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

BIG HORN CALCIUM COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. WEST 88-67-RM
Citation No. 3065941; 12/5/87

Docket No. WEST 88-68-RM
Citation No. 3065942; 12/5/87

Docket No. WEST 88-69-RM
Citation No. 2648962; 12/9/87

Docket No. WEST 88-70-RM
Citation No. 2648963; 12/9/87

Docket No. WEST 88-71-RM
Citation No. 2648964; 12/10/87

Docket No. WEST 88-72-RM
Citation No. 2648965; 12/10/87

Docket No. WEST 88-73-RM
Citation No. 2648966; 12/10/87

Docket No. WEST 88-74-RM
Citation No. 2648967; 12/10/87

Docket No. WEST 88-75-RM
Citation No. 2648968; 12/10/87

Docket No. WEST 88-76-RM
Citation No. 2648970; 12/10/87

Docket No. WEST 88-78-RM
Citation No. 2648971; 12/10/87

Warren Quarry & Mill
Mine ID No. 24-00006

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

v.

BIG HORN CALCIUM COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 88-203-M
A.C. No. 24-00006-05513

Docket No. WEST 88-204-M
A.C. No. 24-00006-05514

Docket No. WEST 88-205-M
A.C. No. 24-00006-05515

(And Related Contest Dockets)

Warren Quarry & Mill

DECISION APPROVING SETTLEMENT

Before: Judge Lasher

Upon motion for approval of a proposed settlement of the 22 alleged violations in these 3 dockets and the same appearing proper and in the full amount of the initial assessments for 21 of the 22 alleged violations, the settlement is approved.

As reflected in the caption, this matter resolves a total of 11 contest dockets and 3 related penalty dockets. The three related penalty dockets involve a total of 22 enforcement documents (Citations and Orders). The settlement disposes completely of these 22 proposed penalty assessment as well as an additional Citation which is the subject of Contest Docket No. WEST 88-75-RM but which was not, apparently due to administrative oversight, made the subject of a proposal for penalty, all of which is reflected below. Big Horn Calcium Company, upon approval of this settlement, agrees to withdraw its contest proceedings herein.

1. Docket No. WEST 88-203-M

Citation No.	Proposed Penalty	Related Contest Proceeding
2645747	\$ 20.00	
2645748	20.00	
2645749	20.00	
2645750	68.00	
2645753	68.00	
2645754	20.00	
2645755	20.00	
2645756	20.00	
2645757	20.00	
2645763	20.00	(88-70-RM)
2645764	20.00	(88-71-RM)
2645765	20.00	(88-72-RM)
2645766	20.00	(88-73-RM)
2645767	20.00	(88-74-RM)

Big Horn Calcium Company agrees to pay the above penalties and such are here assessed.

2. Docket No. WEST 88-204-M

Citation No.	Proposed Penalty	Related Contest Proceeding
3065941	\$1,000.00	(88-67-RM)
Order No.		
3065942	\$1,000.00	(88-68-RM)
Citation No.		

2648962

300.00

(88-69-RM)

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(a) Pursuant to the agreement reached, Citation No. 3065941 is modified from Section 104(d)(1) to Section 104(a) since pretrial preparation disclosed that the violation was not the result of an unwarrantable failure on the part of the mine operator. Likewise, the negligence showing on the Citation is reduced from "reckless disregard" to "high". The proposed penalty of \$1,000.00 and the designation of the violation as significant and substantial shall remain unchanged.

(b) Order No. 3065942 is also modified from Section 104(d)(1) to Section 104(a). Again, pretrial preparation disclosed that the violation was not the result of an unwarrantable failure on the part of the operator and, accordingly, the negligence shall also, as agreed, be reduced from "reckless disregard" to "high". The proposed penalty of \$1,000.00 and the designation of the violation as significant and substantial shall remain unchanged.

(c) Citation No. 2648962 and its \$300 proposed penalty shall remain unchanged.

(d) Big Horn Calcium Company agrees to withdraw its contest to the citations and order as amended herein and to pay the penalties above reflected. Such are here assessed.

3. Docket No. WEST 88-205-M

Citation No.	Proposed Penalty	Related Contest Proceeding
2645752	\$20.00	
2645758	20.00	
2645759	20.00	
2648970 (Vacated)	(20.00) (Withdrawn)	(88-76-RM)
2648971	20.00	(88-78-RM)

(a) The Secretary having moved to vacate Citation No. 2648970 and to withdraw her proposed penalty therefor on the basis of insufficient evidence, such motion is approved and Citation No. 2648970 is VACATED.

(b) Big Horn Calcium Company agrees to withdraw its contest to the other four (4) citations in Docket No. WEST 88-205-M and to pay the above penalties which are here assessed.

4. Docket No. WEST 88-75-RM

A civil penalty proceeding was never filed by MSHA with respect to this Citation (No. 2648968). While a civil penalty has not been proposed, the parties agree that a \$20.00 penalty is

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appropriate. This agreement is approved as part of this overall settlement. Big Horn Calcium Company agrees to withdraw its contest to Citation No. 2648968 and to pay the agreed penalty which is here assessed.

In consenting to this settlement agreement, the parties have agreed (1) that nothing therein shall be deemed an admission by Big Horn Calcium Company of a violation of the Federal Mine Safety and Health Act, or regulation or standard thereof, in any judicial or administration forum other than an action brought by the United States Government under the Federal Mine Safety and Health Act, and (2) that by entering this settlement agreement, Big Horn Calcium Company does not admit to a violation of the Federal Mine Safety and Health Act, or regulation or standard thereof, for the purpose of any judicial or administrative proceeding which directly or indirectly concerns the civil or criminal liability of any or all directors, officers and agents of Big Horn Calcium Company regarding the subject matter, allegations and issues related to Citation No. 3065941 and Order No. 3069542 [Docket No. WEST 88-204-M].

In the premises, the amicable resolution reached by the parties appears appropriate and is approved with the parties to bear their own fees and expenses.

ORDER

1. Citation No. 2648970 is VACATED.
2. Citation No. 3065941 and Order No. 3065942 are MODIFIED as specified hereinabove.
3. The 11 Contest proceedings listed in the Caption are, based on this approval of settlement, DISMISSED.
4. Big Horn Calcium Company, if it has not previously done so, is ordered to pay to the Secretary of Labor within 30 days from the date hereof the sum of \$2,776.00 as and for the civil penalties hereinabove assessed.

Michael A. Lasher, Jr.
Administrative Law Judge