

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

721 19th Street, Suite 443
Denver, Colorado, 80202-2500
Telephone: (303) 844-5267
Fax: (303) 844-5268

June 7, 2016

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

v.

CEMEX DE PUERTO RICO,
Respondent

CIVIL PENALTY PROCEEDINGS

Docket No. SE 2014-066-M
A.C. No. 54-00001-336326

Docket No. SE 2014-234-M
A.C. No. 54-00001-345323

Docket No. SE 2015-048-M
A.C. No. 54-00001-364572

Docket No. SE 2015-081-M
A.C. No. 54-00001-366937

Docket No. SE 2015-249-M
A.C. No. 54-00001-376688

Docket No. SE 2015-276-M
A.C. No. 54-00001-378457

Docket No. SE 2015-333-M
A.C. No. 54-00001-381399

Docket No. SE 2015-342-M
A.C. No. 54-00001-381168

Docket No. SE 2015-395-M
A.C. No. 54-00001-386821

Docket No. SE 2016-025-M
A.C. No. 54-00001-391873

Docket No. SE 2016-033-M
A.C. No. 54-00001-394484

Docket No. SE 2016-055-M
A.C. No. 54-00001-396852

Docket No. SE 2016-104-M
A.C. No. 54-00001-399165

Ponce Cement Plant

Docket No. SE 2014-065-M
A.C. No. 54-00240-336327

Docket No. SE 2016-124-M
A.C. No. 54-00240-401132

Cantera Canas

DECISION APPROVING SETTLEMENT

Before: Judge Manning

1. These cases are before me upon 15 petitions for assessment of civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977 (the “Act”). In total, the dockets include 119 citations and orders issued pursuant to Section 104 of the Act. The Secretary of Labor, Mine Safety and Health Administration, (“Secretary”) proposed total penalties of \$583,444.00 for the fifteen dockets.

The parties have filed a “Joint Stipulations and Motion to Approve Settlement Agreement”. The citations, orders, and penalties are affirmed as follows:

2. All citations and orders shall remain as issued.

3. Cemex de Puerto Rico (“Respondent”) maintained that it would present evidence at trial that it does not have the ability to pay the total proposed penalties and remain in business. It provided the Secretary with documentation of its financial status. The Secretary in turn agreed to reduce the total proposed penalty by fifty percent (50%) to \$291,722, as apportioned herein below.

4. Respondent agrees to the following enhanced abatement measures to address and improve miner safety and health at its three MSHA regulated facilities in Puerto Rico:

i. Respondent will hire at its expense an independent outside safety consultant who has knowledge of surface mining and cement plant operations to conduct a wall-to-wall employee safety audit of its three MSHA-regulated facilities (i.e., Ponce Cement Plant, Cantera Canas, and Florida Lime (Mine ID: 54-00194)) once annually in the years 2016, 2017, 2018, and 2019. The safety consultant shall provide a written report of its findings and the specific actions and recommendations it determines are necessary for Respondent to ensure its compliance with the Mine Act. A copy of these written reports shall be sent by the safety consultant to Respondent’s manager responsible for safety at each facility. Respondent will maintain each audit report for a period of three years and will produce it to MSHA upon request. No action or non-action by MSHA shall constitute a waiver of this paragraph.

ii. Respondent will contact MSHA Educational Field and Small Mine Services (“EFSMS”) within thirty (30) days of the approval of this agreement to arrange for EFSMS to come to its facilities in Puerto Rico and teach a metal/non-metal mining safety course and cement plant safety course designed by EFSMS to the safety directors, assistant safety directors, area supervisors, and foremen of its three MSHA-regulated facilities. EFSMS will not charge Respondent for the provision of these courses. Respondent will compensate each of its aforesaid personnel attending the safety course at their normal rate of pay for their time attending the safety courses. At the time that Respondent contacts EFSMS to arrange the courses, EFSMS will determine whether Respondent’s facility is suitable. If Respondent does not have a facility suitable to teach the class, as determined by EFSMS, Respondent will pay to rent a suitable facility in Puerto Rico.

5. Respondent’s agreement to these enhanced abatement measures in no way preempts MSHA’s statutory authority to conduct inspections of Respondent’s facilities at any time or issue citations as deemed appropriate.

6. The total penalties of \$291,722.00 are apportioned to the individual citations and orders as follows:

STATEMENT OF AMENDED PENALTIES

DOCKET NO. SE 2014-065-M			
CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8733383	30 C.F.R. § 56.14112(b)	\$634.00	\$280.50
8733384	30 C.F.R. § 56.12032	\$127.00	\$100.00
8733385	30 C.F.R. § 56.14131(c)	\$127.00	\$100.00
8733386	30 C.F.R. § 56.11001	\$2,341.00	\$1,134.00
8733387	30 C.F.R. § 56.9300(a)	\$2,341.00	\$1,170.50
8733394	30 C.F.R. § 56.3131	\$1,203.00	\$601.50
8733395	30 C.F.R. § 56.14100(b)	\$362.00	\$181.00
8733397	30 C.F.R. § 56.14100(b)	\$243.00	\$121.50
8733398	30 C.F.R. § 56.20003(a)	\$1,203.00	\$601.50

8733399	30 C.F.R. § 56.14107(a)	\$1,795.00	\$897.50
8733400	30 C.F.R. § 56.14115(b)	\$1,795.00	\$847.50
8733401	30 C.F.R. § 56.18002(a)	\$1,795.00	\$847.50
8733404	30 C.F.R. § 50.30(a)	\$100.00	\$100.00
8733407	30 U.S.C. § 109(a)	\$100.00	\$100.00
	Total for Docket	\$14,166.00	\$7,083.00

DOCKET NO. SE 2014-066-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8727436	30 C.F.R. § 56.14100(b)	\$2,901.00	\$1,350.50
8727438	30 C.F.R. § 56.14100(b)	\$651.00	\$270.50
8727441	30 C.F.R. § 56.12032	\$190.00	\$100.00
8727444	30 C.F.R. § 56.4400(b)	\$100.00	\$100.00
8727445	30 C.F.R. § 56.14107(a)	\$100.00	\$100.00
8727446	30 C.F.R. § 56.20003(a)	\$100.00	\$100.00
8727447	30 C.F.R. § 56.11027	\$1,412.00	\$601.00
8727448	30 C.F.R. § 56.4011	\$190.00	\$100.00
8727449	30 C.F.R. § 56.14201(b)	\$100.00	\$100.00
8733408	30 C.F.R. § 50.20(a)	\$100.00	\$100.00
	Total for Docket	\$5,844.00	\$2,922.00

DOCKET NO. SE 2014-0234-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8733462	30 C.F.R. § 56.4603(b)	\$127.00	\$100.00
8733463	30 C.F.R. § 56.14132(a)	\$425.00	\$176.00
8733464	30 C.F.R. § 56.4402	\$425.00	\$212.50
8733465	30 C.F.R. § 56.11002	\$4,689.00	\$2,344.50
8733467	30 C.F.R. § 56.11001	\$4,689.00	\$2,344.50
8733468	30 C.F.R. § 56.14107(a)	\$285.00	\$142.50
8733469	30 C.F.R. § 56.12008	\$285.00	\$142.50
8733470	30 C.F.R. § 56.20003(a)	\$2,106.00	\$1,003.00
8733471	30 C.F.R. § 56.17001	\$100.00	\$100.00
8733472	30 C.F.R. § 56.20003(a)	\$1,657.00	\$828.50
8733474	30 C.F.R. § 56.11026	\$1,111.00	\$555.50
8733475	30 C.F.R. § 56.20003(a)	\$1,111.00	\$555.50
8733476	30 C.F.R. § 56.11002	\$745.00	\$372.50
8733478	30 C.F.R. § 56.17001	\$1,657.00	\$828.50
8733479	30 C.F.R. § 56.17001	\$1,657.00	\$828.50
8733481	30 C.F.R. § 56.12008	\$334.00	\$117.00
8733483	30 C.F.R. § 56.18002(b)	\$100.00	\$100.00
8733484	30 C.F.R. § 56.11001	\$1,111.00	\$555.50
8733485	30 C.F.R. § 56.14112(b)	\$224.00	\$112.00

8733486	30 C.F.R. § 56.14107(a)	\$1,111.00	\$555.50
8733487	30 C.F.R. § 56.11001	\$1,111.00	\$555.50
8733489	30 C.F.R. § 56.4011	\$3,689.00	\$1,844.50
8733490	30 C.F.R. § 56.14107(a)	\$334.00	\$167.00
8733491	30 C.F.R. § 56.20003(a)	\$1,657.00	\$828.50
8733493	30 C.F.R. § 56.12008	\$745.00	\$372.50
8733495	30 C.F.R. § 56.20003(a)	\$1,111.00	\$555.50
8733496	30 C.F.R. § 56.12034	\$499.00	\$249.50
8733497	30 C.F.R. § 56.20003(a)	\$1,111.00	\$555.50
8733494	30 C.F.R. § 56.17001	\$745.00	\$372.50
8733498	30 C.F.R. § 56.12032	\$1,111.00	\$555.50
8733499	30 C.F.R. § 56.18002(a)	\$3,689.00	\$1,844.50
	Total for Docket	\$39,751.00	\$19,875.50

DOCKET NO. SE 2015-048-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8814188	30 C.F.R. § 56.15006	\$2,473.00	\$1,236.50
8814189	30 C.F.R. § 56.17001	\$3,689.00	\$1,844.50
8814190	30 C.F.R. § 56.14103(a)	\$1,111.00	\$555.50
8814191	30 C.F.R. § 56.20003(a)	\$16,867.00	\$8,433.50
8814192	30 C.F.R. § 56.17001	\$334.00	\$167.00
8814193	30 C.F.R. § 56.12032	\$499.00	\$249.50

8814194	30 C.F.R. § 56.12008	\$11,306.00	\$5,653.00
8814195	30 C.F.R. § 56.11002	\$18,271.00	\$9,135.50
8814196	30 C.F.R. § 56.11001	\$29,529.00	\$14,764.50
8814203	30 C.F.R. § 56.11002	\$3,689.00	\$1,844.50
8814197	30 C.F.R. § 56.11001	\$32,810.00	\$16,405.00
8814198	30 C.F.R. § 56.17001	\$1,657.00	\$828.50
8814199	30 C.F.R. § 56.18002(a)	\$18,271.00	\$9,135.50
8814202	30 C.F.R. § 56.20003(a)	\$18,742.00	\$9,371.00
8814206	30 C.F.R. § 56.20003(a)	\$18,742.00	\$9,371.00
8814207	30 C.F.R. § 56.11027	\$20,302.00	\$10,151.00
8814208	30 C.F.R. § 56.20003(a)	\$18,742.00	\$9,371.00
8814209	30 C.F.R. § 56.20003(a)	\$18,742.00	\$9,371.00
8814210	30 C.F.R. § 56.11001	\$29,529.00	\$14,764.50
8814219	30 C.F.R. § 56.18010	\$499.00	\$249.50
8814220	30 C.F.R. § 46.8(a)(2)	\$7,176.00	\$3,588.00
8814221	30 C.F.R. § 46.8(a)(2)	\$2,901.00	\$1,450.50
	Total Docket	\$275,881.00	\$137,940.50

DOCKET NO. SE 2015-081-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8814251	30 C.F.R. § 56.20003(a)	\$13,609.00	\$6,804.50
8814252	30 C.F.R. § 56.11027	\$6,458.00	\$3,229.00
8814253	30 C.F.R. § 56.11001	\$21,442.00	\$10,721.00
8814255	30 C.F.R. § 56.20003(a)	\$10,705.00	\$5,352.50
8814256	30 C.F.R. § 56.14107(a)	\$2,282.00	\$1,141.00
8814257	30 C.F.R. § 56.11002	\$3,784.00	\$1,892.00
8814258	30 C.F.R. § 56.14107(a)	\$5,645.00	\$2,822.50
	Total for Docket	\$63,925.00	\$31,962.50

DOCKET NO. SE 2015-249-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8814187	30 C.F.R. § 46.7(a)	\$41,574.00	\$20,787.00
8814201	30 C.F.R. § 56.20011	\$4,099.00	\$2,049.50
8814298	30 C.F.R. § 56.14100(b)	\$873.00	\$436.50
	Total Docket	\$46,546.00	\$23,273.00

DOCKET NO. SE 2015-276-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8814254	30 C.F.R. § 56.20003(a)	\$35,700.00	\$17,850.00
	Total for Docket	\$35,700.00	\$17,850.00

DOCKET NO. SE 2015-333-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8819937	30 C.F.R. § 56.20011	\$243.00	\$121.50
8819939	30 C.F.R. § 56.14100(b)	\$1,026.00	\$513.00
8819946	30 C.F.R. § 56.12025	\$634.00	\$317.00
8819947	30 C.F.R. § 56.4011	\$634.00	\$317.00
8819948	30 C.F.R. § 56.11027	\$3,143.00	\$1,571.50
8819949	30 C.F.R. § 56.14112(b)	\$1,412.00	\$706.00
	Total for Docket	\$7,092.00	\$3,546.00

DOCKET NO. SE 2015-342-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8814270	30 C.F.R. § 56.9301	\$33,400.00	\$16,700.00
	Total for Docket	\$33,400.00	\$16,700.00

DOCKET NO. SE 2015-395-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8819976	30 C.F.R. § 50.10(d)	\$285.00	\$142.50
8819981	30 C.F.R. § 47.51	\$460.00	\$230.00
8819979	30 C.F.R. § 56.14100(b)	\$40,180.00	\$20,090.00
8819980	30 C.F.R. § 56.20009	\$3,996.00	\$1,998.00
	Total for Docket	\$44,921.00	\$22,460.50

DOCKET NO. SE 2016-025-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8819936	30 C.F.R. § 56.20011	\$1,203.00	\$601.50
8819938	30 C.F.R. § 56.14100(b)	\$5,080.00	\$2,540.00
8819942	30 C.F.R. § 56.20011	\$946.00	\$473.00
8819943	30 C.F.R. § 56.20011	\$946.00	\$473.00
	Total for Docket	\$8,175.00	\$4,087.50

DOCKET NO. SE 2016-033-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8819950	30 C.F.R. § 56.14100(b)	\$3,689.00	\$1,794.50
8820008	30 C.F.R. § 50.20(a)	\$100.00	\$100.00
8820009	30 C.F.R. § 56.11027	\$873.00	\$386.50
8820010	30 C.F.R. § 56.14107(a)	\$100.00	\$100.00
8820011	30 C.F.R. § 56.20003(a)	\$100.00	\$100.00
8820012	30 C.F.R. § 56.9300(a)	\$873.00	\$336.50
8820013	30 C.F.R. § 56.20003(a)	\$263.00	\$107.50
8820014	30 C.F.R. § 56.11002	\$176.00	\$100.00
8820016	30 C.F.R. § 56.14112(b)	\$176.00	\$100.00
8820017	30 C.F.R. § 56.20003(a)	\$100.00	\$100.00
	Total for Docket	\$6,450.00	\$3,225.00

DOCKET NO. SE 2016-055-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8820038	30 C.F.R. § 56.20003(b)	\$263.00	\$119.50
8820018	30 C.F.R. § 56.11002	\$176.00	\$100.00
8820020	30 C.F.R. § 56.11012	\$392.00	\$146.00
8820021	30 C.F.R. § 56.4201(a)(2)	\$100.00	\$100.00
	Total for Docket	\$931.00	\$465.50

DOCKET NO. SE 2016-104-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8819978	30 U.S.C. § 103(k)	\$270.00	\$135.00
	Total Docket	\$270.00	\$135.00

DOCKET NO. SE 2016-124-M

CITATION/ ORDER NO.	MSHA STANDARD	PROPOSED PENALTY	AMENDED PENALTY
8819839	30 C.F.R. § 14101(a)(2)	\$392.00	\$196.00
	Total for Docket	\$392.00	\$196.00

7. Respondent withdraws its notices of contest to the citations, orders, and proposed penalties, as modified.

8. The agreed upon penalty amounts are consistent with the criteria set forth at 30 C.F.R. Part 100. The penalty amounts are reasonable given the circumstances surrounding the violations.

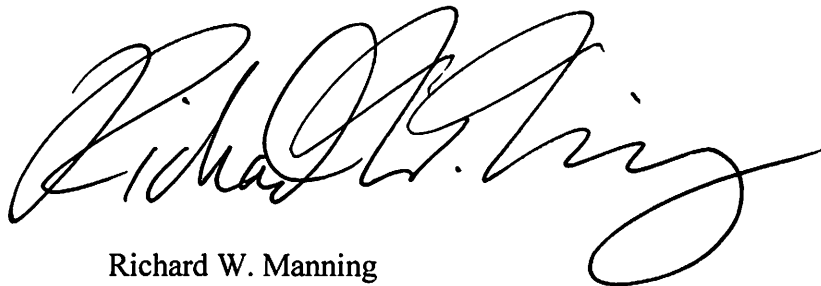
9. I have considered the criteria set forth at Section 110(i) of the Act and I find that the penalties are appropriate in light of these criteria and promote the purposes of the Act. Information pertaining to the operator's negligence, the gravity of the violations, its history of previous violations, and size are contained in the Exhibit A attached to the petition for each docket. Payment of the total amended proposed penalty will not adversely affect the operator's ability to continue in business.

10. Each party agrees to bear its own attorney's fees, costs, and other expenses incurred by such party in connection with any stage of these proceedings, including but not limited to, attorney's fees and costs which may be available under the Equal Access to Justice Act, as amended.

11. This settlement fully resolves the above-captioned dockets.

Based on the foregoing, the motion to approve settlement is hereby **GRANTED**.

It is further **ORDERED** that Cemex De Puerto Rico pay the total penalty of \$291,722.00 in 24 consecutive monthly installments. The first 23 installments will be in the amount of \$12,155.08. The 24th installment shall be in the amount of \$12,155.16. The first monthly installment will be paid on or before July 1, 2016¹ with each subsequent installment being due on or before the first day of each month thereafter until the total revised penalty of \$291,722.00 is paid in full. If the first day of the month falls on a weekend or a holiday, the due date will be the next business day. A ten day grace period shall be allowed for receipt of each installment. In the event that Respondent defaults on this settlement by failing to make timely payment of a monthly installment, the entire outstanding balance of the revised penalty of \$291,722.00 shall become immediately due.



Richard W. Manning
Administrative Law Judge

¹ Payment should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390

Distribution:

James Wong, Esq., Office of the Solicitor, U.S. Department of Labor, 201 Varick St., Room 983, New York, NY 10014

Patrick Dalin, Esq., Office of the Solicitor, U.S. Department of Labor, 201 Varick St., Room 983, New York, NY 10014

Ryan Pardue, Esq., Office of the Solicitor, U.S. Department of Labor, 1244 Speer Boulevard, Suite 216, Denver, CO 80204

Robert Hendrix, Conference/Litigation Representative, Mine Safety and Health Administration, Metal/Non-Metal Southeast District, 1030 London Drive, Suite 400, Birmingham, AL 35211

James R. Shaffer, Conference/Litigation Representative, Mine Safety and Health Administration, Metal/Non-Metal Southeast District, 1030 London Drive, Suite 400, Birmingham, AL 35211

Manuel Quilichini, Esq., P.O. Box 194231, San Juan, Puerto Rico 00919-4231

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