

CCASE:
SOL (MSHA) V. MISSION VALLEY CONCRETE
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
(303) 844-5266/FAX (303) 844-5268

July 13, 1994

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 92-702-M
Petitioner	:	A.C. No. 24-01427-05506
	:	
v,	:	Docket No. WEST 92-703-M
	:	A.C. No. 24-01427-05507
MISSION VALLEY CONCRETE,	:	
Respondent	:	Docket No. WEST 92-704-M
	:	A.C. No. 24-01427-05508
	:	
	:	Mission Valley Concrete Pit

DECISION APPROVING SETTLEMENT AFTER REMAND

Before: Judge Cetti

On May 2, 1994, the Commission remanded the above penalty cases to the undersigned to determine whether the Order of Default issued March 31, 1994, was warranted. Respondent in its request for reconsideration alleged there had been on-going settlement discussions with the attorney representing the Secretary of Labor and that Respondent was waiting for a further response from the Secretary before responding to various orders including the Order to Show Cause.

It now appears that the parties have completed their settlement discussions and have reached an amicable settlement of all issues. Petitioner, on June 20, 1994, filed a motion to approve the settlement agreement pursuant to 29 C.F.R. 2700.31 and to order payment of proposed and amended proposed penalties in the sum of \$1,462.00 within 40 days of the filing of an order approving settlement.

Under the proffered settlement, the Respondent agrees to pay in full MSHA's initial proposed penalties of certain citations as follows:

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Citation No. Proposed Penalty

Docket No. WEST 92-702-M

4122794	\$ 50.00
4122795	\$ 50.00
4122796	\$ 50.00
4122799	\$ 50.00
4122800	\$ 50.00
4123154	\$ 50.00
4123155	\$ 50.00

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4123156	\$ 50.00
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4122798	\$ 50.00
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Respondent also agrees to pay the Secretary's amended proposed penalties as follows:

Citation No.	Proposed Penalty	Amended Proposed Penalty
Docket No. WEST 92-702-M		
4122781	\$ 75.00	\$ 53.00
4122782	\$111.00	\$ 78.00
4122783	\$ 75.00	\$ 50.00
4122784	\$ 75.00	\$ 53.00
4122785	\$111.00	\$ 78.00
4122786	\$ 75.00	\$ 50.00
4122787	\$ 75.00	\$ 53.00
4122788	\$ 81.00	\$ 50.00
4122789	\$111.00	\$ 78.00
4122790	\$ 75.00	\$ 50.00
4122791	\$111.00	\$ 78.00
4122792	\$111.00	\$ 78.00
Docket No. WEST 92-703-M		
4123157	\$ 81.00	\$ 57.00
4123158	\$111.00	\$ 78.00
4123160	\$111.00	\$ 78.00
Docket No. WEST 92-704-M		
4123159	\$ 60.00	\$ 50.00

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In addition, under the proffered agreement, modifications are proposed for certain citations as follows:

Citation Nos. 4122783, 4122786, 4122788 and 4122790: The gravity of the violations be modified to "unlikely" and the citations redesignated as non-significant and substantial.

Citation Nos. 4122781, 4122784 and 4122787: The gravity of the violations be modified to reflect expected injuries to be "lost workdays or restricted duty."

Citation Nos. 4122782, 4122785, 4122789, 4122791 and 4122792: The negligence of the operator was less than originally assessed.

Petitioner states that Citation No. 4122797 was previously vacated by MSHA on September 28, 1992.

I have considered the representations and documentation submitted in these cases, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is GRANTED; the citations shall be modified in accordance with the approved agreed modifications shown above and Respondent is ORDERED TO PAY to the Secretary of Labor the approved civil penalties in the sum of \$1,462.00 within 40 days of this decision. Upon receipt of payment these cases are DISMISSED.

August F. Cetti
Administrative Law Judge

Distribution:

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