



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 1120 20th Street, N.W., Ninth Floor
 Washington, DC 20036-3419

Office of
 Executive Secretary

Phone: (202) 606-5100
 Fax: (202) 606-5050

SECRETARY OF LABOR,

Complainant,

v.

SANDERS LEAD COMPANY,

Respondent.

OSHR Docket No. 87-260

ORDER

On April 24, 1995, the Commission issued a decision in the above-referenced matter that invited the parties to resubmit their partial settlement agreement to the Commission. *Sanders Lead Co.*, 17 BNA 1197, 1205 n.26, 1993-95 CCH OSHD ¶ 30,740, p. 42,697 n.26. Both parties filed petitions for appellate review that were consolidated in the United States Court of Appeals for the Eleventh Circuit, and the Eleventh Circuit subsequently dismissed the case upon joint agreement of the parties. The parties have now resubmitted the partial settlement agreement to the Commission. The partial settlement agreement is approved.

So ordered.

BY DIRECTION OF THE COMMISSION

Date: May 16, 1996

Ray H. Darling, Jr.
 Ray H. Darling, Jr.
 Executive Secretary

87-0260

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210
Attn: Bruce Justh

Associate Regional Solicitor
Office of the Solicitor, U.S.DOL
Chambers Bldg., Highpoint Office Center
Suite 150, 100 Centerview Drive
Birmingham, AL 35216

Michael E. Ward, Esq.
Swidler & Berlin
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-5116

Paul L. Brady
Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 240
1365 Peachtree Street, N.E.
Atlanta, GA 30309-3119

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ROBERT B. REICH, SECRETARY OF LABOR

Complainant,

v.

SANDERS LEAD COMPANY,

Respondent.

OSHRC No. 87-260

PARTIAL SETTLEMENT AGREEMENT

The parties hereto, in order to resolve matters which are no longer controverted, hereby stipulate as set forth below:

I. The complainant, with the consent of the respondent, amends Citation Numbers 1 and 2, issued on February 4, 1987, and their respective Notifications of Penalty, as follows:

A. Citation No. 1

1. The proposed penalty for Item No. 1 is deleted, substituted in lieu thereof is a proposed penalty of \$200.00.
2. Item 3a is modified to an "Other" violation.
3. Item 3b is withdrawn.
4. Item 3c is withdrawn.
5. Paragraph (a) of Item 3(d) is withdrawn.
6. Item 3e is withdrawn.
7. The proposed penalty for Item 3, as above modified and amended, is deleted; substituted in lieu thereof is a proposed penalty of \$500.00.

B. Citation No. 2

1. Item 1b is withdrawn.

II. Respondent represents that the violations alleged in Citation No. 1, Items 1, 2, 3a, 3d(b), and 3g, and in Citation No. 4, Item 1, do not exist and that respondent is now, and will remain, in compliance with the regulations referred to in these items. Respondent hereby withdraws its notice of contest to Citation No. 1, Items 1, 2, 3a, 3d(b), and 3g and to Citation No. 4. Respondent states that this withdrawal was not induced by a promise of any other party hereto except as may appear herein.

III. Respondent agrees to pay, within thirty (30) days of the date this Agreement is approved by the Commission, the proposed penalty for the Items mentioned above.

IV. With respect to Citation No. 1, Item 3a, it is agreed that respondent's obligation in 29 C.F.R. 1910.1025(d)(8)(ii) to include in its "written notice" to employees "a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit" may be fulfilled by posting in writing the corrective action information in the office of the affected employee's foreman, provided that the affected employee has access to, and is informed of, said information.

V. With respect to withdrawn Item 3c of Citation No. 1, respondent represents that it will insure that employees are trained in accordance with 29 C.F.R. 1910.1025(l)(1)(v)(C), that all employees are aware of their right under 29 C.F.R.

1910.1025(f)(2)(ii) to choose a powered, air-purifying respirator (PAPR) when it will provide adequate protection to the employee, and that it will keep two or more PAPRs available at the workplace for employees to use in making their choice.

VI. By entering into this Agreement, respondent does not admit the validity of the alleged violations or any of the underlying facts. By executing this Agreement, respondent does not waive any of the legal or factual defenses available to it with respect to the remaining items of Citations Nos. 1, 2 and 3. Specifically, the execution of this Agreement shall not be deemed as an admission by respondent that the inspection was legal.

VII. Affected employees herein are not represented by a certified bargaining representative.

VIII. With respect to Citation No. 1, Items 1, 2, 3a, 3d(b), and 3g, withdrawn items 3b, 3c, 3d(a), and 3e, Citation No. 2, Item 1b, and Citation 4, Item 1, and only those items, each party hereby agrees to bear its own fees (including attorney fees) and other expenses incurred by such party in connection with any stage of this proceeding.

IX. Respondent certifies that notice of the foregoing was given to employees by posting a true copy of this Stipulation, in accordance with Commission Rule 7(g) [29 C.F.R. 2200.7(g)].

ACCORDINGLY, the parties jointly move the Commission for an Order appropriate for final disposition of the matters addressed herein.

Executed, this 18th day of December, 1995.

SANDERS LEAD CO., INC.

ROBERT N. STEINWURTZEL

By: 
MICHAEL E. WARD


Swidler & Berlin, Chtd.
3000 K St., N.W., # 300
Washington, DC 20007

Attorneys for Sanders Lead Co.

THOMAS S. WILLIAMSON, JR.
Solicitor of Labor

JOSEPH M. WOODWARD
Associate Solicitor for
Occupational Safety and Health

BARBARA WERTHMANN
Counsel for Appellate
Litigation

By: 
BRUCE JUSTH
Assistant Counsel for
Appellate Litigation

Attorneys for the Secretary of
Labor, United States
Department of Labor

SOL CASE NO. 0401 8700148