

CCASE:
SOL (MSHA) V. MEDUSA CEMENT
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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. LAKE 83-75-M
A.C. No. 20-00038-05501

v.

Medusa Cement Company
(Plant)

MEDUSA CEMENT COMPANY,
RESPONDENT

DISAPPROVAL OF SETTLEMENT

ORDER OF ASSIGNMENT

The Solicitor has filed a motion to approve settlement in the above-captioned proceeding. The Solicitor proposes to settle the twenty violations in this case for the original assessments total of \$1,341.

Six of the violations were originally assessed for \$20 apiece. The Solicitor advises that one of these violations involved a moderate degree of negligence and five involved a low degree. The Solicitor also states that in each violation the occurrence of an injury would have been unlikely. He notes that abatement was accomplished in each instance. However, the Solicitor gives no information to support his representations regarding negligence and gravity.

The Act makes very clear that penalty proceedings before the Commission are de novo. The Commission itself recently recognized that it is not bound by penalty assessment regulations adopted by the Secretary but rather that in a proceeding before the Commission the amount of the penalty to be assessed is a de novo determination based upon the six statutory criteria specified in section 110(i) of the Act and the information relevant thereto developed in the course of the adjudicative proceeding. Sellersburg Stone Company, 5 FMSHRC 287 (March 1983). Indeed, if this were not so, the Commission would be nothing but a rubber stamp for the Secretary. Of course, the Commission is not bound by 30 C.F.R. 100.4 which was the basis of six \$20 "single penalty assessments."

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The fourteen remaining violations were assessed for amounts ranging from \$39 to \$136. The Solicitor advises that four of these violations involved no negligence and ten involved a low degree of negligence. The Solicitor also states that each of these violations was significant and substantial. He notes that abatement was accomplished in each instance. Here again, the Solicitor gives no information to support his conclusions regarding negligence or gravity. The inspector checked boxes concerning negligence and gravity for all fourteen of these violations. Most of the checked boxes coincide with the Solicitor's conclusions. In one instance, Citation No. 2089069, however, the inspector indicates no negligence while the Solicitor indicates a low level of negligence.

In many other cases I have previously stated that I cannot base a settlement approval upon an inspector's checks in boxes on a form without some explanation from the Solicitor. As already pointed out, under section 110(i) of the Act I am charged with the responsibility of determining an appropriate penalty in light of the six specified criteria. The Solicitor has told me nothing about size, prior history, or ability to continue in business.

Accordingly, the proposed settlements must be Denied.

In another case involving this operator (LAKE 83-80-M) I disapproved a similarly inadequate settlement motion from this Solicitor and ordered him to submit additional information. However, the additional information he submitted still did not support approval of the proffered settlement and I therefore, assigned the case for hearing. Assignment of this case also appears to be the most expeditious manner of proceeding. See also LAKE 83-74-M, LAKE 83-77-M and LAKE 83-81-M.

In light of the foregoing, this case is assigned to Administrative Law Judge James A. Broderick.

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All future communications regarding this case should be addressed to Judge Broderick at the following address:

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Health Review Commission
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Paul Merlin
Chief Administrative Law Judge