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SOL (MSHA) V. COLUMBIA PORTLAND CEMENT
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. LAKE 88-54-M
A.C. No. 33-03990-05521

v.

Jonathan Limestone Mine

COLUMBIA PORTLAND CEMENT
COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

This case is a petition for the imposition of civil penalties for 20 violations originally assessed at \$20 each for a total of \$400. The proposed settlements are for the original amounts. On June 30, 1988, the Solicitor submitted a motion for approval. On September 7, 1988, I issued an order approving one settlement (Citation No. 3058715) and disapproving the remaining nineteen because the motion contained insufficient information. On October 18, 1988, the Solicitor submitted an amended motion with additional information.

Citation No. 3058714

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.14006, because the guard for the self-cleaning tail pulley on the No. 9 auxiliary belt conveyor was not securely in place while the machine was in operation. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of contacting the unguarded pulley was unlikely since the belt conveyor was not in motion. He further advises that the area near the belt conveyor was not a regular travelway or walkway.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059190

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12025, because the conduit used as a grounding conductor for the stop switch on the No. 9 auxiliary

~1546

feed belt in the finishing mill was broken in two places. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of a ground fault happening was unlikely since it would have to occur on the stop switch or conduit simultaneously with an employee making contact with the switch. He further advises that the conduit was in an area not readily accessible to employee contact.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059192

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12032, because the junction box cover for the tailing screw beside the No. 2 elevator in the basement of the baghouse was missing, exposing the conductors to damage. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the junction box was in a location that was not a regular travelway or walkway.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059193

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12025, because the 120 volt fan located at the loading dock door of the bag storage room was not equipped with a grounding conductor. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of a ground fault occurring was unlikely since the fan was not plugged in. Also, no employees worked in the area. Finally, he advises that before an injury could happen, a ground fault would have to occur simultaneously with an employee contacting the fan.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059194

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12025, because the conduit on the alarm switch at the No. 5 packer station in the baghouse was broken. The citation recites that the condition put added strain on the connections in the switch. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of a ground fault occurring was unlikely since the

~1547

alarm switch was not readily accessible to employee contact. He further advises that before an injury could happen, a ground fault would have to occur on the alarm and conduit simultaneously with an employee making contact with the conduit.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059196

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12025, because the conduit holding the light outside the car shop was broken. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of a ground fault occurring was unlikely since the light was not readily accessible to employee contact. He further advises that before an injury could happen, a ground fault would have to occur on the conduit simultaneously with an employee making contact with it.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3058720

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.11001, because a spill of limestone had accumulated on the first landing below the top floor of the raw mill building. The citation recites that the condition put excess weight on the floor. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that no employees were working in the area below the spill of material and that the area in question was not a regular travelway.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059385

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12028, because the continuity and resistance of the grounding system for the plants and mine had not been tested on an annual basis, I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of a ground fault occurring was unlikely since the grounding system was in good condition at the time of the inspection, even though more than one year had passed since the last test.

~1548

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059386

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12034, because the 110-volt light bulb on the extension light in the machine shop was not guarded. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of an employee contacting the light bulb was unlikely since no work was being done in the area.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059388

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12008, because the 440-volt cables did not enter the metal frame of the No. 3 motor control center through proper bushings and fittings. The motor control center was located on the fourth floor of the raw mill. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of the cables coming loose was unlikely since the motor control center was mounted in a stationary position. No strain was being put on the cables and no vibrations were noted.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059422

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.4201(a)(1), because the fire extinguishers located in the raw mill were not inspected on a monthly basis. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor advises that the extinguishers were found to be in working order when tested.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059392

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12020, because an insulation mat was not provided for the disconnect switches and breaker controls located in the basement of the packhouse. I originally dis-

~1549

approved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of an injury happening was unlikely since a ground fault would have to occur and energize the switches and breaker controls simultaneously with an employee making contact with the controls.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059393

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12034, because guards were not provided for two light bulbs in the west tunnel of the packhouse. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of an employee contacting the light bulbs was unlikely since the light bulbs were not readily accessible to employee contact.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059394

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12025, because the grounding conductor on the motor for the fan in the packhouse was not adequately affixed. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of an accident happening was unlikely since a ground fault would have to occur on the motor simultaneously with an employee making contact with it.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059397

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12020, because an insulation mat was not provided on the concrete floor in the motor control center for the precipitator building. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of an injury happening was unlikely since a ground fault would have to occur on the motor simultaneously with an employee making contact with it.

Based upon the foregoing additional information, I approve the \$20 settlement.

~1550

Citation No. 3059398

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12030, because the conduit for the motor for the No. 5 side gather up screw conveyor was broken in two places. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of a ground fault occurring was unlikely since the screw motor was not readily accessible to employee contact. He further advises that before an injury could happen, a ground fault would have to occur on the motor simultaneously with an employee making contact with it.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059423

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.4102 because of an accumulation of oil on the floor of the compressor room in the basement of the packhouse. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the electrical components were some distance off the floor. He further advises that nobody was working in the area and that a fire extinguisher and two exits were in the area.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059424

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.17001, because illumination was not sufficient to provide safe working conditions in the east tunnel of the packhouse. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that no work was being conducted in the area at the time in question.

Based upon the foregoing additional information, I approve the \$20 settlement.

Citation No. 3059404

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12032, because the cover plate on the junction box at the head pulley of the coal incline belt was missing. The citation recites that the condition exposed conductors on the junction box to damage. I originally disapproved

~1551

this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the probability of damaging the conductors was unlikely since the junction box was not readily accessible to employee contact.

Based upon the foregoing additional information I approve the \$20 settlement.

Conclusions and Order

As set forth above, the proposed settlements for the remaining nineteen citations in this docket are Approved.

However, the parties are cautioned that a number of the citations herein appears to be a rather generous use of the single penalty assessment. Also, the parties are reminded that, as stated in my prior Order of Disapproval, penalty assessments are de novo before the Commission which is not bound by the MSHA's proposed assessments or penalty regulations. Bearing this in mind, in the future before the Solicitor submits any proposed settlement, he should review it in light of the statutory criteria set forth in section 110(i), 30 U.S.C. 820(i). Finally, it should be a matter of concern to MSHA that within a very short period of time this operator was cited for 72 violations. See also Docket Nos. LAKE 88Ä55ÄM, LAKE 88Ä56ÄM, LAKE 88Ä58ÄM, LAKE 88Ä59ÄM, and LAKE 88Ä62ÄM.

It is further ORDERED that the operator pay \$380 within 30 days from the date of this decision.

Paul Merlin
Chief Administrative Law Judge