

CCASE:
SOL (MSHA) V. COLUMBIA ASPHALT & 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 PROCEEDING

Docket No. WEST 86-51-M
A.C. No. 45-00764-05508

v.

Parker Pit

COLUMBIA ASPHALT & GRAVEL,
RESPONDENT

ORDER DISAPPROVING SETTLEMENT
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

I am unable to approve the Motion To Approve Settlement filed by the Solicitor on June 30, 1986, because it fails to provide necessary information and contains many inaccuracies.

For Citation No. 2667782 the Solicitor recommends a reduction from \$136 to \$70, but gives no reasons.

For Citation No. 2667784 he recommends a nominal reduction from \$136 to \$130, but here again, gives no reasons.

For Citation No. 2667785 a very substantial reduction from \$136 to \$45 is recommended and in support thereof the Solicitor states that the wiring referred to in the citation was in excellent condition. However, the citation itself states that the electric feed cable to the water pump was deteriorating. Can a deteriorating wire be in excellent condition?

In seeking a reduction from \$136 to \$45 for Citation No. 2667786 the Solicitor refers to the excellent condition of the wiring (paragraph 3(b)), but as his motion subsequently recognizes, that violation dealt with guarding (paragraph 3(d)).

The Solicitor advises that the operator did not receive any assessed violations during the prior 24 months. However, the printout attached to his penalty petition shows 19 violations.

The Solicitor must explain the foregoing discrepancies before any settlement, much less one like this involving such substantial reductions, is approved.

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This is a simple and routine case. I have difficulty in understanding how the Solicitor could submit such a faulty motion. Such a submission results in extra and unnecessary work for both this Commission and the Solicitor. And of course, it does not further the purposes of the Act.

Finally, I note that the Solicitor filed a Notice of Settlement on February 20, 1986, but did not file his settlement motion until more than four months later. This case has been pending far too long.

Accordingly, it is ORDERED that subject settlement motion be Disapproved and that the Solicitor submit the necessary information on or before August 1, 1986.

Paul Merlin
Chief Administrative Law Judge