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SOL (MSHA) V. CONSOLIDATION COAL  
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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. WEVA 80-145  
A.O. No. 46-01433-03060

v.

Loveridge Mine

CONSOLIDATION COAL COMPANY,  
RESPONDENT

DECISION AND ORDER

Once again the parties' insult our sensibilities and intelligence with a proposal to settle with a wrist slap three extremely serious violations that created a hazard of three or more fatalities or permanently disabling injuries. The excuse offered is so outrageous as to be mind boggling.

MSHA flouts the law by refusing to prosecute independent contractors. As a result, those contractors flout the law with immunity. OSHA, remember, cannot touch them because they are under the "protection" of MSHA.

MSHA then "prosecutes" the operator who pleads the unfairness of holding him responsible while the real culprit goes free. This plea is appealing to the ears of the assessment office, the solicitor and so far the Commission.

As a result, the operator gets off with a token assessment, the policy of non-enforcement proliferates and the death and injury rate among miners employed by independent contractors soars. This charade has got to stop.

Based on an independent evaluation and de novo review of the circumstances, I find:

1. That for the failure to provide safety belts and lines to two miners working on a high scaffold the amount of the penalty warranted for the two violations that occurred is \$1,000.

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2. That for the failure to provide a handrail on an elevated walkway the amount of the penalty warranted is \$500.
3. That for the failure to provide the hand held grinder with an automatic deenergizer the amount of the penalty warranted is \$250.

Accordingly, it is ORDERED that the parties motion to approve settlement of the three violations charged at the amounts initially assessed, \$225, \$240, and \$122 for a total of \$587, be, and hereby is, DENIED.

It is FURTHER ORDERED that for the three violations found the operator pay a penalty of \$1,750.00 on or before Friday, April 25, 1980 and that, subject to payment, the captioned petition be DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge