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SOL (MSHA) V. MEDUSA CEMENT
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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. LAKE 83-80-M
A.C. No. 20-00038-05504

v.

Medusa Cement Company
Plant

MEDUSA CEMENT COMPANY,
RESPONDENT

DISAPPROVAL OF SETTLEMENT

ORDER TO SUBMIT INFORMATION

The Solicitor has filed a motion to approve settlement in the above-captioned proceeding. The Solicitor proposes to settle the one violation in this case for the original assessment of \$56.

Citation No. 2089073 was issued for a violation of 30 C.F.R.

56.16-6 because the covers on oxygen and acetylene cylinder being transported were not in place to protect the stems of the cylinders. The Solicitor states that the operator demonstrated no negligence but he gives no basis for this assertion. The Solicitor further states that the violation was significant and substantial but again he gives no reasons. I note that the inspector stated on the citation that falling materials from the conveyors could easily strike one of the stems and create a serious hazard. The inspector checked boxes indicating occurrence was reasonably likely and could reasonably be expected to result in lost workdays or restricted duty.

I have recently held in many other cases that the term "significant and substantial" is irrelevant in a penalty proceeding before the Commission. Such a proceeding before the Commission under section 110 of the Act is entirely de novo. Whether or not the Secretary looks to the present definition of "significant and substantial" does not affect these proceedings. Here the relevant criterion is gravity. Moreover, I also have stated that I cannot base a settlement approval upon an inspector's checks in boxes on a form without some explanation from the Solicitor.

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The Solicitor has told me nothing about size, prior history, or ability to continue in business.

Under section 110(i) of the Act I am charged with the responsibility of determining an appropriate penalty in light of the six specified criteria. The Solicitor has not even mentioned most of these criteria and where he has, he either gives no reasons (negligence) or misstates the standard (gravity).

The Solicitor must tell me why \$56 is an appropriate penalty in light of the six statutory criteria. The fact that this was the originally assessed amount is not, of course, determinative in this de novo proceeding.

Accordingly, the settlement motion is Denied and the Solicitor is Ordered to submit the necessary information within 30 days from the date of this order.

Paul Merlin
Chief Administrative Law Judge