

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 25, 1999

BHP COPPER, INC.,	:	CONTEST PROCEEDING
Contestant	:	
	:	Docket No. WEST 98-189-RM
v.	:	Citation No. 7922328; 3/13/98
	:	
SECRETARY OF LABOR,	:	San Manuel Mine
MINE SAFETY AND HEALTH	:	ID No. 02-00151
ADMINISTRATION (MSHA),	:	
Respondent	:	
	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 98-415-M
Petitioner	:	A.C. No. 02-00151-05646
	:	
v.	:	San Manuel Mine
	:	
	:	
BHP COPPER, INC.,	:	
Respondent	:	

DECISION ON REMAND

Before: Judge Manning

By decision dated June 23, 1998, I granted BHP Copper's motion for summary decision in WEST 98-189-RM and vacated Citation No. 7922328. 20 FMSHRC 634. The Commission, on its own motion, directed review of my decision. On July 30, 1999, the Commission reversed my decision and remanded that case to me to impose an appropriate penalty. In its decision, the Commission determined that BHP Copper violated section 103(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 813(a) (the "Act"), as alleged in the citation.

I was assigned the civil penalty case that contains the contested citation on October 23, 1998, Docket No. WEST 98-415-M. In that case, the Secretary proposed a penalty of \$60 for Citation No. 7922328. The civil penalty case also contains Citation No. 7922329. On March 22, 1999, I approved the parties' proposed settlement of Citation No. 7922329 in WEST 98-415-M. In the settlement, BHP Copper agreed to pay a civil penalty of \$29,000 for that citation and to comply with the terms of an agreement executed by the parties that was attached to the motion

for approval of settlement. Consequently, the only issue before me on remand in these cases is the assessment of an appropriate civil penalty for Citation No. 7922328.

By order dated August 3, 1999, I consolidated the above proceedings and stated that I would assess the \$60 penalty proposed by the Secretary unless BHP Copper provided reasons, on or before August 20, 1999, why the penalty should be different, taking into consideration the penalty criteria in section 110(i) of the Act. BHP Copper responded to my order by stating that its anticipates appealing the Commission's ruling to the U.S. Court of Appeals and, to preserve its right to appeal, it objects to the assessment of a penalty for Citation No. 7922328.

Under the Act, a penalty must be assessed for any violation of the Act or the Secretary's safety and health standards. Consequently, I assess a penalty based on the information contained in the citation and the Secretary's petition for assessment of penalty filed with the Commission. The Secretary specially assessed the citation under 30 C.F.R. § 100.5.

1. History of Previous Violations

The Secretary's petition for penalty states that the San Manuel Mine was issued 158 citations during the 24 months preceding March 13, 1998, during 377 inspection days.

2. Size of the Mine Operator

Both BHP Copper and the San Manuel Mine are large operations.

3. Negligence of the Mine Operator

Inspector Richard Laufenberg determined that BHP Copper's negligence was high.

4. Effect of Penalty to Continue in Business

The penalty proposed by the Secretary will not have any effect on BHP Copper's ability to continue in business.

5. Gravity of the Violation

Inspector Laufenberg determined that the violation was not serious because there was no likelihood of an illness or injury as a result of the violation; the violation would not be expected to result in any lost workdays; and the violation was not of a significant and substantial nature.

6. Good Faith Abatement

The citation shows that BHP Copper abated the citation by providing the address and phone number of Mr. Ronald Byrd within 30 minutes after the citation was issued. The

Secretary's narrative findings for a special assessment states that the violation was abated within a reasonable period of time.

7. Assessment of an Appropriate Penalty

In assessing a penalty, I take into consideration the information of record for the penalty criteria as set forth above. I find that the Secretary's proposed penalty is appropriate under the penalty criteria. Accordingly, I assess a penalty of \$60 for BHP Copper's violation of section 103(a) of the Act as set forth in Citation No. 7922328.

ORDER

Citation No. 7922328 is **AFFIRMED** and BHP Copper, Inc., is **ORDERED TO PAY** the Secretary of Labor the sum of \$60.00 within 40 days of the date of this decision.

Richard W. Manning
Administrative Law Judge

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