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SOL (MSHA) v. MECCO, INC
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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), v. MECCO, INC.,	PETITIONER	Civil Penalty Proceeding Docket No. LAKE 79-219-M A.O. No. 33-01400-05001-R Mecco, Inc., Pit and Mill
	RESPONDENT	

DECISION AND ORDER APPROVING SETTLEMENT

Petitioner filed a motion to approve settlement in this matter for \$200. The amount originally proposed was \$1,000. For the reasons set forth below, the recommended settlement is approved.

Citation No. 362018 was issued to Respondent on April 18, 1979, for an alleged violation of Section 103(a) of the Federal Mine Safety and Health Act of 1977 (the Act). That provision, inter alia, gives authorized representatives of the Secretary of Labor "a right of entry to, upon, or through any coal or other mine" for the purpose of "making any inspection or investigation under this Act * * *." MSHA alleged that on April 18 and 20, 1979, an authorized representative of the Secretary was denied entry to Respondent's premises.

The settlement motion filed by Petitioner and supporting affidavit filed by Respondent did not deny that the violation occurred. However, these documents asserted that the proposed settlement is warranted for several reasons. The parties detailed a long history of jurisdictional confusion at Respondent's facility between MSHA and the Occupational Safety and Health Administration (OSHA). Respondent claimed that both agencies claimed jurisdiction over its facility. Respondent believed that MSHA's jurisdiction was "limited to underground and open face pit type surface mines." Additionally, in the event MSHA had jurisdiction over facilities such as Respondent's, the company felt that Supreme Court's decision in Marshall v. Barlow's Inc., 436 U.S. 307 (1978), required MSHA to obtain a search warrant before conducting inspections of mine property.

On August 3, 1979, Petitioner filed an injunctive action in the United States District Court for the Southern District of Ohio in an attempt to restrain Respondent from interfering with MSHA inspections at its site. After a series of conferences between the parties, a consent order was

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approved by the Court in which Respondent agreed to permit MSHA inspections "upon and through those portions of its operation subject to MSHA jurisdiction," and not "interfere with, hinder or delay" such inspections. Respondent paid approximately \$2,000 in attorney's fees in connection with this court case.

As this civil penalty case proceeded, Respondent repeatedly stated that it was under the impression the consent order entered in District Court had resolved this matter. In various conference calls between Respondent's president, MSHA's counsel, and the undersigned administrative law judge, Respondent was apprised that this is a separate proceeding from the District Court litigation. At this point, the parties proposed the \$200 settlement.

The settlement motion and affidavit detailed the history of this case and Respondent's relationship with MSHA. The motion reviewed the various court decisions on the warrantless inspection issue, and highlighted the confusion and split of authority which faced Respondent when the subject inspections were attempted. Additionally, the motion discussed the jurisdictional disputes between MSHA and OSHA which had not been resolved as of the date of the subject inspection attempts. Finally, the motion discussed the six criteria in Section 110(i) of the Act. It is noted that Respondent is a small operator with no prior history of violating either MSHA regulations or Section 103(a) of the Act. The gravity of the offense is said to be moderate, and payment of the recommended settlement will not have any effect on the company's ability to remain in business. The parties further stated that Respondent's negligence was slight in view of the conflicting case law on the warrantless inspection issue and the jurisdictional dispute between MSHA and OSHA which existed at the time in question. Finally, the motion stated that the consent judgment in the District Court proceeding demonstrated Respondent's good faith in this matter.

In light of these factors, as well as the fact that Respondent has already paid almost \$2,000 in attorney's fees in connection with the injunction action, I believe the proposed settlement should be approved.

ORDER

Respondent is ORDERED to pay \$200 in penalties within 30 days of the date of this Order.

Edwin S. Bernstein
Administrative Law Judge