

CCASE:
RIVERTON V. SOL (MSHA)
DDATE:
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

RIVERTON CORPORATION, : CONTEST PROCEEDINGS
Contestant :
v. : Docket No. VA 94-31-RM
: Order No. 4288859; 12/9/93
SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket No. VA 94-41-RM
ADMINISTRATION (MSHA), : Order No.4288860; 12/9/93
Respondent :
: Quarry No. 1 Mine
:
: Mine ID# 44-00101
:
SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. VA 94-56-M
Petitioner : A.C. No. 44-00101-5541
v. :
: Docket No. VA 94-57-M
RIVERTON CORPORATION, : A.C. No. 44-00101-05542
Respondent :
: Docket No. VA 94-58-M
: A.C. No. 44-00101-05543
:
: Docket No. VA 94-59-M
: A.C. No. 44-00101-05544
:
: Docket No. VA 94-63-M
: A.C. No. 44-00101-05545
:
: Quarry #1

DECISIONS

Appearances: Glenn M. Loos, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia, for
the Petitioner/Respondent;
Dana L. Rust, Esq., McGuire, Woods, Battle and
Boothe, Richmond, Virginia, for the Contestant/
Respondent.

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings concern Notices of Contests filed by the Contestant Riverton Corporation pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, challenging the legality of two section 104(a) imminent danger orders (Docket No. VA 94-31-RM and VA 94-41-RM). Docket Nos. VA 94-56-M, VA 94-57-M, VA 94-58-M, VA 94-59-M, and VA 94-63-M concern civil penalty proposals filed by the petitioner MSHA against the respondent Riverton Corporation pursuant to section 110(a) of the Act, 30 U.S.C. 820(c), seeking civil penalty assessments for seventy-one (71), violations of certain mandatory safety standards found in Part 56, Title 30, Code of Federal Regulations. Hearings were held in Charlottesville, Virginia, and the parties appeared and participated fully therein.

Issues

The issues presented in Contest Docket Nos. VA 94-31-RM and VA 94-41-RM, are whether the cited conditions constituted an imminent danger and "significant and substantial" violations of the cited mandatory safety standard.

The issues presented in the civil penalty cases include the fact of violation, whether some of the violations were "significant and substantial", and the appropriate civil penalty assessments to be made for the violations.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 301 et seq.
2. Sections 105(d), 107(a), and 110(a) of the Act.
3. Commission Rules, 29 C.F.R. 2700.1, et seq.

Admissions and Stipulations

In its responses to certain discovery requests by MSHA's counsel, Riverton has admitted that it is the owner and operator of the mine at which the citations and orders in these proceedings were issued, that its mining operations are subject to the jurisdiction of the Mine Act, as well as the Commission and the presiding judge in these proceedings.

Discussion

In the course of the hearings the parties were afforded an opportunity to discuss settlements of all of the contested violations in these proceedings, and information was presented

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with respect to the six statutory civil penalty assessment criteria found in section 110(i) of the Act. In addition to trial counsel, the MSHA inspector who issued all of the disputed orders and citations, and Riverton's manager of operations were present in the courtroom and actively participated in the settlement negotiations. Arguments in support of the proposed settlement disposition of these cases were presented on the record, and I issued bench decisions approving the dispositions pursuant to Commission Rule 31, 29 C.F.R. 2700.31. These decisions are herein reaffirmed.

John E. Gray, Riverton Corporation's Manager of Operations, confirmed that Riverton's mining operation at the No. 1 quarry consists of a limestone quarry that produces material for use in its masonry plant for the production of masonry products, agricultural lime, and pre-mix cement products. He characterized the operation as an "old" quarry and plant that has been in operation for many years. He stated that the operation has an annual production of approximately 400,000 to 600,00 tons. MSHA's counsel asserted that MSHA's records reflect a production of 431,797 tons for the year 1992.

MSHA Inspector James E. Goodale, who issued all of the citations and orders in issue in these proceedings, agreed to the age, size, and scope of Riverton's mining operations, and he stated that Riverton's management was cooperative and timely abated all of the citations in good faith.

Findings and Conclusions

I conclude and find that Riverton's No. 1 quarry and plant operations constitute a medium-to-large mining operation. I have also reviewed all of the citations and abateements issued by Inspector Goodale and I conclude and find that Riverton timely abated all of the cited conditions in good faith within the time fixed by the inspector, and in several instances abated the conditions prior to the time fixed by the inspector.

