND GRAVEL
COMPANY,
RESPONDENT

Docket No. WEST 85-155-M
A.C. No. 05-00967-05506

Docket No. WEST 86-64-M
A.C. No. 05-00967-05507

Delta Sand Pit No. 1

DECISION

Appearances: James Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
Jack Starner, President, Delta Sand and Gravel
Company, Delta, Colorado, for Respondent.

Before: Judge Carlson

These four consolidated cases came regularly on for hearing at Grand Junction, Colorado on May 1, 1986. At the outset of the hearing the parties announced that they had reached a settlement that morning which, if approved, would resolve all matters in dispute.

The terms of the proposed settlement are as follows:

In docket number WEST 85-139-M, which embraces seven citations, the Secretary moves to amend the proposed penalty for citation number 2355215 from \$36.00 to \$20.00. He further moves to withdraw citations numbered 2355212 and 2355211 on grounds of insufficient evidence to prove the violations alleged.

Respondent, conditioned upon the granting of the Secretary's motions, agrees to pay the originally proposed \$20.00 penalties for citations numbered 2355214, 2355216, 2355218 and 2355283, as well as the amended \$20.00 penalty for citation number 2355215. It also agrees to withdraw its notice of contest to the citations which are to be affirmed.

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In docket number WEST 85Ä145ÄM, which consists of a single citation, number 2355282, respondent agrees to pay the \$20.00 penalty originally proposed. It further moves to withdraw its notice of contest to the citation.

Docket number WEST 85Ä155ÄM also consists of a single citation, number 2355284, together with an order, number 2355285. The file indicates that the inspector issued the citation on May 22, 1985, under section 103(a) of the Act for respondent's failure to allow entry for purposes of inspection. Later that same morning the inspector issued withdrawal order number 2355285 for respondent's failure to abate the citation. The texts of the order declares that the order "replaces" the citation. The Secretary's petition and the assessment sheet, however, refer to the citation only in proposing a penalty of \$150.00. For consistency's sake, then, only the citation will be dealt with in the decision.

The Secretary moves to amend the proposed penalty from \$150.00 to \$20.00. The Secretary urges this reduction on grounds that the inspection was in fact a follow-up. The wife of respondent's president refused to allow the inspector into the mine because her husband was not on the premises and he, not she, had been present at the original inspection.

Respondent agrees to pay the amended \$20.00 penalty, and moves to withdraw his notice of contest.

Docket number WEST 86Ä64ÄM includes a single citation, number 2355213. The Secretary moves to amend the proposed citation from \$36.00 to \$20.00. In return, the respondent agrees to pay the amended amount and to withdraw its notice of contest.

Based upon the representations of the parties at the hearing and the contents of the files, I conclude that the settlement agreement should be approved in all respects.

Accordingly, it is ORDERED that citations numbered 2355215, 2355214, 2355216, 2355218, 2355283, 2355282, 2355284 and 2355213 are affirmed, whereas citations numbered 2355211 and 2355212 are vacated. It is further ORDERED that respondent shall pay to the Secretary of Labor a total civil penalty of \$160.00 within 40 days of the date of this decision.

John A. Carlson
Administrative Law Judge