

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3993/FAX 303-844-5268

May 2, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 94-560-M
Petitioner : A.C. No. 48-00152-05636
 :
v. :
 : FMC Trona Mine
FMC WYOMING CORPORATION, :
Respondent :

DECISION

Appearances: Robert Cohen, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner;
Matthew F. McNulty, III, Esq., Van Cott, Bagley,
Cornwall & McCarthy, P.C., Salt Lake City, Utah,
for Respondent.

Before: Judge Cetti

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. the "Act." The Secretary of Labor on behalf of the Mine Safety and Health Administration, (MSHA), charges the Respondent, FMC Wyoming Corporation (FMC), the operator of the Trona Mine with two violations of 30 C.F.R. ' 57.14213 which require use of arc shields when arc welding is performed where persons could be exposed to the arc flash.¹

Respondent filed a timely answer contending there was no violation. Pursuant to notice to the parties, the matter was set for hearing on April 2, 1996, at Salt Lake City.

During the hearing, the parties on the record entered into a settlement agreement. It is undisputed that the inspector came by and saw a momentary arc flash that was promptly abated in each case. The operator, explaining why the matter had not been settled prior to hearing, stated that representatives of the local union felt the union welders involved were not violating the

¹ Originally this docket included 2 other citations charging violations involving methane monitoring and methane levels. Those citations were bifurcated into Docket No. WEST 94-560-M-A and previously resolved by my Decision Approving Settlement.

standard and were urging the operator not to settle the case. The operator requested the record to reflect that it is not admitting a violation but for "litigation purposes" is agreeing to a settlement of the issues involved in this case. Under the proffered agreement, FMC will pay a \$50.00 civil penalty for each of the alleged violations.

Upon review of the record, including the information given at the hearing, I conclude the settlement agreed upon on the record at the hearing is consistent with the criteria in section 110(i) of the Act.

ORDER

Accordingly, Citation No. 3906527 is **AFFIRMED** as written and a penalty of \$50.00 is assessed.

Citation No. 4405824 is **AFFIRMED** as written and a penalty of \$50.00 is assessed.

It is further **ORDERED** that FMC Wyoming Corporation **PAY** the approved civil penalties in the sum of \$100.00 to the Secretary of Labor within 30 days of this decision. Upon receipt of payment, this case is dismissed.

August F. Cetti
Administrative Law Judge

Distribution:

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