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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 82-12-M  
A.C. No. 04-00010-05026 A

v.

Crestmore Mine

BEN POWELL,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Vail

This is a civil penalty proceeding filed by the petitioner against Ben Powell, (hereinafter "Powell"), as an individual agent of the Riverside Cement Company, the corporate operator of the Crestmore Mine located in Riverside, California. Powell 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.

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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.

Powell was charged in this case under section 110(c) of the Act, 30 U.S.C. 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 Powell, 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 Powell filed a joint motion for approval of a settlement and for dismissal of this case. Powell 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, Powell was not directly supervising the injured miner at the time of the accident. Also, Powell 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 Powell be, and hereby is, GRANTED. It is further ORDERED that upon clearance of Powell's tendered \$100.00 check as payment of the offered sum herein, the captioned matter is DISMISSED.

Virgil E. Vail  
Administrative Law Judge

AA

~FOOTNOTE\_ONE

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.