

CCASE:  
SOL (MSHA) v. B & B GRAVEL  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
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SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

CIVIL PENALTY PROCEEDING  
Docket No. CENT 90-45-M  
A.C. No. 16-01064-05513

v.

Petty Pit A

B & B GRAVEL COMPANY, INC.,  
RESPONDENT

DECISION

Appearances: Sara D. Smith, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, for the Petitioner;  
Wallace Heck, Jr., Vice-President, B & B Gravel Company, Inc., Baton Rouge, Louisiana, for the Respondent.

Before: Judge Koutras

Statement of the Case

This proceeding concerns 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), seeking civil penalty assessments for three alleged violations of certain mandatory safety standards found in Part 56, Title 30, Code of Federal Regulations. The respondent filed an answer contesting the alleged violations, and pursuant to notice, a hearing was convened in Baton Rouge, Louisiana, and the parties appeared for trial. However, after a brief pretrial conference, the parties informed me that they reached a proposed settlement of the case. The citations, initial proposed civil penalty assessments, and the proposed settlement amounts are as follows:

| Citation No. | Date     | 30 C.F.R. Section | Assessment | Settlement |
|--------------|----------|-------------------|------------|------------|
| 3270896      | 11/03/89 | 56.12008          | \$213      | \$ 86      |
| 3270897      | 11/03/89 | 56.12008          | \$ 20      | \$ 20      |
| 3270898      | 11/03/89 | 56.4101           | \$ 20      | \$ 20      |

Discussion

Section 104(a) "S&S" Citation No. 3270896, November 3, 1989, cites a violation of 30 C.F.R. 56.12008, and the cited condition or practice states as follows: "The electrical conductors to the water pump did not have proper fittings where the conductors entered the switch box."

Section 104(a) non-"S&S" Citation No. 3270897, November 3, 1989, cites a violation of 30 C.F.R. 56.12008, and the cited condition or practice states as follows: "The electrical conductors to the sizing screen motor did not have the proper fittings and bushings where the conductors enter the motor splice box."

Section 104(a) non-"S&S" Citation No. 3270898, November 3, 1989, cites a violation of 30 C.F.R. 56.4101, and the cited condition or practice states as follows: "The fuel storage tank aboard the dredge does not have visible signs prohibiting smoking or open flames in the area."

The inspector established an abatement time of 8:00 a.m., November 17, 1989, for each of the citations. However, he subsequently terminated the citations on November 27, 1989, and the termination notices state as follows: "The dredging operation was shut down on 11-14-89, and the operator is moving the equipment to a different location for storage. Citation No. 3270896 is terminated by this action."

The parties agreed that the respondent is a large sand and gravel mine operator, with an annual production of 250,000 tons, and 12 employees. With regard to the particular pit operation where the citations were issued, the parties agreed that it was a small operation with approximately three employees. The evidence establishes that the pit was subsequently closed shortly after the citations were issued (Tr. 11-12).

In support of the proposed settlement of this matter, the Solicitor asserted that at the time the citations were issued on November 3, 1989, the respondent was in the process of closing down its pit operations and moving to a new location. The Solicitor stated that since its move to a new location, the respondent has shown an improvement in its electrical equipment and has attempted to stay in compliance with the requirements of the electrical standards.

MSHA Inspector James Bussell, stated that at the time of his inspection of November 3, 1989, the respondent was in the process of closing the pit and moving its equipment to another location. He further stated that the old pit was in fact closed on November 14, 1989, and that he subsequently terminated the citations on November 27, 1989. He confirmed that when he issued the citations he was aware of the fact that the respondent was in

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the process of closing its old pit and was moving its equipment to another location. He further confirmed that he scheduled the abatement time of November 17, 1989, in order to allow the respondent sufficient time to complete its move.

With regard to Citation No. 3270896, concerning the water pump fittings, Inspector Bussell stated that the cited pump in question was located in the plant operator's compartment and the operator would have been exposed to a potential hazard. He identified photographic exhibits G-1 and G-2 as the switch box in question (Tr. 15-16).

With regard to Citation No. 3270897, Inspector Bussell stated that he issued it as a non-S&S citation because the motor in question was installed at an elevated location out of reach of anyone and there was no hazard exposure (exhibit G-4).

With regard to Citation No. 3270898, concerning the absence of a visible sign prohibiting smoking and open flames, the inspector stated that he observed some diesel fuel spillage on the dredge dock and issued the citation to alert the respondent to this condition. He confirmed that no visible sign was posted on the diesel fuel storage tank.

The respondent's representative, Wallace Heck, Jr., company Vice-President, stated that the respondent has always tried to comply with the applicable mandatory standards but has experienced some difficulty in communicating with the inspectors with respect to precisely what is required of him for compliance. With regard to the absence of the cited sign, Mr. Heck asserted that a warning sign had originally been painted on the fuel storage tank but that it was obscured over time by diesel fuel. He also asserted that the fuel tank was not physically located on the dredge, but was installed on a rack at the rear of the dredge which placed the tank over the water and not the dredge. He further indicated that the dredge operator's compartment was located at the other end of the dredge (Tr. 19-20).

Mr. Heck further stated that the cited water pump was installed 5-years prior to the citation issued by Mr. Bussell, and that the dredging operation had previously been inspected numerous times prior to the inspection in question. I take note of Mr. Heck's answer of July 9, 1990, in this case, in which he states that no accident was likely because he was in the process of disconnecting and moving the equipment, and that no accidents have ever occurred at this operation.

Inspector Bussell confirmed that the inspection which he conducted on November 3, 1989, was his first inspection at the dredging operation in question. He further confirmed his "moderate" negligence findings with respect to each of the cited conditions (Tr. 17).

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The pleadings filed by the petitioner include a copy of MSHA's Proposed Assessment Form 1000-179, which reflects that 27 prior citations were issued to the respondent during the course of 14 inspections which took place over a 24-month period prior to November 3, 1989. However, there is no evidence that any of these prior violations were for violations of sections 56.12008 or 56.4101.

#### Conclusion

After careful consideration of the arguments presented in support of the proposed settlement disposition of this matter, and pursuant to Commission Rule 30, 29 C.F.R. 2700.30, the proposed settlement was approved from the bench. My bench decision approving the settlement is herein reaffirmed, and I conclude and find that it is reasonable and in the public interest.

#### ORDER

The respondent IS ORDERED to pay civil penalty assessments in the settlement amounts shown above in satisfaction of the citations in question. Payment is to be made to MSHA within thirty (30) days of the date of this decision and order. Upon receipt of payment, this matter is dismissed.

George A. Koutras  
Administrative Law Judge