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SOL (MSHA) V. ARROYO MINING  
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TTEXT:

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. CENT 83-20  
A.C. No. 29-01820-03505

v.

Arroyo Mine No. 1

ARROYO MINING COMPANY, INC.,  
RESPONDENT

DENIAL OF SETTLEMENT

ORDER TO SUBMIT INFORMATION

In accordance with what apparently now is becoming standard practice, the Solicitor has filed a motion for settlement in the amount of \$20 for the one violation involved in this matter. The motion is predicated solely upon section 100.4 of the regulations of the Mine Safety and Health Administration, 30 C.F.R. 100.4 which provides for the assessment of a \$20 penalty for a violation which is not reasonably likely to result in a reasonably serious injury or illness. The citation was issued for a failure to submit the required respirable dust samples.

I am unable to grant the Solicitor's motion on the basis of the present record. The Solicitor has furnished no information. The citation itself contains boxes which were checked by the inspector indicating the feared event was reasonably likely and that negligence was moderate. I cannot approve a settlement based upon checks in boxes but even if I could the checks in this case would contra-indicate a \$20 penalty.

Even more importantly, the Act makes very clear that penalty proceedings before the Commission are de novo. The Commission itself recently recognized that it is not bound by penalty assessment regulations adopted by the Secretary but rather that in a proceeding before the Commission the amount of the penalty to be assessed is a de novo determination based upon the six statutory criteria specified in section 110(i) of the Act and the information relevant thereto developed in the course of the adjudicative proceeding. Sellersburg Stone Company, 5 FMSHRC 287 (March 1983). Indeed, if this were not so, the Commission would be nothing but a rubber stamp for the Secretary.

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The fact that MSHA may have determined that this violation is not "significant and substantial" as that term presently is defined by the Commission, is not determinative or even relevant in these proceedings. I agree with Administrative Law Judge Broderick that whether a cited violation is checked as significant and substantial is per se irrelevant to the determination of the appropriate penalty to be assessed. United States Steel Mining Co., Inc., 5 FMSHRC 934 (May 1983), PDR granted June 22, 1983.

Regardless of the Secretary's regulations, once this Commission's jurisdiction attaches we have our own statutory responsibilities to fulfill and discharge. This can only be done on the basis of an adequate record.

ORDER

In light of the foregoing, it is Ordered that the Solicitor's motion for settlement be Denied.

It is further Ordered that within 30 days from the date of this order the Solicitor file information adequate for me to determine whether the proposed penalty is justified and settlement warranted. Otherwise, this case will be assigned and set down for hearing on the merits.

Paul Merlin  
Chief Administrative Law Judge