

CCASE:  
SOL (MSHA) V. R.L. HELMS CONSTRUCTION  
DDATE:  
19790905  
TTEXT:

~1335

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

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

Civil Penalty Proceedings

Docket No. DENV 79-322-PM  
A.O. No. 26-01452-05001

v.

Settlemeier Pit

ROBERT L. HELMS CONSTRUCTION  
& DEVELOPMENT CO.,  
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT

This proceeding concerns a petition for assessment of civil penalty filed by the petitioner on February 8, 1979, pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for 19 alleged violations of the Act and implementing mine safety and health standards.

Respondent filed timely answers contesting the citations and alleged violations and by notice issued April 13, 1979, the matter was scheduled for hearing in Reno, Nevada, August 8, 1979. However, in view of a proposed settlement by the parties, the hearing was cancelled and by motion filed August 17, 1979, petitioner has presented arguments in support of the proposed settlement.

The citations, and the proposed settlement amounts are as follows:

Citation No.	Date	30 CFR Section	Assessment	Settlement
371721	4/13/78	56.26-1	\$26.00	\$23.00
371722	4/13/78	56.4-2	\$44.00	\$39.00
371723	4/13/78	56.14-1	\$72.00	\$64.00
371725	4/13/78	56.14-1	\$90.00	\$72.00
371726	4/13/78	56.14-1	\$90.00	\$72.00
371727	4/13/78	56.14-1	\$90.00	\$72.00
371728	4/13/78	56.14-1	\$66.00	\$52.00
371729	4/13/78	56.14-1	\$66.00	\$52.00
371730	4/13/78	56.14-1	\$90.00	\$72.00
371731	4/13/78	56.14-1	\$90.00	\$72.00
371732	4/13/78	56.14-1	\$66.00	\$52.00
371733	4/18/78	56.5-50A	\$52.00	\$46.00
371734	4/18/78	56.5-50B	\$48.00	\$43.00
371735	4/18/78	56.5-50A	\$52.00	\$46.00
371736	4/18/78	56.5-50B	\$66.00	\$52.00
371737	4/20/78	56.9-88	\$66.00	\$52.00
371738	5/4/78	56.9-88	\$32.00	\$28.00
371739	6/28/78	56.9-87	\$40.00	\$36.00

~1336

With respect to Citation No. 371724, April 13, 1978, citing a violation of 30 CFR 56.14-1, petitioner moves to dismiss without prejudice and in support of its motion asserts that the citation alleges a condition similar to that found in MSHA v. Massey Sand and Rock Company, Docket No. DENV 78-575-PM. Petitioner states it is appealing that decision and if it is affirmed by the Commission the citation will remain withdrawn. If not, petitioner proposes to reassess the civil penalty.

In support of its motion to approve the proposed settlement petitioner has submitted information concerning those factors required to be taken into account under section 110(i) of the Act. That information reflects that respondent operates a small-to-medium size metal and nonmetal mine, has no prior history of assessed violations, and that payment of the proposed civil penalties will not impair its ability to continue in business. Further, petitioner asserts that upon investigation it would appear that the evidence which would be produced at any hearing on the merits would establish less gravity and negligence than was assessed initially by the petitioner's assessments office, and that respondent exercised complete and prompt abatement of all of the conditions cited. Petitioner therefore believes that the proposed settlement does not shock the conscience, is within the bounds of reason, and will clearly effectuate the deterrent purpose of civil penalties for violations such as those alleged in the instant citations.

I have carefully reviewed all of the pleadings filed in this proceeding, including copies of the citations, abatements, inspector's statements, and upon consideration of the arguments presented by the petitioner in support of the proposed settlement and disposition of this matter I conclude and find that the motion should be granted. Accordingly, pursuant to Commission Rule 29 CFR 2700.30, settlement is approved.

#### Order

With regard to petitioner's motion to dismiss Citation No. 371724 without prejudice, I take note of the fact that on July 27, 1979, the Commission denied petitioner's petition for discretionary review of my decision in Massey Sand and Rock Company. Accordingly, petitioner's motion to dismiss the citation is granted and the citation is dismissed.

Respondent is ordered to pay civil penalties totaling \$945.00 in satisfaction of the cited violations within thirty (30) days of the date of this decision and order. Upon receipt of payment, this proceeding is dismissed.

George A. Koutras  
Administrative Law Judge