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SOL (MSHA) V. M & M CONSTRUCTION
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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

v.

M & M CONSTRUCTION INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEST 87-204-M
A.C. No. 26-01874-05504

West Ann Road Pit

DECISION

Appearances: Marshall P. Salzman, Esq., Office of the Solicitor,
U.S. Department of Labor, San Francisco, California,
for Petitioner;
Tommy F. Deaver, Esq., Deaver & Associates, Las
Vegas, Nevada, for Respondent.

Before: Judge Cetti

Statement of the Case

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (Mine Act). The Secretary of Labor on behalf of the Mine Safety and Health Administration, charges the operator of the West Ann Road Pit with the violation of 9 Mine Safety and Health standards.

This proceeding was initiated by the Secretary with the filing of a proposal for assessment of civil penalties. The operator filed a timely appeal contesting the existence of the alleged violations and the amount of the proposed civil penalties. The hearing was held on November 18, 1987, at 10:00 a.m.

Discussion

Vaughn D. Crowley, an MSHA mine inspector, based upon his April 15, 1987, inspection of the West Ann Road Pit issued nine citations to respondent alleging eight violations of safety standard 30 C.F.R. 56.14001 and one violation of safety standard 30 C.F.R. 56.14006.

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Section 56.14001 requires guarding of exposed moving machine parts which may cause injury when contacted by persons. Section 56.14006 requires machinery guards to be securely in place while machinery is being operated except when testing machinery.

On May 13, 1987, MSHA issued proposed assessments totaling \$1,728.00. The proposed assessments were duly contested.

At the November 18, 1987 hearing the parties on the record stated that they had reached a settlement subject to the approval of the judge and filed a motion for an order approving the settlement.

Counsel for the Secretary proposed that the penalty for each of the nine alleged violations be reduced from \$192.00 to \$111.00 thus reducing the original proposed penalties totaling \$1,728.00 to a total of \$999.00.

The amended proposed penalties take into account those factors required to be considered by Section 110(i) of the Act. Stipulations

The parties stipulated as follows:

1. History - in the previous twenty-four months respondent has had eight assessed violations.
2. Size - The size of the respondent operator at its one facility is approximately 5,000 man-hours per year. This is a small operation.
3. Ability to Continue in Business - Payment of the proposed penalties will not impair the ability to continue in business.
4. Good Faith - Respondent abated the violative conditions within the required time for abatement.
5. Negligence - Negligence is considered moderate.
6. Gravity - Further analysis indicates that only one employee, rather than two employees, is reasonably likely to be exposed to these violations. Thus, while still significant and substantial violations, the gravity is less and the penalties should be reduced accordingly.

Respondent withdrew its notice of contest and agreed to pay the proposed penalties as amended.

Conclusions

After careful review and consideration of the pleadings, arguments, and the information placed upon the record at the hearing, I'm satisfied that the proposed settlement disposition is reasonable, appropriate and in the public interest. It is consistent with the criteria in Section 110(i) of the Act.

Accordingly, the motions made at trial are granted.

ORDER

Good cause having been shown each of the nine citations is affirmed and respondent is ordered to pay a civil penalty of \$999.00 within 30 days from the date of this decision.

August F. Cetti
Administrative Law Judge