

CCASE:
MSHA V. SIERRA AGGREGATE
DDATE:
19900430
TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
DENVER, COLORADO
April 30, 1990

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|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner | CIVIL PENALTY PROCEEDING Docket No. WEST 89-138-M A.C. No. 04-04707-05508 |
| v. | Docket No. WEST 89-173-M A.C. No. 04-04707-05509 |
| SIERRA AGGREGATE, INC. Respondent | Red Top Mine |

DECISION

Appearances: Jonathan S. Vick, Esq., Office of the Solicitor,
U.S. Department of Labor, Los Angeles, California
for the Petitioner; Donald G. Jolly, President,
Sierra Aggregate, Inc. for the Respondent.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges respondent with violating safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq. (the Act).

After notice to the parties, a hearing on the merits commenced in Reno, Nevada on March 29, 1990.

At the hearing the parties reached an amicable settlement and entered into the following stipulation.

Docket No. WEST 89-138-M:

Citation No. 3286098: this citation should be affirmed as a non-S&S violation and the proposed penalty should be affirmed.

Citation No. 3286099: this citation should be affirmed as a non-S&S violation. Further, the proposed penalty of \$105 should be reduced to a penalty of \$20.

Citation No. 3293961: this citation should be amended to allege a non-S&S violation of 30 C.F.R. 4200(b)(2). Further, the proposed penalty should be affirmed.

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Citation No. 3293962: this citation and the proposed penalty of \$20 should be affirmed.

Citation No. 3293963: this citation should be amended to allege a non-S&S violation of 30 C.F.R. 56.4200 (B)(2) and the proposed penalty of \$63 should be reduced to a penalty of \$20.

Citation No. 3293964: this citation should be amended to allege a non-S&S violation and the proposed penalty should be reduced from \$85 to \$20.

Docket No. WEST 89-173-M:

Citation No. 3293966: this citation is amended to allege a non-S&S violation of section 109(a) of the Act and the penalty should be reduced from \$50 to \$20.

Citation No. 3286032: this citation should be affirmed as a non-S&S violation and the proposed penalty should be reduced from \$126 to \$20.

Citation No. 3286033: this citation should be affirmed and the proposed penalty reduced from \$98 to \$75.

I have reviewed the stipulation and I find it is reasonable. Further, it is in the public interest that the proposed settlement should be approved.

Accordingly, I enter the following:

ORDER

1. The stipulation and proposed settlement are approved.
2. The foregoing citations, as amended by the stipulation, are affirmed.
3. The following civil penalties are assessed:

Docket No. WEST 89-138-M:

| Citation No. | Penalt@ |
|--------------|---------|
| 3286098 | \$20 |
| 3286099 | 20 |
| 3293961 | 20 |
| 3293962 | 20 |
| 3293963 | 20 |
| 3293964 | 20 |

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Docket No. WEST 89-173-M:

| Citation No. | Penalty |
|--------------|---------|
| 3293966 | \$20 |
| 3286032 | 20 |
| 3286033 | 75 |

4. Respondent is ordered to pay to the Secretary the sum of \$235.00 within 40 days of the date of this decision.

John J. Morris
Administrative Law Judge

Distribution:

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Mr. Donald G. Jolly, President, Sierra Aggregate Company, Inc.,
P.O. Box 1725, Bishop, CA 93514 (Certified Mail)