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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. CENT 86-100-M
A.C. No. 41-01786-05514

v.

Nolanville Quarry and Plant

BANDAS INDUSTRIES, INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Merlin

The parties have filed a motion to approve settlements of five violations involved in this case. The total of the originally assessed penalties was \$713. The parties now recommend penalties in the sum of \$535.

The motion discusses each violation in light of the six criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977. Citation No. 2662416 was issued for violation of 30 C.F.R. 56.14011 because of inadequate guarding on the primary plant impact crusher. A reduction in the proposed penalty from \$105 to \$79 is now recommended because of reduced negligence. The operator believed in good faith that the hazard had been abated. An inspector from the Occupational Safety and Health Administration (OSHA) had observed the same condition and had prescribed a method of abatement. The operator had followed the instructions of the OSHA inspector but these did not meet MSHA's requirements.

Citation No. 2662418 was issued for violation of 30 C.F.R. 56.9003 because of inadequate brakes on a dump truck. A reduction in the proposed penalty from \$168 to \$126 is now recommended because of reduced gravity. The conditions under which the brakes were tested were extreme. The truck was loaded greater than it would be in actual practice and it was operated on a steeper grade than it ever was while in service.

Citation No. 2662425 was issued for violation of 30 C.F.R. 56.14006 because of failure to guard the pinch points of a drive motor on a screen. A reduction in the proposed penalty from \$136 to \$102 is now recommended because of reduced gravity. Exposure of miners to the hazard was extremely limited.

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Citation No. 2662426 was issued for violation of 30 C.F.R. 56.14001 because of failure to guard the fan blades of a portable generator. A reduction in the proposed penalty from \$136 to \$102 is now recommended because of reduced gravity. Exposure of miners to the hazard was limited.

Citation No. 2662427 was issued for violation of 30 C.F.R. 56.15002 because of the failure of some miners to wear hard hats in areas where material may fall. A reduction in the proposed penalty from \$168 to \$126 is now recommended because of reduced gravity and negligence. The operator had issued hard hats to its employees and had instructed the employees to wear them. The employees who were not wearing hard hats usually did not work in areas where there was a hazard of falling objects, and were seldom exposed to this hazard. I approve the recommendation but the operator should make sure in the future that all affected employees wear hard hats.

The representations and recommendations of the parties are accepted, especially in light of the operator's small size.

Accordingly, the motion to approve settlements is GRANTED and the operator is ORDERED TO PAY \$535 within 30 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge