CCASE:

SOL (MSHA) V. WAYNE KENDALL

DDATE: 19840117 TTEXT: 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 81-406-M A.C. No. 04-00010-05025 A

v.

Crestmore Mine

WAYNE KENDALL,

RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Vail

This is a civil penalty proceeding filed by the petitioner against Wayne Kendall, (hereinafter "Kendall"), as an individual agent of the Riverside Cement Company, the corporate operator of the Crestmore Mine located in Riverside, California. Kendall in this case was acting as the operator's plant manager at the Crestmore Mine.

On November 1, 1979, Order No. 375785 was issued by the Mine Safety and Health Administration to the Riverside Cement Company, pursuant to section 107(a) of the Federal Mine Safety and Health Act, 30 U.S.C. 817(a), citing a violation of safety standard 30 C.F.R. 57.15-5. (FOOTNOTE 1) Said order reads as follows:

A serious accident occurred at the Crestmore Mine when an employee entered the feed hopper at the dynapactor (crusher) to free a bridged material hangup. The bridged material broke through dropping the employee onto the pan feeder and loose material from above came down covering the employee. Safety belts, lines, and a person in attendance on the line were not being used in this dangerous location.

Riverside Cement Company has paid an uncontested civil penalty assessment of \$5,000 for the foregoing violation under MSHA Assessment Office Case No. 04-00010-0511-I.

Kendall was charged in this case under section 110(c) of the Act, 30 U.S.C. \mid 820(c), with knowing, authorizing, ordering, or carrying out said violation charged above against Riverside Cement Corporation, as their agent.

The petitioner filed a civil penalty proceeding against Kendall, proposing the assessment of a \$300.00 civil penalty. This matter was set for hearing on November 16, 1982 in Riverside, California. On November 15, 1982, the petitioner and Kendall filed a joint motion for approval of a settlement and for dismissal of this case. Kendall tendered a check for \$100.00 in settlement of the proposed civil penalty and indicated he no longer wished to contest the charges against him.

The parties represent that there was a serious violation in this case involving an accident wherein a miner sustained back injuries, multiple abrasions and lacerations. However, as a mitigating factor, Kendall was not directly supervising the injured miner at the time of the accident. Also, Kendall showed good faith after notification of the violation in helping to implement, at a mine safety meeting, proper procedures for when and where to use safety belts and lines to guard against a future occurrence of a similar accident.

Based on a review of the record in this case and the representations of the parties, I find the settlement proposed is in accord with the purpose and policy of the Act.

ORDER

Accordingly, it is ORDERED that the motion by the petitioner and Kendall be, and hereby is, GRANTED. It is further ORDERED that upon clearance of Kendall's tendered \$100.00 check as payment of the offered sum herein, the captioned matter is DISMISSED.

Virgil E. Vail Administrative Law Judge

1 30 C.F.R. | 57.15 5 provides as follows:

Mandatory. Safety belts and lines shall be worn when men work where there is danger of falling; a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered.