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SOL (MSHA) V. JESSE MORIE & SON
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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 Proceedings Docket No. WILK 78-322-PM A.O. No. 28-00526-05001
v.	Docket No. WILK 78-323-PM A.O. No. 28-00526-05002
JESSE S. MORIE & SON, INC., RESPONDENT	Morie Division

DECISIONS

Appearances: David E. Street, Esquire, Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for the petitioner Edward C. Laird, Esquire,
Haddonfield, New Jersey, for the respondent

Before: Judge Koutras

Statement of the Proceedings

These consolidated civil penalty proceedings were initiated by the petitioner on September 21, 1978, through the filing of civil penalty proposals against the respondent 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 29 violations of certain mandatory safety standards promulgated pursuant to the Act. All of the citations were issued pursuant to section 104(a) of the Act, and copies are included as part of the pleadings filed in the proceedings.

Respondent filed answers contesting the citations on October 24, 1978, and the cases were assigned to Judge Moore who issued prehearing orders concerning the scheduling of hearings, possible settlements, and the scheduling of a prehearing conference. MSHA's Arlington, Virginia, Solicitor's Office advised Judge Moore that the parties were unable to settle the cases and that they should be scheduled for hearings.

The cases were subsequently reassigned to me, and by notice of hearing issued on December 20, 1979, they were scheduled for hearing in Philadelphia,

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Pennsylvania, on February 13, 1980. MSHA's Philadelphia regional counsel entered his appearance in the cases on January 18, 1980, and the parties appeared at the hearing pursuant to notice. However, upon calling the dockets, the parties informed me for the first time that they proposed to settle the citations and requested an opportunity to present their proposals for my approval. Counsel were permitted to state their positions (Tr. 1-12), including an explanation as to why the proposed settlements were not communicated to me in advance of the hearing, and after due consideration they were permitted to present their settlement proposals on the record.

Discussion

The citations in question, the initial assessments, and the proposed settlement amounts are as follows:

Docket No. WILK 78-322-PM

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
204502	3/22/78	56.14-1	\$ 72	\$ 38
204503	3/22/78	56.11-2	72	38
204504	3/22/78	56.11-27	60	34
204505	3/22/78	56.14-1	106	106
204506	3/22/78	56.12-20	78	40
204507	3/22/78	56.16-6	60	36
204508	3/22/78	56.4-2	48	34
204509	3/23/78	56.11-1	84	48
204510	3/23/78	56.14-1	84	40
204511	3/23/78	56.9-2	84	48
204512	3/23/78	56.9-54	78	40
204513	3/23/78	56.11-1	90	48
204514	3/23/78	56.14-1	106	60
204515	3/23/78	56.14-1	122	60
204516	3/23/78	56.20-3	78	44
204517	3/23/78	56.14-1	90	52
204518	3/23/78	56.11-27	90	48
204519	3/23/78	56.11-27	90	44
204520	3/23/78	56.14-1	90	56
204521	3/23/78	56.11-1	90	44
			\$1,672	\$958

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Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
204522	3/23/78	56.14-1	\$ 90	\$ 50
204523	3/23/78	56.11-27	90	44
204524	3/23/78	56.11-1	98	44

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204525	3/23/78	56.11-12	90	44
204526	3/23/78	56.11-27	90	44
204528	3/23/78	56.4-9	72	40
204529	3/23/78	56.4-2	40	30
204530	3/23/78	56.12-25	72	38
			\$642	\$334

On motion by the petitioner made on the record, petitioner's proposal for assessment of a civil penalty for Citation No. 204527, March 23, 1978, citing 30 C.F.R. 56.12-18, in Docket No. WILK 78-323-PM, is DISMISSED (Tr. 14, 28).

Stipulations

The parties stipulated that the respondent is a medium-sized sand and gravel mine operator; that respondent has no prior history of violations; and that the penalties assessed in these proceedings will not adversely affect respondent's ability to remain in business (Tr. 16).

With regard to the factors of gravity, negligence, and good faith compliance, the parties presented information and arguments on the record with respect to each of the citations in issue, and a summary of this information follows below.

Negligence

Although MSHA's counsel asserted that some of the citations resulted from "low negligence," the parties were in agreement with my conclusions that they all resulted from ordinary negligence, that is, they all resulted from the failure by the respondent to exercise reasonable care to prevent the conditions or practices which caused the violations and which the respondent knew or should have known existed (Tr. 24-28).

Gravity

The parties agreed that with the exception of those citations characterized by MSHA's counsel on the record as nonserious, that the remaining citations were serious (Tr. 23).

With respect to Citation Nos. 204502, 204504, 204508, 204510 (Docket No. WILK 78-322-PM), and Citation Nos. 204528, 204529, and 204530 (Docket No. WILK 78-323-PM), MSHA's counsel asserted that the inspector, who was present in the courtroom, does not now believe that they were "significant and substantial" and that the inspector would modify his citations to reflect this fact (Tr. 14).

Good Faith Compliance

The parties are in agreement that all of the citations were timely abated in good faith, and with regard to Citation Nos. 204502, 204503,

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204507, 204509, 204510, 204512, 204515, 204519, 204520, and 204523, petitioner's counsel asserted that respondent exhibited exceptional good faith compliance by achieving rapid compliance (Tr. 15-22; 29-31).

Conclusion

After careful consideration of the arguments presented by the parties in support of the proposed settlement, and taking into account the six statutory criteria set forth in section 110(i) of the Act, including the fact that the respondent has no prior history of violations, and that all of the citations were issued a week or two after the effective date of the 1977 Act, I conclude and find that the proposed settlement should be approved.

ORDER

Pursuant to 29 C.F.R. 2700.30, the proposed settlement of these dockets is APPROVED, and respondent IS ORDERED to pay civil penalties totaling \$1,292 in satisfaction of the citations noted above, payment to be made to MSHA within thirty (30) days of the date of these decisions.

George A. Koutras
Administrative Law Judge