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SOL (MSHA) V. MAIDEN MINING
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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 83-183
A.C. No. 46-05806-03505

v.

No. 3 Mine

MAIDEN MINING COMPANY,
RESPONDENT

PARTIAL APPROVAL AND PARTIAL DISAPPROVAL OF SETTLEMENT
ORDER TO SUBMIT INFORMATION

The Solicitor has filed a motion to approve settlement for the four violations involved in this matter. The proposed settlement is for the originally assessed amounts. Three violations were assessed at \$20 apiece and one violation was assessed at \$126. The operator has already tendered payment of \$186.

Citation No. 2122147 was issued because a disconnect plug was not marked for identification. The violation was serious and the operator was moderately negligent. The Solicitor proposes to settle this violation for the original assessment of \$126. I accept the Solicitor's representations.

The Solicitor proposes to settle the other three citations for the original assessments of \$20 apiece. In my opinion, \$20 is a nominal penalty which denotes a lack of gravity. The three citations involve accumulations of coal and coal dust, and permissibility violations. A reading of these citations indicates on their face the possibility that some degree of gravity may have been present. The Solicitor provides no information about the gravity or negligence involved in these citations. I cannot approve these proposed settlements on the basis of the information submitted to date.

The \$20 "single penalty assessments" were obviously predicated 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

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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) 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 will not order that the case be dismissed with respect to Citation No. 2122147 pending final disposition of the three other citations.

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

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three 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