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SOL (MSHA) V. ANSCO 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),
PETITIONER

CIVIL PENALTY PROCEEDING
Docket No. PENN 83-67
A.C. No. 36-02713-03501 B43

v.

Frenchtown Strip Mine

ANSCO, INCORPORATED,
RESPONDENT

PARTIAL DENIAL OF SETTLEMENT

ORDER TO SUBMIT INFORMATION

The Solicitor has filed a motion to approve settlements for the three violations involved in this matter. The proposed settlements are for the originally assessed amounts. Two violations were assessed at \$20 apiece and one violation was assessed at \$98.

While the motion for settlement contains sufficient information to approve settlement of the \$98 violation, there is little information regarding the two \$20 violations. In my opinion, \$20 denotes a lack of gravity. However, the \$20 violations are for lack of insulated bushings and proper fittings for power wires in a generator and lack of non-conductive material at a circuit box. The inspector has checked boxes on the citations which indicate that negligence was low and an accident was unlikely to occur in each case. I cannot approve a settlement on the basis of checks in boxes because no reasons are given for the bare conclusions represented by the checks.

The Solicitor advises that the two violations which are assessed at \$20 each were done so as the result of the so-called "single penalty assessment" which is set forth in 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 MSHA believes is not reasonably likely to result in a reasonably serious injury or illness. This regulation is not binding upon the Commission and is not a basis upon which I could approve a settlement.

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)

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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 this proceeding. 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.

I approve of the settlement of the \$98 violation but will not direct payment until information is furnished for the two \$20 violations.

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 \$20 penalties for the two citations discussed above 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