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SOL (MSHA) V. RIDGE LAND
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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 83-171 A.C. No. 46-05963-03503
v.	Ridge Land No. 22
RIDGE LAND COMPANY, 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 $60 for the three violations involved in this matter. This 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 single penalty for a violation which MSHA believes is not reasonably likely to result in a reasonably serious injury or illness. The first violation was issued for failure to properly install a fire sensor system. The second violation was issued for failure to have proper lighting on a continuous mining machine and failure to properly illuminate the working place. The third violation was issued for failure to have proper lighting on the roof bolting machine and failure to properly illuminate the working place.

I am unable to approve the motion for settlement on the basis of the present record. In my opinion $20 is a nominal penalty which indicates a lack of gravity. I have been told nothing about gravity, negligence or any other factors which would enable me to make an informed judgment as to proper penalty amounts.

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.

The fact that MSHA may have determined that these violations are 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 penalties are justified and settlement warranted. Otherwise, this case will be assigned and set down for hearing on the merits.

Paul Merlin
Chief Administrative Law Judge