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SOL (MSHA) V. KENNECOTT COPPER CORP.  
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

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

Civil Penalty Proceeding  
Docket No. DENV 79-246-PM  
A.C. No. 02-00826-05001

v.

KENNECOTT COPPER CORPORATION,  
RAY MINES DIVISION,  
RESPONDENT

Hayden Concentrator Mine

DECISION AND ORDER APPROVING SETTLEMENT  
OF CIVIL PENALTY PROCEEDINGS

Appearances: Marshall P. Salzman, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner  
Patrick W. Paterson, Esq., Fennemore, Craig,  
von Ammon & Udall, Phoenix, Arizona, for Respondent

Before: Administrative Law Judge Michels

This is a civil penalty proceeding brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), by the Mine Safety and Health Administration (MSHA) against Respondent, Kennecott Copper Corporation. On September 12, 1979, a hearing was held in Phoenix, Arizona, at which both parties were represented by counsel.

When the hearing commenced, counsel for Petitioner proposed the following disposition for this docket:

Mr. Salzman: Your Honor, these proceedings involve five (5) citations. Regarding, four (4) of these citations, the Secretary, as a result of additional and careful investigation, moves to dismiss four (4) of the proposed penalties resulting from these citations.

These are citations numbers 371165, 371167, 371170 and 371174. The reason is that we do not believe that we have the evidence to sustain the alleged violations.

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With respect to the remaining citation, 371166, the Respondent has agreed to pay the full assessed amount.

We therefore move to settle this citation based upon the payment of the full assessed amount and we believe that the assessed amount was reasonable.

(Tr. 4-5)

Respondent advised the court that it concurred in this motion (Tr. 6).

Since Petitioner had advised that it did not have sufficient evidence to sustain its burden on four of the citations and the proposed settlement of Citation No. 371166 for \$60, which is the full amount of the original assessment, appeared to be sufficient, a decision was issued from the bench approving the proposed disposition (Tr. 6). This bench decision is hereby AFFIRMED. Accordingly,

The Citation Nos. 371165, 371167, 371170, and 371174 are vacated and the petition is dismissed as to these citations. Respondent is ordered to pay the sum of \$60 for the violation in Citation No. 371166 within 30 days of the date of this decision.

Franklin P. Michels  
Administrative Law Judge