

CCASE:
SOL (MSHA) V. USX CORP., MINNESOTA ORE
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. LAKE 92-399-M-A
Petitioner : A. C. No. 21-00820-05700-R
:
v. : Minntac Plant
:
USX CORPORATION, MINNESOTA :
ORE OPERATIONS, :
Respondent :

ORDER PARTIALLY VACATING ORDER OF DISMISSAL
ORDER AMENDING DECISION APPROVING PENALTY
ORDER TO REFUND

Before: Judge Merlin

On November 19, 1992, the operator filed a motion to withdraw its contest of those violations contained in Docket No. LAKE 92-399-M which were designated non-significant and substantial. On January 5, 1993, an order was issued removing the non-significant and substantial violations from LAKE 92-399-M and placing them in a newly created docket, LAKE 92-399-M-A. On the same day, a decision approving penalty was issued in LAKE 92-399-M-A approving the proposed penalties, dismissing the matter and directing the operator to pay the proposed penalties. On April 28, 1993, Administrative Law Judge Feldman issued a decision approving settlements for sixteen cases involving this operator including Docket No. LAKE 92-399-M.

On May 14, 1993, the operator filed a motion to reopen this proceeding. The operator advised that in its motion to withdraw it had requested that its contest be withdrawn for all the non-significant and substantial violations in LAKE 92-399-M except Citation No. 3892662. The operator also stated that it paid the \$5,767 assessment in LAKE 92-399-M-A which included the \$800 penalty for Citation No. 3892662.

In addition, Citation No. 3892662 was included in the April 28 settlement decision issued by Judge Feldman. The proposed penalty for this violation was reduced from \$800 to \$311 which was included in the total assessments the operator was ordered to pay by Judge Feldman. The operator states that it has paid this assessment.

A review of the file shows that the operator did request that this citation not be dismissed. However, due to a clerical

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error the citation was included in the January 5 order of removal and replacement as well as in the decision approving penalty and order of dismissal. I conclude partial relief from the decision approving penalty and order of dismissal is warranted.

29 C.F.R. 2700.65(c). Therefore, the January 5 decision approving penalty should be amended to reflect the amount due without Citation No. 3892662 and the order of dismissal should be vacated with respect to this violation. The approval of the settlement by Judge Feldman for Citation No. 3892662 will stand because that violation would have been properly before him when his decision was issued were it not for the clerical error, noted above. In light of the foregoing, I find that in this case the operator overpaid MSHA \$800 for Citation No. 3892662 and that amount should be refunded to the operator.

Accordingly, it is ORDERED that the January 5 order of dismissal issued with respect to Citation No. 3892662 in LAKE 92-399-M-A be VACATED.

It is further ORDERED that the January 5 decision approving penalty issued for LAKE 92-399-M-A be amended to reflect the correct penalty amount of \$4,967.

It is further ORDERED that the operator's overpayment of \$800 for LAKE 92-399-M-A be REFUNDED to the operator.

Paul Merlin
Chief Administrative Law Judge

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