

CCASE:
SOL V. GARRICK GRAVEL
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FMSHRC-DC
JUNE 13, 1988

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner

CIVIL PENALTY PROCEEDING

Docket No. WEST 88-95-M
A.C. No. 24-01804-05502

v.

Garrick Gravel

GARRICK GRAVEL INCORPORATED,
Respondent

DECISION

Appearances: Margaret A. Miller, Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado, for
Petitioner; No appearance was made on Respondent's behalf.

Before: Judge Cetti

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges Respondent with violation of three safety regulations promulgated under Federal Mine Safety and Health Act, 30 U.S.C. § 801 et seq., (the Act).

This proceeding was initiated by the Secretary with the filing of a proposal for assessment of a civil penalty in the amount of \$119 for each of the three violations in the total amount of \$357. The Respondent filed a timely appeal admitting the violations alleged in the three citations but contesting the amount of the proposed penalties.

After notice to the parties by certified mail as to time and place of hearing, a hearing was held in the above-captioned case on May 10, 1988. The Secretary was represented by Margaret A. Miller, Esq., Office of the Solicitor, U.S. Department of Labor. No one appeared on behalf of Respondent.

The Secretary's request that the record be opened to present documentary and oral evidence was granted.

Richard C. Ferreira, a mine inspector employed by MSHA, inspected the Garrick Gravel plant on September 15, 1987. As a result of that inspection he issued Citation Nos. 2649490, 2649491 and 2649492 to the Respondent, Garrick Gravel Incorporated, for the violation of 30 C.F.R. § 56.12001, § 56.12025 and § 56.12013.

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At the hearing oral and documentary evidence was presented fully justifying the \$119 proposed civil penalty for each of the violations. The mine inspector testified that at no time during his September 1987 inspection was anyone told that no penalties would be assessed on the violations.

On May 16, 1988 the undersigned Judge issued a notice of intention to issue a decision to uphold the violations and assess the Secretary's proposed civil penalty of \$119 for each of the three violations in the total amount of \$357 unless good cause to the contrary be shown in writing within 10 days. No response to the notice of intention has been received.

In concluding that the Secretary's proposed \$119 penalty for each of the violations is the appropriate penalty, I have considered the criteria set forth in Section 110(i) of the Act.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to decide this case.
2. Respondent violated the mandatory safety standard 30 C.F.R. § 56.12001 as alleged in Citation No. 2649490.
3. Respondent violated the mandatory safety standard, 30 C.F.R. § 56.12025 as alleged in Citation No. 2649491.
4. Respondent violated the mandatory safety standard, 30 C.F.R. § 56.12013 as alleged in Citation No. 2649492.
5. The appropriate penalty for each of the violations is \$119.

ORDER

Citations Nos. 2649490, 2649491, 2649492 are affirmed and the Respondent is ordered to pay a civil penalty of \$357.00 to the Secretary within 30 days of the date of this decision.

August F. Cetti
Administrative Law Judge

Distribution:

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Mr. Norman L. Garrick, President, Garrick Gravel Incorporated, P.O. Box 2966, Missoula, MT 59806 (Certified Mail)