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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. SE 88-101-M A.C. No. 08-00006-05523
v.	Brooksville Rock Plant
FLORIDA MINING & MATERIALS, RESPONDENT	

DECISION

Appearances: Michael K. Hagan, Esq., Office of the Solicitor, U.S. Department of Labor, Atlanta, Georgia for Petitioner;
Archie Clark, Jr., Manager Human Resources and Safety, Tampa, Florida for Respondent.

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," charging Florida Mining and Materials (the Company) with seven violations of the regulatory standard at 30 C.F.R. 50.20. The general issue before me is whether the company violated the cited regulatory standard and if so what is the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

The cited standard, 30 C.F.R. 50.20, provides in part as follows:

> Each operator shall report each accident, occupational injury, or occupational illness at the mine. The principal officer in charge of health and safety at the mine or the supervisor of the mine area in which an accident or occupational injury occurs, or an occupational illness may have originated, shall complete or review the form in accordance with the instructions and criteria in sections 50.20-1 through 50.20-7. . . The operator shall mail completed forms to MSHA within 10 working days after an accident or occupational injury

> occurs or an occupational illness is diagnosed. When an accident specified in section 50.10 occurs, which does not involve an occupational injury, sections A, B and items 5 through 11 of section C of form 7000-1 shall be completed and mailed to MSHA in accordance with the instructions in section 50.20-1 and criteria contained in section 50.20-4 through 50.20-6.

The seven citation at bar all charge the failure of the mine operator to have submitted MSHA form 7000-1 to report an accident involving an employee. At hearing the Company admitted the violations but claimed that the Secretary's proposed penalty was unwarranted in light of the factors mitigating the negligence findings.

According to Archie Clark, Manager of Human Resources and Safety, the person in charge of filing the MSHA forms at issue died in May 1985, apparently just before the Company began failing to file the reports. According to Clark the office secretary who was familiar with the MSHA reporting requirements also suffered a longterm illness during 1986 and 1987 and had been replaced by a temporary secretary. Clark observed that neither the successor to the deceased manager nor the temporary secretary had experience in the MSHA reporting requirements. He also noted that the Company had not previously failed to report accidents or injuries and since a new employee had taken a course, apparently in MSHA reporting requirements, there have been no problems since the citations at bar.

The Secretary nevertheless argues that any violation of the cited standard demontrates negligence per se. In this regard counsel for the Secretary stated in closing argument as follows:

> Any violation of Part 50 is considered to be a result of a high degree of negligence simply because every MSHA -- every operator subject to MSHA jurisdiction knows and ought to take it as the highest responsibility to report injuries that occur in the workplace. As a matter of policy, that is what MSHA has determined to do.

The Secretary is clearly wrong however in her analysis. Negligence is defined in her own regulations as "committed or omitted conduct which falls below a standard of care established under the Act to protect persons against the risks of harm", 30 C.F.R. 100.3(d). In particular then in determining the existence, vel non, of negligence the facts of each case must be examined. In this case the testimony of

Mr. Clark is undisputed that the two persons with knowledge of MSHA filing requirements had become unavailable during the time in which the cited accidents should have been reported. The evidence also is undisputed that both before and after the cited deficiencies the MSHA reports were properly filed. Under the circumstances I agree that there is indeed a mitigating basis for a reduction in the negligence findings.

In assessing a civil penalty in this case I have also considered the Respondent's history of violations, that the violations were abated in good faith, and that the operator is large in size. In regard to gravity I concur with the observations made by Chief Judge Merlin in Secretary v. Consolidation Coal Co., 9 FMSHRC 727 at 733-734 (1987) concerning similar reporting violations:

> Gravity cannot be doubted in view of the fact that Part 50 is the cornerstone of enforcement under the Act. Since Part 50 statistics provide the basis for planning, training and inspection activities, accurate reporting is essential. Moreover, failure accurately to report could have extremely dangerous consequences by concealing problem areas in a mine which should be investigated by MSHA inspectors. In short, without proper compliance by the operator under Part 50, the Secretary could not know what is going on in the mines and, deprived of such information, he would be unable to decide how best to meet his enforcement responsibilities.

Under the circumstances I find that a civil penalty of $50 for each of the 7 violations is appropriate.

ORDER

Florida Mining and Materials is directed to pay civil penalties of $350 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge
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