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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 88-55-M
A.C. No. 33-03990-05522

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 four settlements (Citation Nos. 3059430, 3059431, 3059434, and 3059439) and disapproving the remaining sixteen because the motion contained insufficient information. On October 18, 1988, the Solicitor submitted an amended motion with additional information.

Citation No. 3059412

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12008, because the feed cable for the portable reducing transformer located on the burner floor did not enter the metal frame through proper bushings and/or fittings. 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 feed cable coming loose was unlikely since the transformer was stationary and not vibrating. He further advises that there was no strain on the connections.

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

Citation No. 3059413

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12025, because the grounding jumper

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around the flexible conduit on the motor of the No. 5 separator in the finishing mill was not connected to the frame of the motor. 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 there was limited access to the motor. He further advises that before an accident could happen, a ground fault would have to occur simultaneously with an employee making contact with the motor.

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

Citation No. 3059414

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12008, because the 440-volt feed cable for the portable welder in the car shop did not enter the metal frame of the welder through proper fittings and/or bushings. 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 cable coming loose was unlikely since the cable was in good condition and there was no strain on the connections.

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

Citation No. 3059432

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.14006, because the guard was not in place for the coupling between the motor and chain drive for the gyp belt feeder for the No. 7 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 contacting the coupling was unlikely since the coupling was not readily accessible to employee contact. He further advises that an employee could contact the hazard only through an intentional act.

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

Citation No. 3059435

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.14006, because the guard for the sawblade for the electrical saw located in the car shop was not in place. 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

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the sawblade was unlikely since the saw was not in operation and no employees were working in the car shop.

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

Citation No. 3059418

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12020, because the breaker and control box for the pump at the settling pond was not provided with a dry wooden platform or insulation mat. 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 area was dry and the controls were seldom used. He further advises that no employees were in the area.

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

Citation No. 3059436

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.11001, because the ladder used to climb in and out of a haulage truck did not constitute a safe means of access. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that a ladder was in fact provided, but was not positioned on the truck in such a way so as to provide the safest means of access into the truck cab. He further advises that although placement of the ladder was not the best, the probability of an accident happening was unlikely even the way it was placed.

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

Citation No. 3059441

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12020, because a wooden platform or insulation mat was not provided for the controls at the 3 inch water pump. 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 control panel simultaneously with an employee making contact with the controls.

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

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Citation No. 3059442

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12025, because the grounding conductor was not connected to the frame of the portable light located in the underground shop. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that the light was not readily accessible to employee contact. He further advises that before an accident could happen, a ground fault would have to occur on the light frame simultaneously with an employee making contact with the light frame.

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

Citation No. 3059445

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12020, because a dry wooden platform or insulation mat was not provided for the controls on the #3250 portable water pump. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that before an accident could happen, a ground fault would have to occur on the control panel simultaneously with an employee making contact with the panel.

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

Citation No. 3059446

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12020, because a wooden platform or insulation mat was not provided for the controls at the high pressure wash bay located at the underground wash station. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that before an accident could happen, a ground fault would have to occur on the control panel simultaneously with an employee making contact with the panel.

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

Citation No. 3059448

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12030, because the 440-volt feed cable to the main exhaust fan located at the underground crusher station was damaged and had a conductor showing through. I originally disapproved this settlement because the Solicitor

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failed to support his conclusions. In his amended motion the Solicitor explains that the probability of contacting the cable was unlikely since the cable was not readily accessible to employee contact. He further advises that employees were not in the area.

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

Citation No. 3059450

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 110-volt light in the walkway of the underground bin conveyor 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 accident could happen, a ground fault would have to occur simultaneously with an employee making contact with the light frame.

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

Citation No. 3059452

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12025, because the conduit used for a grounding conductor for the 110-volt outlet at the top landing for the underground man lift 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 happening was unlikely since it would have to occur simultaneously with an employee using the outlet.

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

Citation No. 3059453

According to the Solicitor, this citation was issued for a violation of 30 C.F.R. 56.12020, because the cover plate for the junction box located near the walkway for the 4A belt was missing, thereby exposing the conductor to damage. 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 conductor was not damaged. He further advises that before an accident could happen, a ground fault on

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the conductor would have to occur simultaneously with an employee making contact with the conductor.

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

Citation No. 3059454

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 was broken on the 4A underground belt conveyor. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that before an accident could happen, a ground fault would have to occur on the motor for the conveyor simultaneously with an employee making contact with the conveyor.

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

Conclusions and Order

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

However, the parties are cautioned that a number of the citations herein appear 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 MSHA's proposed assessments or penalty regulations. Bearing this in mind, 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 88Å54ÅM, LAKE 88Å56ÅM, LAKE 88Å58ÅM, LAKE 88Å59ÅM, and LAKE 88Å62ÅM.

It is further ORDERED that the operator pay \$320 within 30 days from the date of this decision

Paul Merlin
Chief Administrative Law Judge