

CCASE:  
SOL (MSHA) V. HASKELL COUNTY GRAVEL  
DDATE:  
19891030  
TTEXT:

~2115

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. CENT 89-69-M  
A.C. No. 34-01287-05507

v.

Haskell County Pit & Plant

HASKELL COUNTY GRAVEL CO., INC.,  
RESPONDENT

ORDER DENYING MOTION TO APPROVE SETTLEMENT

On October 30, 1989, the Secretary filed a settlement agreement of the parties to this proceeding and a motion to approve the settlement agreement. The violations were originally assessed at \$10,000, and the parties propose to settle for \$5000.

Four citations were issued to Respondent on November 2 and 3, 1988, growing out of an investigation of a fatal accident occurring on November 1, 1988. According to the 107(a)/104(a) order/citation issued November 2, a front end loader crossed over a bumper block into a feeder hopper and over the crusher. It turned over and fell 14 feet to the ground below killing the loader operator.

The citations charged first that Respondent failed to maintain an adequate bumper block at the jaw crusher feeder hopper where trucks and front end loaders dumped. This violation was assessed at \$5000. Second, Respondent was cited for failure to equip the front end loader with roll over protection and a seat belt. This violation was assessed at \$3,000. The third citation charged Respondent with a defect in the airline on the loader which could materially reduce the efficiency of the service brakes. This violation was assessed at \$1000. Finally, Respondent was cited because the braking system on the front end loader was defective in that the front service brakes were inoperable. This citation was assessed at \$1000.

~2116

The motion states that penalties in the total amount of \$10,000 will have an adverse effect on the ability of Respondent to continue in business, but no factual justification for this conclusion is given in the motion. The motion states that each of the alleged violations was considered to be of very high gravity and caused by Respondent's negligence. Respondent is a small operator and has a favorable history of prior violations, but these facts were presumably considered in the original assessments. Based on the information provided with the motion, the settlement agreement, reducing the penalties by 50%, does not conform to the criteria in section 110(i) of the Act.

Therefore, the motion to approve the settlement agreement is DENIED.

James A. Broderick  
Administrative Law Judge