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SOL (MSHA) V. ROSS ISLAND SAND
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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 83-111-M
A.C. No. 35-00540-05501

v.

Ross Island Plant

ROSS ISLAND SAND & GRAVEL
COMPANY,
RESPONDENT

DENIAL OF SETTLEMENT
ORDER TO SUBMIT INFORMATION

The Solicitor has filed a motion to approve settlement for the two violations involved in this matter. The proposed settlements are for \$20 apiece.

The Solicitor advises that the operator is small, has no prior history, abatement was in good faith, and payment of proposed penalties will not affect the ability to continue in business. However, the Solicitor does not furnish sufficient information with respect to gravity and negligence. She merely attaches the citations. One violation involved a work deck area littered with wood and other debris and the second violation involved an unsecured acetylene bottle located in the welding area. The inspector said nothing about gravity or negligence and neither does the Solicitor. There is therefore, insufficient basis for me to determine whether \$20 penalties are appropriate.

In discussing the operator's prior history the Solicitor states that this is a single penalty assessment situation. The fact that the Mine Safety and Health Administration treated these violations as "single penalty assessments" under section 100.4 of its regulations, 30 C.F.R. 100.4, is not binding upon this Commission. Indeed, the single penalty assessment regulation is not even relevant in these proceedings. 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

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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. Regardless of the Secretary's regulations once this Commission's jurisdiction attaches we have our own statutory responsibility to fulfill and discharge. This can only be done on the basis of an adequate record. The Solicitor has furnished information regarding four of the six statutory criteria. She must furnish information regarding the remaining two which are negligence and gravity.

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