

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1244 SPEER BOULEVARD #280  
DENVER, CO 80204-3582  
303-844-3993/FAX 303-844-5268

June 19, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEST 93-85-M  
Petitioner : A.C. No. 42-00023-05521  
 :  
v. : Docket No. WEST 93-285-M  
 : A.C. No. 42-00023-05522  
AMERICAN STONE, INC., :  
Respondent : Docket No. WEST 93-424-M  
 : A.C. No. 42-00023-05523  
 :  
 : Docket No. WEST 93-527-M  
 : A.C. No. 42-00023-05524  
 :  
 : Aragonite Mine

**DECISION**

Appearances: Ann M. Noble, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
Scott E. Isaacson, Esq., KING & ISAACSON,  
Salt Lake City, Utah,  
for Respondent.

**Before: Judge Cetti**

These consolidated civil penalty proceedings are before me upon petitions 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. (Mine Act). The Secretary of Labor, on behalf of the Mine Safety and Health Administration, charged the operator of the Aragonite Mine with 18 violations of safety standards set forth in Part 56, Title 30, Code of Federal Regulations.

The Respondent filed a timely answer contesting the violations. After due notice to the parties the consolidated cases were heard in Salt Lake City, Utah.

Citation No. 2653512, the only citation in Docket No. WEST 93-85-M, charges that the operator failed to notify the nearest subdistrict office when closing the Aragonite Mine. At the hear-

ing the Secretary vacated the citation along with its proposed \$50.00 penalty based upon the fact that Respondent produced billing statements for August, September, and October 1992, which satisfactorily demonstrated that the mine was open and not closed at all times for which the citation was issued.

All the remaining citations, except for two which are not contested, are for alleged violations at the Aragonite crushing mill which is located approximately four miles from the mine. The crushing mill had been operated only sporadically. The mill is enclosed in a metal building and has no permanent source of electrical power. When it is operated, electrical power is provided by a portable diesel generator.

Respondent American Stone states that when the citations were issued the mill had been shut down for approximately nine months. American Stone states that just before the inspection it had moved the portable diesel generator from another site to the mill, but had not yet hooked up the generator.

American Stone states that at the time of inspection it was in the process of cleaning, repairing, and setting up the mill. The inspector was told that the mill was shut down and had not been operated for approximately nine months but the inspector, nevertheless, insisted on inspecting the mill at that time.

Respondent contends that when there is no electrical power to the mill, there is no risk of electrical injuries and that it did not and would not have operated the mill in the condition it was in at the time of inspection. It is on this basis that American Stone requested that the citations be vacated or at least that the penalties be reduced to a more appropriate level.

At the hearing the parties negotiated a settlement agreement and requested approval of the agreement. Under the proffered settlement Respondent withdraws its contest to Citation Nos. 2653598, 2653665, 2653666, 2653674, 2653662, 2653663, 2653664, 2653669, 2653671, and 2653670 and agrees to pay in full the MSHA proposed penalty of \$50.00 for each of these citations, for a total penalty of \$500.00 for these 10 uncontested citations.

In support of the reduction of penalties for the remaining eight citations the Secretary states that preparation for hearing discloses the following:

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The other two citations are Citation No. 2653664, the horn on a front-end loader was not functional and Citation No. 2653669, the falling object protection structure on a forklift was not functional.

There were fewer employees (one rather than four) exposed to the hazards posed by the violations set forth in Citation Nos. 2653599 and 26533600 and 104(b) Order 4120245.

The injury which would reasonably result from the conditions set forth in Citation Nos. 2653672, 2653661, and 2653668 would be permanently disabling rather than fatal.

The injury which would reasonably result from the conditions set forth in Citation Nos. 2653667 and 2653675 would cause lost workdays or restricted duty and not permanent disability.

The negligence exhibited by Respondent with regard to Citation No. 2653673 and the corresponding 104(b) Order No. 4120246 was "low" rather than "moderate". (The bagger conveyor belt was seldom operated.)

In view of the foregoing, Petitioner agrees to amend the proposed penalties on the remaining eight citations as follows:

<u>Citation/Order No.</u>	<u>Initial Proposed Penalty</u>	<u>Amended Proposed Penalty</u>
2653599	\$ 147.00	\$100.00
2653672	102.00	80.00
2653661	102.00	80.00
2653667	81.00	50.00
2653668	102.00	80.00
2653600	1,000.00	750.00
4120245 (104(b) Order)		
2653673	300.00	200.00
4120246 (104(b) Order)		
2653675	81.00	50.00

In addition, Respondent states that it will no longer operate the crushing mill in question and that it intends to remove the structure from the site. If Respondent places a portable mill at the Aragonite Mine it will notify MSHA at least three business days prior to placing the portable mill at the Aragonite Mine and will, at the time of notification, provide information regarding the anticipated length of time Respondent plans to operate the portable mill at the Aragonite Mine.

Respondent will also notify MSHA at least three business days prior to the time it anticipates having employees present at the Aragonite Mine to conduct mining operations and will, at that

time, provide information regarding the anticipated length of time Respondent plans to have employees present at the Mine.

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

**ORDER**

In view of the foregoing it is ordered that:

1. Citation No. 2653512 is **VACATED** and the proposed \$50.00 penalty is set aside.

2. The motion to approve the settlement is **GRANTED**; this includes the modification of certain citations as agreed and shown above.

3. Respondent shall pay the approved penalties totaling \$1,890.00 to the Secretary of Labor within 40 days of the date of this decision and order.

August F. Cetti  
Administrative Law Judge

Distribution:

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