

CCASE:  
SOL (MSHA) V. CONCRETE MATERIALS  
DDATE:  
19930506  
TTEXT:

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 92-358-M
Petitioner	:	A. C. No. 39-00226-05506
	:	
v.	:	
	:	
	:	
CONCRETE MATERIALS,	:	Summit Pit
Respondent	:	

ORDER ACCEPTING RESPONSE  
DECISION APPROVING SETTLEMENT  
ORDER TO PAY

Before: Judge Merlin

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. On December 17, 1992, the Solicitor filed a motion to approve settlement of the one violation involved in this case. The Solicitor sought approval of a reduction in the penalty amount from the original proposal of \$690 to \$50. On February 18, 1993, an order was issued disapproving the settlement and directing the Solicitor to file additional information to support her motion. On March 1, 1993, the Solicitor filed a second motion to approve settlement.

Citation No. 3909835 was issued for a violation of 30 C.F.R. 56.12067 because the fence surrounding an electrical substation was not six feet in height. According to the citation, the substation contained six mounted transformers with exposed energized components. The inspector concluded that contact with the energized high voltage components might result in a fatality. In her original motion the Solicitor alleged that negligence was less than originally assessed and that because the violation was unlikely rather than likely to contribute to an accident the significant and substantial designation should be deleted.

The Solicitor advises in her second settlement motion that the fence is only two to three inches short of the required six feet but does have some rips and tears. The Solicitor also avers that photographs submitted by the operator show that it was unlikely that a person would be able to reach any of the energized components over the fence. Therefore, although the fence was not in full compliance with the standard, it was sufficient to prevent persons from coming into contact with the energized

~829

components unless a deliberate attempt was made to climb the fence.

I accept the Solicitor's representations and I conclude that the settlement is appropriate under the six criteria set forth in section 110(i) of the Act.

In light of the foregoing, it is ORDERED that the settlement motion filed March 1 is ACCEPTED as a response to the February 18 order.

It is further ORDERED that the recommended settlement be APPROVED and the operator PAY \$50 within 30 days of the date of this decision.

Paul Merlin  
Chief Administrative Law Judge

Distribution:

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

Mr. Jerome T. Nusbaum, Concrete Materials, P.O. Box 84140, Sioux Falls, SD 57118 (Certified Mail)

/gl