

CCASE:
SOL (MSHA) V. MOUNTAIN CEMENT
DDATE:
19930316
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
(303) 844-5266/FAX (303) 844-5268

March 16, 1993

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 91-109-M
Petitioner : A.C. No. 48-00007-05548
 :
v. : Mountain Cement Company
 :
MOUNTAIN CEMENT COMPANY, :
a Wyoming Partnership, :
Respondent :
 :
SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 92-321-M
Petitioner : A.C. No. 48-00007-05563A
 :
v. : Mountain Cement Company
 : Albany County, Wyoming
 :
PAUL MILLER, JR., employed :
by MOUNTAIN CEMENT COMPANY, :
Respondent :
 :
SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 92-322-M
Petitioner : A.C. No. 48-00007-05565A
 :
v. : Mountain Cement Company
 : Albany County, Wyoming
 :
PAUL ESTEVE, employed by :
MOUNTAIN CEMENT COMPANY, :
Respondent :
 :
SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 92-323-M
Petitioner : A.C. No. 48-00007-05566A
 :
v. : Mountain Cement Company
 : Albany County, Wyoming
 :
JAMES F. MAY, employed by :
MOUNTAIN CEMENT COMPANY, :
Respondent :

~464

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 92-324-M
Petitioner	:	A.C. No. 48-00007-05568A
	:	
v.	:	Mountain Cement Company
	:	Albany County, Wyoming
RICK G. WILSON, employed by	:	
MOUNTAIN CEMENT COMPANY,	:	
Respondent	:	

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 92-325-M
Petitioner	:	A.C. No. 48-00007-05569A
	:	
v.	:	Mountain Cement Company
	:	Albany County, Wyoming
WILLIAM SMITH, employed by	:	
MOUNTAIN CEMENT COMPANY,	:	
Respondent	:	

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 92-358-M
Petitioner	:	A.C. No. 48-00007-05567A
	:	
v.	:	Mountain Cement Company
	:	Albany County, Wyoming
THOMAS G. JACKSON, employed	:	
by MOUNTAIN CEMENT COMPANY,	:	
Respondent	:	

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 92-376-M
Petitioner	:	A.C. No. 48-00007-05564A
	:	
v.	:	Mountain Cement Company
	:	Albany County, Wyoming
STEVEN M. BONER, employed	:	
by MOUNTAIN CEMENT COMPANY,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Morris

These cases are civil penalty proceedings initiated by Petitioner against Respondents pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the "Act"). The civil penalties sought here are for the violation of Section 110(a) and Section 110(c) of the Act.

The eight cases herein were assessed penalties totaling \$7,900. The Secretary agreed to settle the cases for voluntary civil penalty payments totaling \$5,300.00.

The proceedings all involve MSHA Citation No. 3451535 which was issued to the corporate mine operator on June 7, 1990, citing a violation of 30 C.F.R. 56.15006.

The violation was issued because special protective clothing was not worn by an employee attempting to poke and unplug the preheat tower. The Secretary's investigation of the serious burn injury accident, related to the issuance of the above-cited violation, indicated that it was an established practice, by both management and employees at this mine, to unplug or poke the preheat tower without wearing protective clothing.

It is the Secretary's position that each of the above-named Respondents, acting as agents of the corporate mine operator within the meaning and scope of Sections 3(e) and 110(c) of the Mine Act, knowingly authorized, ordered, or carried out the aforesaid violation of the corporate mine operator. Further, it is the Secretary's position that each of the respondents allowed and condoned the existence of the practice not to use, or require the use of, the hot suit when efforts related to unplugging the preheat tower took place, prior to the issuance of the aforesaid violation.

The Respondents each take the position that, but for purposes of the Mine Act, nothing contained herein shall constitute an admission by any of the Respondents that they knowingly violated the Mine Act or its regulations.

The Settlement agreement involves the full payment of the proposed penalty for the company case filed in Docket No. WEST 91-109-M. It also includes the full payment of the proposed penalty for Docket No. WEST 92-376-M, which involves the agent who was on duty at the time the accident occurred, and which resulted in the violation being issued. The settlement further includes reduced penalties of \$500.00 for each of the other Section 110(c) cases involved in these proceedings.

~466

Therefore, the settlement is allocated among the various cases as follows:

Docket No.	A/O No. 48-00007	Respondent	Penalty	Settlement
WEST 91-109-M	-05548	Mountain Cement Co.	\$1,500	\$1,500
WEST 92-358-M	-05567-A	Thomas Jackson Vice President	1,200	500
WEST 92-323-M	-05566-A	James May Superintendent	1,000	500
WEST 92-322-M	-05565-A	Paul Esteve Superintendent	1,000	500
WEST 92-324-M	-05568-A	Rick Wilson Shift Foreman	800	500
WEST 92-321-M	-05563-A	Paul Miller Shift Foreman	800	500
WEST 92-325-M	-05569-A	William Smith Shift Foreman	800	500
WEST 92-376-M	-05564-A	Steve Bonar Shift Foreman	800	800
	TOTALS		\$7,900	\$5,300

The Secretary submits that the violation involved a degree of both negligence and seriousness because it resulted in a miner's suffering a serious burn injury, and that it was abated in good faith after its issuance. The Secretary further submits that corporate operator is a medium-size operator with an average history of prior violations for an operation its size. It is also noted that none of the agent Respondents has a prior history of Section 110(c) violations.

I have reviewed the settlement and I find it is reasonable and in the public interest. It should be approved.

Accordingly, I enter the following:

ORDER

1. The settlement agreement is APPROVED.
2. In WEST 91-109-M and WEST 92-376-M the Petition for Assessment of a Civil Penalty and the proposed civil penalties are AFFIRMED.

~467

3. Respondent's Mountain Cement Company and Steve Bonar are ORDERED TO PAY to the Secretary of Labor their respective penalties of \$1500 and \$800 within 30 days of the date of this decision.

4. In the remaining six cases, the Petition for Assessment of a Civil Penalty and the amount of the Proposed Settlement are AFFIRMED.

5. Respondents Jackson, May, Esteve, Wilson, Miller, and Smith are ORDERED TO PAY to the Secretary of Labor within 30 days their respective penalties of \$500 each.

John J. Morris
Administrative Law Judge

Distribution:

Robert J. Murphy, Esq., Office of the Solicitor, U.S. Department of Labor, 1585 Federal Office Building, 1961 Stout Street, Denver, CO 80294 (Certified Mail)

Edward H. Fitch, Esq., Office of the Solicitor, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203 (Certified Mail)

Allen Gardzelewski, Esq., CORTHELL & KING, P.O. Box 1147, Laramie, WY 82070 (Certified Mail)

Phillip Nicholas, Esq., NICHOLAS LAW OFFICE, P.O. Box 928, Laramie, WY 82070 (Certified Mail)

ek

Robert J Murphy Esq
Office of the Solicitor
U S Department of Labor
1585 Federal Office Building
1961 Stout Street
Denver CO 80294

Edward H Fitch Esq
Office of the Solicitor
U S Department of Labor
4015 Wilson Boulevard
Arlington VA 22203

Allen Gardzelewski Esq
CORTHELL & KING
P O Box 1147
Laramie WY 82070

Phillip Nicholas Esq
NICHOLAS LAW OFFICE
P O Box 928
Laramie WY 82070