

CCASE:  
SOL (MSHA) V. BOYER READY MIX SAND & ROCK  
DDATE:  
19940920  
TTEXT:

~1953

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1244 SPEER BOULEVARD #280  
DENVER, CO 80204-3582  
(303) 844-5266/FAX (303) 844-5268

September 20, 1994

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. CENT 93-39-M  
Petitioner : A.C. No. 39-01377-05503  
 :  
v. : North Pit  
 :  
BOYER READY MIX SAND & ROCK, :  
INCORPORATED, :  
Respondent :

DECISION APPROVING SETTLEMENT AFTER REMAND

Before: Judge Cetti

On August 5, 1994, the Commission remanded the above penalty case to the undersigned to determine whether the Order of Default issued June 28, 1994, was warranted. Respondent in its request for reconsideration alleged there had been on-going settlement discussions with the attorneys representing the Secretary of Labor and that he inadvertently neglected to respond to the show cause order.

The parties now have completed their settlement discussions and have reached an amicable settlement of all issues. Petitioner on August 23, 1994, filed a motion to approve the settlement agreement pursuant to 29 C.F.R. 2700.31 and to order payment of the amended proposed penalties in the sum of \$2,938.00 within 40 days of the filing of an order approving settlement.

Under the proffered settlement there is a reduction of the initial proposed penalties as follows:

Citation No.	Initial Proposed Penalty	Amended Proposed Penalty
3909396	\$ 252.00	\$ 200.00
3909398	595.00	400.00
3909400	362.00	290.00
3909401	595.00	475.00
3909402	147.00	115.00
3909403	168.00	134.00
3909404	111.00	89.00
3909405	362.00	290.00
3909406	119.00	50.00

~1954

3909407	168.00	50.00
3909408	119.00	95.00
3909409	102.00	50.00
3909411	2,816.00	500.00
3909412	252.00	200.00

TOTAL		\$2,938.00
-------	--	------------

I have considered the representations and documentation submitted in this case, 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; and Respondent is ORDERED TO PAY to the Secretary of Labor the approved civil penalties in the sum of \$2,938.00 within 40 days of this decision. Upon receipt of payment this case is DISMISSED.

August F. Cetti  
Administrative Law Judge

Distribution:

Margaret A. Miller, Esq., Office of the Solicitor, U.S. Department of Labor, 1999 Broadway, Suite 1600, Denver, CO 80202-5716

Bill B. Boyer, President, BOYER READY MIX SAND & ROCK, INC., Rural Route 2, Box 51A, Hawarden, IA 51023

sh