

CCASE:  
SOL (MSHA) V. CHRISMAN READY-MIX  
DDATE:  
19941128  
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS  
MINE AND SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. CENT 94-35-M  
Petitioner : A.C. No. 0301597-05504  
 :  
v. : Docket No. CENT 94-42-M  
 : A.C. No. 0301597-05505  
CHRISMAN READY-MIX, INC., :  
Respondent : Clarkville Quarry

DECISION

Appearances: Nancy B. Carpentier, Esq., Robert A. Goldberg,  
Esq., Office of the Solicitor, U.S. Department  
Of Labor, Dallas, Texas, for the Petitioner;  
Lonnie C. Turner, Esq., Turner & Mainard, Ozark,  
Arkansas, for the Respondent.

Before: Judge Feldman

These proceedings concern proposals for assessment of civil penalties filed by the Secretary of Labor against the respondent corporation pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. 820(a). These matters were called for hearing on August 2, 1994, in Fort Smith, Arkansas.

Docket No. CENT 94-35-M concerns a total proposed civil penalty of \$250.00 for five citations alleging nonsignificant and substantial violations of mandatory safety standards contained in Part 56 of the mine safety regulations, 30 C.F.R. Part 56. Docket No. CENT 94-42-M involves three citations for alleged significant and substantial violations of Part 56 mandatory standards. The civil penalty proposed by the Secretary for each of these alleged violations is \$63.00 for a total proposed penalty of \$189.00.

At trial, the Secretary relied upon the testimony of Mine Safety and Health Administration (MSHA) Inspector James Clifton Enochs and Robert Newton Chrisman, the respondent's Chairman of the Board. The respondent's direct case consisted of the testimony of its Chairman Robert Chrisman. At the culmination of the hearing I scheduled September 27, 1994, as the filing date for proposed findings and conclusions. The filing date was extended to October 27, 1994, at the request of the Secretary.

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In lieu of filing posthearing proposed findings, on November 21, 1994, The Secretary, pursuant to Commission Rule 31, 29 C.F.R. 2700.31, filed a joint motion to approve settlement of all matters in issue in these proceedings. With respect to Docket No. CENT 94-35-M, the Secretary moves to vacate Citation No. 4116731. The respondent has agreed to pay the total proposed civil penalty of \$200.00 for the remaining four citations. Similarly, the respondent has agreed to pay the total proposed penalty of \$126.00 for two of the three citations that are the subject of Docket No. CENT 94-42-M. The Secretary seeks to vacate remaining Citation No. 4116732.

In support of their agreement, the parties state the settlement terms are consistent with the statutory civil penalty criteria in section 110(i) of the Act, 30 U.S.C. 820(i). While I am concerned that the agreed upon civil penalty of \$63.00 for each of the two significant and substantial violations in Docket No. CENT 94-42-M may undermine the public's confidence in the enforcement of the Act by trivializing the serious nature of such violations, even where the respondent is a small operator, I will defer to the parties' agreement.

ORDER

After considering the evidence adduced at trial as well as the submission in support of the proposed settlement, the parties joint motion for the approval of settlement IS GRANTED. Accordingly, consistent with the parties' agreement, the respondent IS ORDERED to pay, within 30 days of the date of this decision, a total civil penalty of \$326.00 in satisfaction of the citations in issue in these proceedings. Upon timely receipt of payment, these cases ARE DISMISSED.

Jerold Feldman  
Administrative Law Judge

Distribution:

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