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SOL (MSHA) V. INDUSTRIAL MINING
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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

v.

INDUSTRIAL MINING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 84-69
A.C. No. 33-00945-03506

Rogers Pit Mine

DISAPPROVAL OF SETTLEMENT
ORDER OF ASSIGNMENT

The Solicitor has filed a motion to approve settlements for the three violations involved in this matter. Each violation was originally assessed at \$54 and the Solicitor moves for settlements in the amount of \$40 apiece.

The Solicitor's motion advises that the operator is small in size, a history of prior violations is low, and the negligence was moderate. I accept these representations.

I cannot, however, accept the Solicitor's representations regarding gravity. The Solicitor advises "These violations involve the failure to provide 200 feet of berms on a roadway into a pit in violation of 77.1605(k) (Citation No. 02326985); the failure to provide safety belts on a pan loader equipped with a roll over protective structure in violation of 77.1701(i) (Citation No. 02326986), and an accumulation of oil and grease on the motor and transmission of a front-end loader in violation of 77.1104 (Citation No. 02326987). Therefore, there was little likelihood of any danger to Respondent's miners."

The mere recitation of the facts of each violation does not support the conclusion that there is little likelihood of danger. Moreover, there is no explanation of the Solicitor's proposed conclusions that the probability of occurrences of the event against which the violated standard were directed was unlikely and that the gravity of projected injury would be slight. On the contrary, all of the violations appear to involve a significant degree of gravity, in light of which, the originally assessed penalties of \$54 apiece are modest.

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In light of the foregoing, I am unable to approve the recommended settlement.

This case is hereby assigned to Assistant Chief Administrative Law Judge Gary Melick. All future communications regarding this case should be addressed to Judge Melick at the following address:

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Paul Merlin
Chief Administrative Law Judge