

CCASE:
SOL (MSHA) V. D. M. CONNOR SAND
DDATE:
19940308
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. VA 93-72-M
Petitioner : A. C. No. 44-02385-05511
v. :
:
D. M. CONNOR SAND COMPANY, : Connor Sand
Respondent :

DECISION

Appearances: Patrick L. DePace, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, VA
for Petitioner;
Humes J. Franklin, Jr., Waynesboro, VA
for Respondent.

Before: Judge Weisberger

This case is before me based upon a Petition for Assessment of Civil Penalty filed by the Secretary (Petitioner) seeking a civil penalty of \$539 (Footnote 1) for the alleged violation, by the Operator of various mandatory regulatory standards. Pursuant to Notice, the case was scheduled for hearing on November 9, 1993 in Charlottesville, Virginia. On November 9, 1993, before the hearing commenced, I inquired of counsel if there had been any recent discussion concerning settlement of all, or some of the citations at issue. Counsel requested time to discuss settlement. Counsel advised me that a settlement had been reached regarding all citations at issue. The parties moved for approval of the settlement which reduces the proposed penalty for Citation No. 4084309 from \$189 to \$50, and amends the citation to non-significant and substantial. The parties also seek approval of the Operator's agreement to pay the full penalty assessed for citation numbers 4084310, 4084312, 4084313, 4084314, 4084316, 4084317, 4084318, 4084319, and 4084320.

1 At the hearing, Counsel for the Secretary asserted that the proposed assessment in error sought a penalty for citation No. 4084315, and that the reference to this citation is to be excluded from the proposed assessment.

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I have considered the representation of counsel, the documentation in this case, and the testimony of the inspector who issued these citations. I conclude that the proposed settlement is appropriate within the preview of Section 110(b) of the Federal Mine Safety and Health Act of 1977. The Motion to Approve the settlement is Granted.

It is ORDERED that the operator, D.M. Connor Sand Company, pay, within 30 days of this decision, \$500 as a civil penalty.

Avram Weisberger
Administrative Law Judge

Distribution:

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Humes J. Franklin, Jr., Franklin, Franklin, Denney & Ward, P.O. Drawer 1140, Waynesboro, VA 22980 (Certified Mail)

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