

CCASE:

SOL (MSHA) V. PUERTO RICAN CEMENT

SOL (MSHA) V. MAR-LAND INDUSTRIAL

DDATE:

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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 92-196-M
Petitioner	:	A. C. No. 54-00001-05522
v.	:	
	:	Docket No. SE 92-233-M
PUERTO RICAN CEMENT COMPANY,	:	A. C. No. 54-00001-05523
Respondent	:	
	:	Ponce Cement Plant
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE-92-197-M
Petitioner	:	A. C. No. 54-00001-05504 BOY
v.	:	
	:	Ponce Cement Plant
MAR-LAND INDUSTRIAL	:	
CONTRACTORS INCORPORATED,	:	
Respondent	:	

DECISION

Appearances: Jane Snell Brunner, Esq., Office of Solicitor,
U.S. Department of Labor, New York, New York,
for Petitioner;
Daniel R. Dominguez, Esq., and Miquel A. Maza,
Esq., Law Office Dominguez & Totti, Hato Rey,
Puerto Rico, for Respondents.

Before: Judge Barbour

STATEMENT OF THE CASE

In these consolidated civil penalty proceedings, brought by the Secretary of Labor ("Secretary") against Puerto Rican Cement Company ("Puerto Rican Cement") and Mar-Land Industrial Contractors, Incorporated ("Mar-Land") pursuant to sections 105(d) and 110(a) of the Federal Mine Safety and Health Act of 1977 ("Mine Act" or "Act"), 30 U.S.C. 815(d), 820(a), the Secretary charges Puerto Rican Cement with three violations of mandatory safety standards for surface metal and nonmetal mines found in Part 56, Title 30, Code of Federal Regulations ("C.F.R.") and Mar-Land with two violations. In addition, the Secretary asserts that four of the alleged violations were significant and substantial contributions to mine safety hazards ("S&S" violations).

All of the alleged violations were cited on December 16, 1991, by inspectors of the Secretary's Mining Enforcement and Safety Administration at Puerto Rican Cement's Ponce Cement Plant, a cement processing plant located at Ponce, Puerto Rico.

In answer to the Secretary's subsequent proposals for the assessment of civil penalties, Puerto Rican Cement denied that the violations had occurred, and argued in the alternative that in any event the employees involved in the violations either were under the exclusive control of Mar-Land, were employees of Mar-Land, or that the area involved was under the exclusive control and supervision of Mar-Land. For its part, Mar-Land denied the violations.

The matters were among a series of cases called for hearing in Hato Rey, Puerto Rico. Shortly before the scheduled hearing, counsel for Mar-Land, Enrique M. Bray, requested a continuance, stating he was required to appear in a case in Federal District Court in San Juan on the same day as the hearing. Because the hearing in the Puerto Rican Cement\Mar-land cases had long been scheduled and because a continuance would have unduly prolonged the cases, I denied the motion. Counsel then moved for permission to withdraw. I advised counsel that I would permit him to withdraw only if Mar-Land obtained replacement counsel. This was done when counsel for Puerto Rican Cement entered an appearance on Mar-Land's behalf as well, and I then granted Mr. Bray's motion to withdraw. Tr. 5.

At the hearing, counsel speaking on behalf of both Respondents, stated that the recent interview of the Respondents' potential witnesses had caused the companies to re-evaluate their positions. Counsel stated:

The last thing that Puerto-Rican Cement and Mar-Land want to ever give the impression is that Puerto Rican Cement or Mar-Land will go into a case with witnesses that may not be stating the truth . . . and Puerto Rican Cement and Mar-Land want to make it very clear that they would never go into a situation for creating a credibility issue, when there is no credibility issue.

So, under those circumstances, Mar-Land . . . and . . . Puerto Rican Cement will accept liability

Tr. 6-7. Counsel then stated that both companies withdrew their contests of the alleged violations and "accept[ed] the fine[s]." Tr. 8.

In response, I expressed my concern about the Respondents' late decision to admit liability. I noted that had theirs been the only cases to be heard, the government would have been put to unnecessary expense arranging for the hearing, and I noted that

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it was incumbent upon counsel to be more expeditious in evaluating cases. I expressed the expectation that in the future Puerto Rican Cement and Mar-Land fully would meet their duty in this regard. Tr. 8. Counsel stated that he and co-counsel were "very conscious" of their obligations. Tr. 9.

I then inquired of counsel for the Secretary whether the penalties proposed for the admitted violations were commensurate with the statutory penalty criteria? Counsel stated that she believed they were and added that she had no objection to Respondents' withdrawing their contests of the penalties.

CONCLUSION

After review and consideration of the pleadings and submissions, I agree with counsel for the Secretary and find that the proposed penalties faithfully reflect the statutory civil penalty criteria and are each appropriate for the subject admitted violations. Accordingly, the civil penalties in these matters are assessed as follows:

PUERTO RICAN CEMENT

Docket No. SE 92-196-M

Citation	Date	30 C.F.R.	Assessment
3878262	12/16/91	56.16009	\$98
3878266	12/16/91	56.12030	\$98

Docket No. SE 92-233-M

Citation	Date	30 C.F.R.	Assessment
3878268	12/16/91	56.18002(a)	\$20

MAR-LAND

Docket No. SE 92-197-M

Citation	Date	30 C.F.R.	Assessment
3878261	12/16/91	56.16009	\$136
3878264	12/16/91	56.12030	\$112

ORDER

The citations referenced above are AFFIRMED. Puerto Rican Cement and Mar-Land are ordered to pay civil penalties for the violations as assessed above within thirty (30) days of the date of this decision and upon receipt of payment this proceeding is DISMISSED.

David F. Barbour
Administrative Law Judge

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Distribution:

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