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SOL (MSHA) V. MISSISSIPPI POTASH  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
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June 29, 1994

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. CENT 92-212-M  
Petitioner : A.C. No. 29-00175-05526  
 :  
v. : Mississippi Chemical Corp.  
 :  
MISSISSIPPI POTASH, INC., :  
(MISSISSIPPI CHEMICAL CORP.), :  
Respondent :

DECISION

Appearances: Robert A. Goldberg, Esq., Office of the Solicitor,  
U.S. Department of Labor, Dallas, Texas,  
for Petitioner;

Charles C. High, Jr., Esq., Kemp, Smith, Duncan &  
Hammond, P.C., El Paso, Texas,  
for Respondent.

Before: Judge Cetti

I

This case is before me upon a petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act". The Secretary of Labor on behalf of the Mine Safety and Health Administration (MSHA), seeks a civil penalty of \$8,000.00 from the Respondent, Mississippi Potash Inc. (formerly Mississippi Chemical Corporation), for the alleged violation of 30 C.F.R. 57.3360. This safety standard in relevant part provides:

Ground support shall be used where ground conditions, or mining experience in similar ground conditions in the mine, indicate that it is necessary.

The primary issue at the hearing was whether or not there was a violation of the cited safety standard. More specifically the issue was whether ground conditions or mining experience in similar ground conditions in the mine indicated the need for additional ground support.

II

The citation in question was issued after an MSHA ground fall investigation at Respondent's underground potash mine located near Carlsbad, New Mexico. There was a fatality resulting from a roof fall in the North 405 Panel of the mine. Respondent was mining potash using a modified longwall system. Basically, Respondent drove entries to the end of the ore body and then retreated using continuous miners to mine out the potash as they retreated to the starting point.

III

At the hearing the parties entered into the record Stipulations as follows:

1. Mississippi Potash Inc. (formerly Mississippi Chemical Corporation) is engaged in mining and selling minerals and its mining operations affect commerce.
  2. Respondent is the owner and the operator of the Mississippi Potash, Inc., Mine Identification No. 29-00175.
  3. Respondent is subject to the jurisdiction of the Federal Mine and Safety Health Act of 1977, 30 U.S.C. 801, et seq., (the Act).
  4. The presiding Administrative Law Judge has jurisdiction over this matter.
  5. The subject citation as well as any modifications issued thereto, was properly served by a duly authorized representative of the Secretary of Labor, the Mine Safety and Health Administration, upon an agent of the Respondent on the date and place stated therein.
- Accordingly, the citation may be admitted into evidence for the purpose of establishing its issuance and not for the truthfulness or relevancy of any statements asserted therein.
6. The proposed penalty of the \$8,000.00 will not affect Respondent's ability to continue in business.
  7. Respondent is a mine operator with 336,048 tons of production in 1991.
  8. The certified copies of the Mine, Safety and Health Administration's Assessed Violations History accurately reflect the history of the mine for two years prior to the date of the citation.

The record in this penalty proceeding includes 1,191 pages of transcript of the testimony of 13 lay and expert witnesses and 59 exhibits. It took four full days of hearing to take the testimony of the 13 witnesses. At the conclusion of the second day it appeared that the Petitioner had established a prima facie case. During the last two days of hearing, Respondent presented credible lay and expert testimony that convincingly established that prior to the ground fall, there were no detectable ground conditions nor mining experience in similar ground conditions in the mine to indicate that ground support was necessary. Particularly persuasive was the testimony of Respondent's expert witness, the mining consultant Dr. John F. Abel.

Near the conclusion of the hearing, I granted Petitioner's request for a short recess so counsel could consult with his expert before responding to Respondent's motion for dismissal. When the hearing resumed on the record, counsel for Petitioner stated that Respondent and Petitioner had discussed the facts of the case and came to an agreed proposed disposition. Counsel for Petitioner on behalf of both parties made a motion that MSHA be permitted to withdraw the citation and the related proposed penalty. Having heard all the evidence and having considered the matter I granted the motion.

ORDER

Citation No. 3277238 and its related proposed penalty are VACATED and the above captioned case is DISMISSED.

August F. Cetti  
Administrative Law Judge

Distribution:

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