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SOL (MSHA) V. WALKER STONE
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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 PROCEEDINGS

Docket No. CENT 89-103-M
A.C. No. 14-01492-05501

v.

Portable No. 2

WALKER STONE COMPANY,
INCORPORATED,
RESPONDENT

Docket No. CENT 89-158-M
A.C. No. 14-00612-05502

Plant C Mine

DECISIONS

Appearances: Dewey P. Sloan, Jr., Esq., Office of the
Solicitor, U.S. Department of Labor, Kansas City,
Missouri, for the Petitioner;
David S. Walker, President, Walker Stone Company,
Incorporated, Chapman, Kansas, Pro se, for the
Respondent.

Before: Judge Koutras

Statement of the Proceedings

These civil penalty proceedings concern proposals for
assessment of civil penalties filed 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). The petitioner seeks
civil penalty assessments against the respondent for six (6)
alleged violations of certain mandatory safety standards found in
Part 56, Title 30, Code of Federal Regulations. The respondent
filed answers and contests, and hearings were convened in Topeka,
Kansas.

Issues

The issues presented in these cases are (1) whether the
conditions or practices cited constitute violations of the cited
mandatory safety standards; (2) whether several of the alleged

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violations were "significant and substantial," and (3) the appropriate civil penalties to be assessed for the violations, taking into account the civil penalty assessment criteria found in section 110(i) of the Act.

In Docket No. CENT 89-158-M, the respondent raised a question of jurisdiction claiming that the location where the alleged violations were cited was not subject to MSHA's enforcement jurisdiction because no mining activities covered by the Act are taking place at that site.

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. Sections 110(a) and (i) of the 1977 Act, 30 U.S.C. 820(a) and (d).
3. Commission Rules, 20 C.F.R. 2700.1 et seq.

Findings and Conclusions

Docket No. CENT 89-103-M

In this case, the respondent was cited on January 19, 1989, for three alleged violations. Section 104(a) non-S&S Citation No. 2651871, cited an alleged violation of mandatory safety standard 30 C.F.R. 56.13011, because of an inoperative pressure gauge on the air receiver tank of a compressed air drill. The inspector found that the violation resulted from a moderate degree of negligence, and that an injury was unlikely. The violation was abated and the citation was terminated after a new pressure gauge was installed on the compressor.

Section 104(a) S&S Citation No. 2651874, cited an alleged violation of 30 C.F.R. 56.12025, for the failure by the respondent to provide an adequate grounding device for the 110 volt parts cleaning machine. The inspector found that an injury was reasonably likely, and that the violation resulted from a moderate degree of negligence. The violation was abated and the citation was terminated after the machine was properly grounded by the installation of a new cable equipped with a grounding conductor and proper plug.

Section 104(a) S&S Citation No. 2651877, cited an alleged violation of 30 C.F.R. 56.12025, for the failure by the respondent to properly ground a 3 horsepower 3 phase 220 volt grinder. The inspector found that an injury was reasonably likely, and that the violation resulted from a moderate degree of negligence. The violation was abated and the citation was terminated after

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the grinder was grounded properly by the installation of a grounding wire from the fuse safety switch to the grinder motor.

When the hearing in this case was convened the parties advised me that they proposed to settle the case, and the respondent conceded that the violations occurred and agreed to pay the proposed civil penalty assessments in full. In this regard, the parties stipulated to the following:

1. The respondent's portable number two plant is subject to the Act and to MSHA's enforcement jurisdiction.
2. The respondent is a small crushed stone operator who employs approximately 3 to 15 miners during the course of its mining operation.
3. Payment of the proposed civil penalty assessments will not adversely affect the respondent's ability to continue in business.
4. The respondent has no history of prior assessed civil penalties for violations of any mandatory safety or health standards.

The inspector who issued the citations was present in the court room, and he expressed his agreement with the proposed settlement disposition of this case. After careful consideration of the pleadings and arguments presented by the parties in support of the proposed settlement of this case, and pursuant to Commission Rule 30, 29 C.F.R. 2700.30, the proposed settlement was approved from the bench (Tr. 11-20). I conclude and find that the settlement is reasonable and in the public interest, and my bench decision is reaffirmed, and the settlement IS APPROVED.

ORDER

The contested citations are AFFIRMED, and the respondent IS ORDERED to pay the following civil penalty assessments in satisfaction of the contested violations in this case:

Citation No.	Date	30 C.F.R. Section	Assessment
2651871	01/19/89	56.13011	\$20
2651874	01/19/89	56.12025	\$68
2651877	01/19/89	56.12025	\$68

Payment is to be made to MSHA within thirty (30) days of the date of this decision and order, and upon receipt of payment, this matter is dismissed.

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Docket No. CENT 89-158-M

In this case, petitioner's counsel stated that he agrees with the respondent's contention that MSHA has no enforcement jurisdiction at the location where the citations were issued by the inspector during an inspection conducted on May 25, 1989. Counsel asserted that the inspection was made because the respondent had filed for a mine identification number at MSHA's request. However, a subsequent investigation by MSHA revealed that the mine previously operated at the site identified as "plant C" has been closed for 10 years and that the respondent does not conduct any crushed stone mining activities at the site and simply uses the location for an office and small shop.

Petitioner's counsel confirmed that pursuant to MSHA's enforcement policies, the activities conducted by the respondent at the location in question are not within MSHA's enforcement jurisdiction. Counsel explained that the respondent filed an MSHA legal identity form after being instructed by MSHA's Denver Office to do so and that this triggered an inspection by the inspector who assumed that there was jurisdiction. The inspector who conducted the inspection which resulted in the issuance of the citations agreed that this was in fact the case and he concurred that MSHA has no jurisdiction in this matter (Tr. 4-11).

In view of the foregoing, petitioner's counsel moved for a dismissal of this case. The motion was granted from the bench, and it is herein reaffirmed. Under the circumstances, the petitioner's previously filed motion for admission of the citations and jurisdiction is deemed moot and withdrawn.

ORDER

This case IS DISMISSED for lack of jurisdiction, and the three contested citations ARE VACATED.

George A. Koutras
Administrative Law Judge