

CCASE:
SOL (MSHA) V. CONCRETE MATERIALS
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SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 92-358-M
Petitioner	:	A. C. No. 39-00226-05506
	:	
v.	:	
	:	
CONCRETE MATERIALS,	:	Summit Pit
Respondent	:	

ORDER DISAPPROVING SETTLEMENT
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. The Solicitor has filed a motion to approve settlement of the one violation involved in this case. The Solicitor seeks approval of a reduction in the penalty amount from the original proposal of \$690 to \$50.

Citation No. 3909835 was issued for a violation of 30 C.F.R. 56.12067 because the fence surrounding an electrical substation was not six feet in height. According to the citation, the substation contained six mounted transformers with exposed energized components. The inspector concluded that contact with the energized high voltage components might result in a fatality. In her motion the Solicitor alleges that negligence is less than originally assessed and that because the violation was unlikely rather than likely to contribute to an accident the significant and substantial designation should be deleted.

The Solicitor however, gives no reasons to support the conclusions she would have the undersigned adopt. She has instead filed her usual form motion. In this instance where the Solicitor recommends a 93% reduction in the penalty amount she must do more. Even more importantly, a \$50 penalty would be totally at variance with what the inspector wrote on the citation which would require a far higher penalty under the criteria set forth in section 110 (i) of the Act.

The Solicitor is reminded that the Commission and its judges bear a heavy responsibility in settlement cases pursuant to section 110(k) of the Act. 30 U.S.C. 820(k); See, S. Rep. No. 95-181, 95th Cong., 1st Sess. 44-45, reprinted in Senate Subcom

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mittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 632-633 (1978). It is the Commission's responsibility to determine the appropriate amount of penalty, in accordance with the six criteria set forth in section 110(i) of the Act. 30 U.S.C. 820(i); Sellersburg Stone Company v. Federal Mine Safety and Health Review Commission, 736 F.2d 1147 (7th Cir. 1984).

Based upon the Solicitor's motion, I cannot conclude that the recommended penalty of \$50 is warranted. The Solicitor must provide explicit reasons for the action she wishes this Commission to undertake.

In light of the foregoing, it is ORDERED that the motion for approval of settlement be DENIED.

It is further ORDERED that within 30 days of the date of this order the Solicitor submit additional information to support her motion for settlement. Otherwise this case will be assigned and set for hearing.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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