With respect to Riverton's history of prior violations, MSHA's counsel produced a computer print-out of the mine compliance record for the period beginning in October, 1983 through March, 1994. Counsel asserted that the respondent's history of prior violations does not warrant any penalty assessment increases over those which have been made in these proceedings, and upon review of the print-out I agree.

In the absence of any evidence to the contrary, I conclude and find that the payment of the penalty assessments agreed to by the parties in these proceedings will not adversely affect Riverton's ability to continue in business.

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Docket Nos. VA 94-31-RM and VA 94-41-RM

These dockets concern two combined Section 107(a) - 104(a) imminent danger orders and citations initially issued on December 9, 1993, and subsequently modified on January 19, 1994, by MSHA Inspector James E. Goodale after he found that certain electrical starter switches in the No. 1 and No. 4 mill starters were not provided with overload protection as required by mandatory safety standard 30 C.F.R. 56.12001. The inspector concluded that the cited conditions constituted imminent dangers pursuant to section 107(a) of the Act.

MSHA's counsel filed motions to approve proposed settlements of these cases. In support of the motions, counsel asserted that after further review of the factual circumstances surrounding the alleged violations MSHA agrees that no imminent dangers or violations existed in these cases. In support of these conclusions, counsel has provided a full discussion of the circumstances presented at the time the orders were issued, including MSHA's findings that the existing 300 amp fuses for the equipment in question were of the correct type and capacity and provided the required overload protection. Under the circumstances, MSHA has agreed that the contested orders should be vacated. Further, MSHA's counsel asserted that appropriate administrative action will be taken to vacate the citations and to withdraw any proposed civil penalty assessments based on those citations.

After careful review and consideration of the motions and pleadings filed in these cases, I rendered bench decisions approving the proposed settlement disposition with respect to the contested orders. My bench decisions are herein re-affirmed. The orders ARE VACATED, and the contests filed by the contestant ARE GRANTED.

Docket No. VA 94-56-M

This docket concerns twenty (20) alleged violations. The respondent conceded the fact of violations with respect to Citation Nos. 4288854, 4288856, 4288684, 4288685, 4288686, 4288861, 4288690, 4288691, and 4288862, and agreed to accept the citations as issued and to pay the proposed penalty assessments.

The petitioner agreed to vacate Citation Nos. 4288855, 4288857, 4288687, 4288688, 4288689, 4288693, 4288858, and 4288682. The petitioner also agreed to delete the "S&S" designations with respect to citation Nos. 4288681 and 4288683 and to modify the citations to non-"S&S". The petitioner amended its proposed penalty assessments to reflect proposed penalties of fifty-dollars (\$50) for each of the citations. The respondent agreed to accept the amended citations and to pay the amended proposed penalty assessments.

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With regard to citation No. 4288692, the parties agreed to a modification of the citation to reflect a violation of mandatory safety standard 30 C.F.R. 56.12032, and the respondent agreed to accept the amended citation and to pay the proposed penalty assessment.

Docket No. VA 94-57-M

This docket concerns twenty (20) alleged violations. The respondent conceded the fact of violations with respect to citation Nos. 4288864, 4288865, 4288867, 4288868, 4288870, 43288872, 4288873, 4288874, 4288875, 4288876, and 4288878, and agreed to accept the citations as issued and to pay the proposed penalty assessments.

The petitioner agreed to vacate Citation Nos. 4288863, 4288866, 4288694, 4288879, and 4288695. The petitioner also agreed to delete the "S&S" designations with respect to Citation Nos. 4288869, 4288877, 4288871 and to modify the citations to non-"S&S". The petitioner also amended its proposed penalty assessments to reflect proposed penalties of fifty-dollars (\$50) for each of the citations. The respondent agreed to accept the amended citations and to pay the amended proposed penalty assessments.

With regard to Citation No. 4288880, the parties agreed to a modification of the citation to reflect a violation of mandatory safety standard 30 C.F.R. 56.12013, and the respondent agreed to accept the citation, as amended, and to pay the proposed penalty assessment.

Docket No. VA 94-58-M

This docket concerns twenty (20) alleged violations. The respondent conceded the fact of violations with respect to Citation Nos. 4288696, 4288697, 4288699, 4288700, 4288701, 4288702, 4288704, 4288705, 4288706, 4288709, 4288710, 4288713, and 4288717, and agreed to accept the citations as issued and to pay the proposed penalty assessments. The petitioner agreed to vacate citation Nos. 4288703 and 4288707.

