

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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May 29, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 95-214-M
Petitioner	:	A. C. No. 23-02072-05512 A
v.	:	
	:	Gallatin Quarry
HAROLD L. MOODY,	:	
Respondent	:	

**REMAND DECISION AND
ORDER APPROVING SETTLEMENT**

Before: Judge Koutras

Statement of the Case

This matter concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent Harold L. Moody, pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977, seeking a civil penalty assessment of \$1,000, for a violation of mandatory safety standard 30 C.F.R. ' 56.9300(b), as stated in a section 104(d)(1) Citation No. 4322450, issued on July 21, 1994. The respondent was charged with knowingly authorizing, ordering, or carrying out the violation.

On January 26, 1996, former Commission Judge Arthur Amchan issued a decision concluding that the Secretary failed to establish a violation, and he dismissed the case. 18 FMSHRC 67 (January 1996).

Following an appeal by the Secretary, the Commission, on April 30, 1997, issued its decision reversing Judge Amchan's determination that the respondent was not liable under section 110(c) for the violation, and remanded the matter for assessment of a civil penalty.

In response to my May 1, 1997, Order on Remand, the petitioner has filed a motion to approve a proposed settlement requiring the respondent to pay the full amount of the proposed \$1,000 penalty assessment for the violation. By agreement of the parties, the respondent proposes to pay the penalty over a scheduled six-month payment period.

Conclusion

After careful review and consideration of the pleadings, arguments and submissions in support of the motion to approve the proposed settlement of this case, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. ' 2700.31, the motion IS GRANTED, and the settlement IS APPROVED.

ORDER

The respondent IS ORDERED to pay a civil penalty assessment of \$1,000, in satisfaction of the violation. Payment is to be made to MSHA in accordance with the following schedule:

The respondent shall make an initial installment payment of \$200, within thirty (30) days of the date of this settlement decision. Thereafter, the respondent shall make three (3) successive monthly payments of \$200 each, followed by two (2) successive monthly payment of \$100 each until the full amount of \$1,000 is paid.

Payments shall be by check or money order made payable to the Mine Safety and Health Administration, and sent to the following address:

U.S. Department of Labor
Mine Safety and Health Administration
Payment Office
P.O. Box 360250M
Pittsburgh, PA 15251

Each payment shall include a reference to Docket No. CENT 95-214-M, and A.C. No. 23-02072-05512 A.

This decision will not become final until such time as full payment of the \$1,000 is made by the respondent to MSHA, and I retain jurisdiction in this case until payment of all installments are remitted and received by MSHA. In the event the respondent fails to comply with the terms of the settlement, the petitioner may file a motion seeking appropriate sanctions or further action against the respondent, including a reopening of the case.

George A. Koutras
Administrative Law Judge

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