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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 83-81-M
A.C. No. 20-02514-05502

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 three violations in this case for the original assessments total of \$98.

Citation No. 2088997 was issued for a violation of 30 C.F.R. 56.14-1 because guarding was not provided for the counterweigh wheel for a shaker screen. The violation was assessed at \$20. The Solicitor states that the operator demonstrated a moderate degree of negligence and that an injury was unlikely to occur. The Solicitor, however, provides no information to support these assertions.

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 mere recitation by the Solicitor of bare conclusions is not a sufficient basis upon which I can approve \$20 penalty assessments.

Citation Nos. 2089063 and 2089064 were issued for failure to properly maintain a fire extinguisher and failure to clear a walkway of material causing a slip and fall

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hazard, respectively. The violations were assessed at \$39 apiece. The Solicitor states that the operator demonstrated a low degree of negligence in both instances but he provides no information to support this assertion. The Solicitor further states that the violations were significant and substantial but again he gives no reasons. In both citations, 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. I have previously stated that I cannot base a settlement approval upon an inspector's checks in boxes on a form without some explanation from the Solicitor. As already noted, 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, including gravity. In absence of other evidence, \$39 would appear a low penalty amount. The Solicitor has told me nothing about size, prior history, or ability to continue in business.

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. See also LAKE 83-74-M, LAKE 83-75-M and LAKE 83-77-M.

Accordingly, the settlement motion is Denied and this case is hereby 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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Health Review Commission
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Paul Merlin
Chief Administrative Law Judge