With regard to Citation Nos. 4288712, 4288716, 4288718, 4288719, and 4288720, the petitioner agreed to delete the "S&S" designations and to modify the citations to non-"S&S". The petitioner amended its proposed penalty assessments to reflect proposed penalties of fifty-dollars (\$50) for each of the citations. The respondent agreed to accept the amended citations and to pay the amended proposed penalty assessments.

Docket No. VA 94-59-M

This docket concerns nine (9) alleged violations. With respect to Citation Nos. 4288721, 4288722, and 4288728, the respondent conceded the fact of violations and the petitioner agreed to delete the "S&S" designations and to modify the citations to non-"S&S". The petitioner also amended its proposed

penalty assessments to reflect proposed penalties of fifty dollars (\$50) for each of the citations, and the respondent agreed to pay the amended proposed penalty assessments.

With regard to Citation Nos. 4288723, 4288724, 4288727, and 4288729, the respondent conceded the fact of violations, and agreed to accept the citations as issued and to pay the proposed penalty assessments. The respondent also conceded the fact of violation with respect to Citation Nos. 4288726, and the petitioner agreed to reduce the inspector's gravity finding to "no likelihood of injury", and the respondent agreed to pay a reduced penalty assessment of twenty-five dollars (\$25) for the violation. The petitioner also agreed to vacate citation No. 4288725.

Docket No. VA 94-63-M

This docket concerns two (2) alleged violations of mandatory safety standard 30 C.F.R. 56.15003, which provides as follows:

All persons shall wear suitable protective footwear when in or around an area of a mine or plant where a hazard exists which could cause an injury to the feet.

The record reflects that MSHA Inspector James E. Goodale served section 104(a) "S&S" Citation Nos. 4288773 and 4288774, on the respondent citing violations of section 56.15003, because two employees of Robb Electric Company were observed at the No. 4 mill area without wearing safety shoes. After further consultation with the inspector the petitioner asserted that it will vacate the citations served on the respondent and will take appropriate action to cite the independent contractor Robb Electric for the alleged violations. A similar disposition was made with respect to Section 104(a) "S&S" citation No. 4288866, issued on December 9, 1993, by Inspector Goodale to the respondent for an alleged violation of Section 56.15003, after he observed that an employee of independent contractor Lloyd Electric Company was not wearing safety toed shoes while at the No. 1 and No. 2 mill areas (Docket No. VA 94-57-M).

ORDER

In view of the foregoing, IT IS ORDERED as follows:

Docket Nos. VA 94-31-RM and VA 94-41-RM

Section 107(a) Imminent Danger Order Nos. 4288859 and 4288860, issued on December 9, 1993, by MSHA Inspector James E. Goodale ARE VACATED.

Docket No. VA 94-56-M

The following Section 104(a) citations ARE AFFIRMED, and the respondent IS ORDERED to pay the civil penalty assessments.

Citation No.	Date	30 C.F.R. Section	Assessment
4288854	12/8/93	56.20003(a)	\$157
4288856	12/8/93	56.12013	\$50
4288684	12/9/93	56.11002	\$157
4288685	12/9/93	56.14107(a)	\$50
4288686	12/9/93	56.14107(a)	\$50
4288861	12/9/93	56.11002	\$157
4288690	12/9/93	56.20003(a)	\$50
4288691	12/9/93	56.20003(a)	\$50
4288862	12/9/93	56.20003(a)	\$157

Section 104(a) Citation Nos. 4288855, 4288857, 4288687, 4288688, 4288689, 4288693, 4288858, and 4288682 ARE VACATED, and the petitioner's proposed civil penalty assessments ARE DENIED and DISMISSED.

Section 104(a) "S&S" Citation Nos. 4288681 and 4288683 ARE MODIFIED to non-"S&S" citations, and as modified they ARE AFFIRMED. The respondent IS ORDERED to pay civil penalty assessments of fifty-dollars (\$50) for each of the citations.

Section 104(a) non-"S&S" Citation No. 4288692, IS MODIFIED to reflect a violation of mandatory safety standard 30 C.F.R. 56.12032, and as modified IT IS AFFIRMED. The respondent I ORDERED to pay a civil penalty assessment of fifty-dollars (\$50) for the violation.

Docket No. VA 94-57-M

The following section 104(a) citations ARE AFFIRMED, and the respondent IS ORDERED to pay the civil penalty assessments.

