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SOL (MSHA) v. DANEKER SAND & GRAVEL  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. YORK 85-1-M  
A.C. No. 18-00707-05502

v.

Docket No. YORK 85-3-M  
A.C. No. 18-00707-05503

DANEKER SAND & GRAVEL,  
RESPONDENT

Daneker Sand & Gravel

DECISION APPROVING SETTLEMENT

Before: Judge Merlin

The Solicitor has filed a proposal for penalty for the ten violations involved in this matter. The original assessments for the alleged violations in both cases totalled \$528, and the proposed settlements are for \$132. The Solicitor believes that a reduction from the original assessment is warranted for the following reasons.

Citation Nos. 2369404, 2369405, 2369406, 2369407, 2369408, 2369410, 2369411 and 2369412 were all issued on July 16, 1984 for violations of 30 C.F.R. 56.15-1. These violations involved the lack of guards on machinery such as conveyor rollers (2369405), (2369406); pinch points of V-belt drives (2369407), (2369412); tail pulleys of the No. 1 conveyor (2369404); a gravel conveyor (2369408), (2369410); and sand conveyor (2369411). Four of these violations were originally assessed at \$68, and the other four at \$54. The violations were later terminated when the operator provided the appropriate guards.

Citation No. 2369415 was issued for a violation of 30 C.F.R. 56.15-1 and originally assessed at \$20. The inspector observe that first aid equipment was not provided at the mine site. Citation No. 2369414 was issued for a violation of 30 C.F.R. 56.9-87 and originally assessed at \$20 when an inspector observed that the back-up alarm on the loader feeding the wash plant was out of order.

The Solicitor believes that a reduction from the total amount originally assessed is appropriate due to the financial hardship involved here. Daneker Sand and Gravel, a sole proprietorship, reported losses of \$136,250 in 1983 and \$62,155 in 1984. The supervisory inspector on this case believed that

~1324

the tax returns accurately reflected the state of the business and recommended to his supervisor that the penalties "be reduced as much as possible." The parties assert that the original assessment of \$528 would affect the operator's ability to stay in business. Mr. Daneker has shown good faith in abating the conditions. Also, there were no other assessed violations in the prior two year period.

In view of the foregoing, I accept the parties' representations and conclude that the reduced penalties are appropriate under the statutory criteria of section 110(i) which take into account the effect of a penalty on an operator's continued ability to remain in business. However, the guarding violations are a cause for concern and I trust the operator will be more careful in the future.

Accordingly, the operator is ORDERED TO PAY \$132 within 30 days of the date of this decision.

Paul Merlin  
Chief Administrative Law Judge