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SOL (MSHA) V. PALMER COKING COAL
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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. WEST 83-93
A.C. No. 45-02150-03502

v.

Section 12 - McKay
Surface Mine

PALMER COKING COAL COMPANY,
RESPONDENT

DENIAL OF SETTLEMENT
ORDER TO SUBMIT INFORMATION

The Solicitor has filed a motion to approve settlement of the one violation involved in this proceeding for the original assessment of \$20. I cannot approve the proposed settlement on the basis of the information submitted to date.

The citation was issued because the automatic warning device on a dozer was inoperative. The Solicitor advises that the operator is small in size with a small history of violations. She further reports that the condition was abated in good faith and that payment will not impair the operator's ability to continue in business. However, the Solicitor provides no information about negligence or gravity. She merely refers to the inspector's statement and the fact that the inspector would testify the hazard was immediately abated. Abatement is one thing and gravity is another. A proposed settlement of \$20 would appear to denote a lack of gravity. Based upon the record as it now stands I could not find a lack of gravity.

I recently approved a settlement motion from this Regional Solicitor's office, but I had difficulty in doing so because all the requisite information was not furnished. My approval was based on my own reading and evaluation of the citation. See United States Antimony Corp., WEST 83-98-M (August 29, 1983). Other Regional Solicitor's routinely provide the necessary information. I cannot approve the settlement in this case without an explanation from the Solicitor regarding negligence and gravity sufficient to justify the penalty amount she proposes.

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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. If the information is not forthcoming, the case will be assigned for hearing.

Paul Merlin
Chief Administrative Law Judge