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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 83-76-M  
A.C. No. 20-00038-05502

v.

Medusa Cement Company  
(Plant)

MEDUSA CEMENT COMPANY,  
RESPONDENT

DISAPPROVAL OF SETTLEMENT  
ORDER OF ASSIGNMENT

The Solicitor has filed a motion to approve settlement in the above-captioned proceeding. The Solicitor proposes to settle the two violations in this case for the original assessments total of \$105.

Citation No. 2089083 was issued for a violation of 30 C.F.R.

56.11-1 because a build-up of cement was noted on the stairway and walkway at the bottom of the transfer elevator. The violation was assessed at \$85. The Solicitor states that the operator demonstrated a low degree of 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. The inspector checked boxes indicating that negligence was low and that occurrence was reasonably likely and could reasonably be expected to result in lost workdays or restricted duty.

Citation No. 2089085 was issued for a violation of 30 C.F.R.

56.11-12 because the cover plate for the No. 2 fuel oil pump pit was not in place. The violation was assessed at \$20. The Solicitor states that the operator demonstrated a low degree of negligence and that there was no likelihood of an injury. However, the Solicitor provides no information to support these representations.

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

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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. Of course, the Commission is not bound by 30 C.F.R. 100.4 which was the basis of the one \$20 "single penalty assessment" in this penalty proceeding.

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.

In another case involving this operator (LAKE 83-80-M) I disapproved a similarly inadequate settlement motion from this Solicitor and ordered him to submit additional information. However, the additional information he submitted still did not support approval of the proffered settlement and I therefore, assigned the case for hearing. Assignment of this case also appears to be the most expeditious manner of proceeding.

Accordingly, the settlement motion is Denied and this case is assigned to Administrative Law Judge James A. Broderick.

All future communications regarding this case should be addressed to Judge Broderick at the following address:

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Paul Merlin  
Chief Administrative Law Judge