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SOL (MSHA) v. CYPRUS MINERAL
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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. WEST 80-19-M
A.O. No. 24-01431-05001 F

v.

Bosal No. 1 Claim

CYPRUS INDUSTRIAL MINERALS
CORP.,
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT

This is a civil penalty proceeding initiated by the petitioner against the respondent through the filing of a proposal for assessment of a civil penalty pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment for one alleged violation of mandatory safety standard 30 C.F.R. 57.3-22.

Respondent filed a timely answer but this proceeding was subsequently stayed by order issued May 27, 1980, pending a decision by the 9th Circuit concerning the review of a notice of contest filed by the respondent contesting the issuance of the underlying imminent danger order of withdrawal issued in this case. By order issued September 3, 1980, the 9th Circuit remanded the contest of the withdrawal order to the Commission for its review. The Commission issued a final order on January 1, 1981 upholding the validity of the 107(a) imminent danger order, and on January 21, 1981, I issued an order to show cause why this civil penalty matter should not be scheduled for hearing. Respondent complied by submitting a copy of its petition for review filed with the 9th Circuit on February 4, 1981. The parties on February 12, 1981 also submitted a stipulation and motion to approve a proposed settlement agreement. I rejected, without prejudice, this proposed settlement by an order issued February 13, 1981 because inter alia, I disagreed with respondent's asserted right to a refund based on any favorable outcome for respondent with regard to the litigation pending in the 9th Circuit. On March 4, 1981, the parties filed an amended stipulation and motion to approve settlement agreement, whereby they limited the right to a refund to a decision by the 9th Circuit that respondent was inappropriately cited or that the Commission had no jurisdiction over the mine in issue. The order, initial assessment, and the proposed settlement amount is as follows:

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Order No.	Date	30 CFR Standard	Assessment	Settlement
342065	8/3/78	57.3-22	\$1,000	\$500

In support of the proposed settlement the parties have submitted arguments and information concerning the six statutory factors found in section 110(i) of the Act. The parties have stipulated that respondent operates a noncoal mine and the total hours worked at the controlling company are 2,585 and the hours worked at the mine are 160 per year. Payment of the proposed penalty will not impair the respondent's ability to continue in business.

In support of a reduced penalty, the parties state prior stipulated facts which lessen the degree of negligence on the part of respondent. These facts indicate that an independent contractor performed the work for which the order was issued, that this man furnished all the manpower, equipment and supplies needed to perform the work, and that he exercised complete control over the area in which he was working.

Conclusion

After careful review and consideration of the pleadings, arguments and information of record in support of the motion to approve the proposed settlement, I conclude and find that it is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the motion is GRANTED and the settlement is APPROVED.

Order

Respondent IS ORDERED to pay a civil penalty in the settlement amount listed above in satisfaction of the order in question, within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, this proceeding is dismissed. In the event that respondent prevails on the issue of jurisdiction or in the event that the 9th Circuit determines that respondent was inappropriately cited, petitioner will refund the \$500 penalty to respondent.

George A. Koutras
Administrative Law Judge