

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1244 SPEER BOULEVARD # 280  
DENVER, CO 80204-3582  
303-844-3577/ FAX 303-844-5268

June 24, 1997

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner

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CIVIL PENALTY PROCEEDING

Docket No. WEST 95-339-M  
A.C. No. 05-00860-05537

v.

MOBILE PREMIX SAND & GRAVEL  
COMPANY,  
Respondent

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Specification Aggregates

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner

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CIVIL PENALTY PROCEEDINGS

v.

DON DEWILD, employed by  
MOBILE PREMIX SAND & GRAVEL  
COMPANY,  
Respondent

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Docket No. WEST 96-223-M  
A.C. No. 05-00860-05540 A

KEITH BUESCHER, employed by  
MOBILE PREMIX SAND & GRAVEL  
COMPANY,  
Respondent

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Docket No. WEST 96-224-M  
A.C. No. 05-00860-05541 A

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Specification Aggregates

DECISION

Appearances: Kristi Floyd, Esq., Office of the Solicitor, U.S. Department of Labor,  
Denver, Colorado, for Petitioner;  
Laura E. Beverage Esq., Jackson & Kelly, Denver, Colorado, for  
Respondents.

Before: Judge Manning

These cases are before me on petitions for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration ("MSHA"), against Mobile Premix Sand and Gravel Company ("Mobile Premix"), Don DeWild, and Keith Brescher, pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820 (the "Act"). The citation in each petition, No. 4423012, alleges that the respondents violated 30 C.F.R. 56.16002(c). The citation also alleges that the violation was of a significant and substantial nature and was caused by the operator's unwarrantable failure to comply with the safety standard.

A hearing was held in these cases in Denver, Colorado. At the beginning of the second day of the hearing, counsel for the parties announced that they reached a settlement of all issues in these cases. (Tr. 282-84). Subsequently, the Secretary filed a motion for approval of settlement incorporating all of the terms and conditions of the settlement.

In the motion, the Secretary states that based on "additional information presented in the course of this litigation, counsel for the Secretary has concluded that insufficient evidence exists to pursue the § 110(c) penalties against either Mr. DeWild or Mr. Brescher." (Motion at 3). The Secretary agrees to withdrawal the penalties she proposed against Messrs. DeWild and Brescher. The Secretary also agrees to reduce the proposed penalty against Mobile Premix from \$2,000 to \$1,600. In reducing the penalty, the Secretary considered "certain mitigating factors, including the fact that the employees referenced in the citation had received lock out and safety line training, as well as the fact that there existed conflicting evidence regarding the actual hazard present." (Motion at 4). Mobile Premix agrees to pay the amended penalty. The parties do not seek other modifications to the citation.

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

Accordingly, the motion for approval of settlement GRANTED, the penalties against Don DeWild and Keith Brescher are WITHDRAWN and Mobile Premix Sand & Gravel Company is ORDERED TO PAY the Secretary of Labor the sum of \$1,600.00 within 30 days of the date of this decision. Upon payment of the penalty, these proceedings are DISMISSED.

Richard W. Manning

Administrative Law Judge

Distribution:

Kristi Floyd, Esq., Office of the Solicitor, U.S. Department of Labor, 1999 Broadway, Suite 1600, Denver, CO 80202-5716 (Certified Mail)

Laura E. Beverage, Esq., JACKSON & KELLY, 1660 Lincoln Street, Suite 2710, Denver, CO 80264 (Certified Mail)

RWM