

CCASE:
SOL (MSHA) V. KAISER SAND & GRAVEL
DDATE:
19830715
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. WEST 83-64-M
A.C. No. 04-01959-05501

v.

Sisquic Pit and Mill

KAISER SAND & GRAVEL CO.,
RESPONDENT

DENIAL OF SETTLEMENT

ORDER TO SUBMIT INFORMATION

The Solicitor has filed a motion for settlement for the one violation involved in this matter. She advises that the operator has paid the originally assessed amount of \$20 and has withdrawn its notice of contest.

Since the Commission's jurisdiction has attached, the operator's proposed withdrawal of its notice of contest is not determinative. Under section 110 of the Act the Commission has the responsibility to insure that all settlements comply with the requirements of the law including the six statutory criteria. In her motion the Solicitor sets forth information regarding history, size and ability to continue in business. With respect to abatement, negligence and gravity the Solicitor directs my attention to the "inspector's statement, Exhibit 1 attached hereto, which reflects the testimony of the inspector if he were to testify." There is, however, no inspector's statement attached to the motion. Such carelessness is unfortunately all too typical of these settlement motions. The Commission and its Judges should not have to waste time repeatedly attempting to obtain information necessary to dispose of settlement motions.

Moreover, on the face of the matter, I cannot approve the proposed settlement. In my opinion, \$20 is a nominal penalty which denotes a lack of gravity. The dry vegetation cited by the inspector appears to fall squarely within the mandatory standard. The proximity of this vegetation to the electrical substation does not necessarily mandate a finding that the condition was serious but if there was no gravity there must be an explanation why.

~1282

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