

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, NW
Suite 9500
Washington, DC 20001

November 24, 2003

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2001-285-M
Petitioner	:	A.C. No. 41-00009-05550
	:	
	:	Docket No. CENT 2001-286-M
	:	A.C. No. 41-00009-05551
v.	:	
	:	Docket No. CENT 2001-363-M
	:	A.C. No. 41-00009-05552
	:	
	:	Docket No. CENT 2001-364-M
CACTUS CANYON QUARRIES OF	:	A.C. No. 41-00009-05553
TEXAS, INCORPORATED,	:	
Respondent	:	Docket No. CENT 2001-379-M
	:	A.C. No. 41-00009-05554
	:	
	:	Docket No. CENT 2002-80-M
	:	A.C. No. 41-00009-05555
	:	
	:	Docket No. CENT 2002-124-M
	:	A.C. No. 41-00009-05556
	:	
	:	Mine: Fairland Plant and Quarries

DECISION APPROVING SETTLEMENT

Appearances: Thomas A. Paige, Esq., U.S. Department of Labor, Office of the Solicitor,
Dallas, Texas, for the Petitioner;
Andy Carson, Esq., Marble Falls, Texas, for the Respondent.

Before: Judge Schroeder

These cases came before me for hearing on November 12, 2003, in Burnett, Texas. At the beginning of the hearing the parties informed me that a settlement had been agreed upon between them. The terms of the settlement were presented in open court as reflected by the transcript filed in the record. This Decision is intended to summarize the terms of the settlement as I approved it at the hearing. I found the terms of the settlement to be reasonable and in the public interest.

The settlement is best described by considering each mine inspector citation of concern to the parties in terms of any changes to both the Civil Penalty amount and the assessment factors. Taking the cases in order results in the following tabulation of amounts and changes:

In CENT 2001-285-M

Citation	Orig. Assess.	Settled Assess.	Changes to Citation
7896108	\$55.00	\$55.00	Modify gravity to “no lost workdays”
7896110	\$55.00	\$55.00	No change
7896112	\$55.00	\$0.00	Vacated
7896113	\$55.00	\$55.00	Modify negligence to “low”
7896115	\$242.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
7896116	\$242.00	\$0.00	Vacated
7896117	\$277.00	\$0.00	Vacated
7896118	\$173.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
7896119	\$317.00	\$0.00	Vacated
7896120	\$475.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
7896121	\$55.00	\$0.00	Vacated
7896122	\$55.00	\$55.00	No change
7896123	\$55.00	\$55.00	Modify gravity to “no lost workdays”
7896124	\$475.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
7896125	\$55.00	\$0.00	Vacated

7896128	\$475.00	\$0.00	Vacated
---------	----------	--------	---------

In CENT 2001-286-M

Citation	Orig. Assess.	Settled Assess.	Changes to Citation
7896129	\$55.00	\$55.00	No change
7896130	\$242.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
7896131	\$55.00	\$0.00	Vacated
7896132	\$55.00	\$55.00	No change
7896133	\$242.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
7896135	\$317.00	\$317.00	No change
7896136	\$55.00	\$55.00	No change
7896137	\$242.00	\$0.00	Vacated
7896138	\$55.00	\$55.00	No changes. Modified in conference

In CENT 2001-363-M

Citation	Orig. Assess.	Settled Assess.	Changes to Citation
6207806	\$161.00	\$161.00	No change
6207807	\$55.00	\$55.00	No change
6207808	\$161.00	\$161.00	No change
6207809	\$55.00	\$55.00	Modify negligence to “moderate”
6207810	\$55.00	\$55.00	No change to citation as modified in conference

6207811	\$113.00	\$113.00	No change to citation as modified in conference
6207812	\$55.00	\$55.00	Modify gravity to “lost workdays or restricted duty”
6207813	\$207.00	\$0.00	Vacated
6207814	\$55.00	\$55.00	Modify gravity to “lost workdays or restricted duty”
6207815	\$161.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
6207816	\$55.00	\$0.00	Vacated
6207817	\$55.00	\$0.00	Vacated
6207818	\$55.00	\$55.00	No change to citation as modified in conference
6207819	\$55.00	\$55.00	No change
6207820	\$55.00	\$55.00	Modify gravity to “lost workdays or restricted duty”
6207821	\$55.00	\$0.00	Vacated
6207822	\$55.00	\$0.00	Vacated
6207823	\$259.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
6207824	\$55.00	\$55.00	No change

In CENT 2001-364-M

Citation	Orig. Assess.	Settled Assess.	Changes to Citation
6207825	\$55.00	\$0.00	Vacated
6207826	\$161.00	\$161.00	No change to citation as modified in conference

6207827	\$259.00	\$55.00	Modify gravity to “unlikely” and negligence to “moderate” (now non-S&S)
6207828	\$55.00	\$55.00	No change to citation as modified in conference
6207829	\$161.00	\$55.00	Modify gravity to “unlikely” (now non-S&S)
6207830	\$55.00	\$0.00	Vacated
6207834	\$259.00	\$0.00	Vacated
6207839	\$55.00	\$55.00	No change

In CENT 2001-379-M

Citation	Orig. Assess.	Settled Assess.	Changes to Citation
7896126	\$700.00	\$500.00	No change to citation as modified in conference
7896127	\$1,500.00	\$500.00	Modify to allege violation of section 104(a) instead of 104(d); no other change in citation as modified in conference.

In CENT 2002-80-M

Citation	Orig. Assess.	Settled Assess.	Changes to Citation
6209870	\$55.00	\$55.00	Modify negligence to “moderate”

In CENT 2002-124-M

Citation	Orig. Assess.	Settled Assess	Changes to Citation
6209922	\$55.00	\$0.00	Vacated

The total amount originally proposed by the Secretary as a Civil Penalty was \$9,581.00. The settlement results in a total Civil Penalty of \$3,618.00. Therefor, it is

ORDERED that the Joint Motion to Approve Settlement is granted. The Respondent is directed to pay a Civil Penalty of \$3,618,00 within 30 days of the date of this Order. The parties will bear their own costs.

Irwin Schroeder
Administrative Law Judge

Distribution:

Thomas A. Paige, Esq., Office of the Solicitor, U.S. Department of Labor, 525 S. Griffin Street, Suite 501, Dallas, TX 75202 (Certified Mail)

Andy Carson, Esq., 7232 County Road 120, Marble Falls, TX 78654 (Certified Mail)

/mh