

CCASE:
SOL (MSHA) V. ALLENDALE GRAVEL
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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 88-134-M
A.C. No. 11-02842-05503

v.

Pinkstaff Plant Mine

ALLENDALE GRAVEL COMPANY,
RESPONDENT

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the
Solicitor, U.S. Department of Labor, Chicago,
Illinois, for the Petitioner.

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a) seeking a civil penalty assessment in the amount of \$42, for an alleged violation of mandatory safety standard 30 C.F.R. 56.18002. The respondent filed an answer and notice of contest, and the matter was scheduled for hearing in Evansville, Indiana, along with several other cases during the hearing term March 8-9, 1989. Petitioner's counsel advised me that the parties agreed to a proposed settlement of the case, and he was afforded an opportunity to present the motion and supporting arguments on the record at the conclusion of another hearing held in Evansville on March 8, 1989.

Issue

The issue in this case is whether or not the respondent violated the cited mandatory safety standard, and if so, the appropriate civil penalty assessment to be made for the violation, taking into account the civil penalty assessment criteria found in section 110(i) of the Act.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub. L. 95-164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

Discussion

Section 104(a) "S&S" Citation No. 3260277, issued on April 20, 1988, cites a violation of mandatory safety standard, 30 C.F.R. 56.18002, and the cited condition or practice states as follows:

Records were not provided to show that a competent person was making an examine (sic) of the work areas on a daily shift basis. There was no form provided to show that anyone had examined the work areas. A condition which could have adversely affected safety was cited during this inspection. There was no ground mat at the electrical control switches.

Petitioner's counsel confirmed that the parties have agreed to a proposed settlement of this case, and that the respondent has agreed to pay a civil penalty assessment in the amount of \$30, in satisfaction of the violation in question.

In support of the slight reduction of the initial civil penalty assessment made in this case, petitioner's counsel asserted that the gravity of the violation was moderate, and that the respondent exercised a moderate degree of negligence in that it knew or should have known that work shift examinations were required to be recorded and records kept. Counsel agreed that it was possible that the shift examinations were in fact made, and that the violation only concerns a failure to record the results of the examination.

Petitioner's counsel stated that the respondent is a very small operator with 5,506 annual work hours, and that it has no assessed civil penalty violations for the 24-month period preceding the issuance of the citation in question. Counsel stated further that in view of its small size, the respondent believed that it was not required to maintain the examination records in question. Counsel confirmed that the violation was timely abated in good faith by the respondent, and I take note

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of the fact that the citation termination notice reflects that the mine superintendent is examining the work areas and recording the examinations in a log book.

Conclusion

After careful review and consideration of the pleadings, and arguments in support of the proposed settlement of this case, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the settlement IS APPROVED.

ORDER

Respondent IS ORDERED to pay a civil penalty in the amount of \$30 in satisfaction of the citation in question within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, this proceeding is dismissed.

George A. Koutras
Administrative Law Judge