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Citation No.	Date	30 C.F.R. Section	Assessment
4288864	12/9/93	56.11001	\$50
4288865	12/9/93	56.11001	\$50
4288867	12/9/93	56.12006	\$50
4288868	12/9/93	56.12032	\$50
4288870	12/9/93	56.12013	\$252
4288872	12/9/93	56.12008	\$50
4288873	12/9/93	56.12008	\$50
4288874	12/9/93	56.12032	\$50
4288875	12/9/93	56.12013	\$50
4288876	12/9/93	56.11001	\$50
4288878	12/9/93	56.12032	\$50

Section 104(a) citation Nos. 4288863, 4288866, 4288694, 4288879, and 4288695 ARE VACATED, and the petitioner's proposed civil penalty assessments ARE DENIED AND DISMISSED.

Section 104(a) "S&S" citation Nos. 4288869, 4288877, and 4288871 ARE MODIFIED to non-"S&S" citations, and as modified they ARE AFFIRMED. The respondent IS ORDERED to pay civil penalty assessments of fifty-dollars (\$50) for each of the citations.

Section 104(a) non-"S&S" citation No. 4288880, IS MODIFIED to reflect a violation of mandatory safety standard 30 C.F.R. 56.12013, and as modified IT IS AFFIRMED. The respondent I ORDERED to pay a civil penalty assessment of fifty-dollars (\$50) for the violation.

Docket No. VA 94-58-M

The following section 104(a) citations ARE AFFIRMED, and the respondent IS ORDERED to pay the civil penalty assessments.

Citation No.	Date	30 C.F.R. Section	Assessment
4288696	12/14/93	56.14109	\$50
4288697	12/14/93	56.14109	\$50
4288699	12/14/93	56.11002	\$50
4288700	12/14/93	56.12018	\$50
4288701	12/14/93	56.11002	\$50
4288702	12/14/93	56.20003(a)	\$50
4288704	12/14/93	56.12008	\$50
4288705	12/14/93	56.12013	\$50
4288706	12/14/93	56.11002	\$252
4288709	12/14/93	56.12032	\$50
4288710	12/15/93	56.16005	\$50
4288713	12/15/93	56.14107(a)	\$204
4288717	12/15/93	56.12034	\$252

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Section 104(a) Citation Nos. 4288703 and 4288707, ARE VACATED, and the petitioner's proposed civil penalty assessments ARE DENIED AND DISMISSED.

Section 104(a) "S&S" Citation Nos. 4288712, 4288716, 4288718, 4288719, and 4288720 ARE MODIFIED to non-"S&S" citations, and as modified they ARE AFFIRMED. The respondent IS ORDERED to pay civil penalty assessments of fifty-dollars (\$50) for each of the citations.

Docket No. VA 94-59-M

The following Section 104(a) citations ARE AFFIRMED, and the respondent IS ORDERED to pay the civil penalty assessments.

Citation No.	Date	30 C.F.R. Section	Assessment
4288723	12/15/93	56.12032	\$50
4288724	12/15/93	56.16005	\$50
4288727	12/16/93	56.11001	\$252

Section 104(a) "S&S" Citation Nos. 4288721, 4288722, 4288728, ARE MODIFIED to non-"S&S" citations, and as modified they ARE AFFIRMED. The respondent IS ORDERED to pay civil penalty assessments of fifty-dollars (\$50) for each of the citations.

The inspector's gravity finding with respect to Section 104(a) non-"S&S" citation No. 4288726, IS MODIFIED to reflect "no likelihood of injury", and as modified IT IS AFFIRMED. The respondent IS ORDERED to pay a civil penalty assessment of twenty-five dollars (\$25) for the violation.

Section 104(a) "S&S" Citation No. 4288725, IS VACATED and the petitioner's proposed civil penalty assessment IS DENIED AND DISMISSED.

Docket No. VA 94-63-M

Section 104(a) "S&S" citation Nos. 4288773 and 4288774, ARE VACATED, and the petitioner's proposed civil penalty assessments ARE DENIED AND DISMISSED.

IT IS FURTHER ORDERED that the respondent shall pay the aforementioned civil penalty assessments to the petitioner (MSHA) within thirty (30) days of the date of these decisions and orders, and upon receipt by MSHA, these civil penalty proceedings ARE DISMISSED.

George A. Koutras
Administrative Law Judge

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