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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 PROCEEDINGS

Docket No. WEST 82-155-M
A.C. No. 42-00716-05015

v.

Docket No. WEST 83-60-M
A.C. No. 42-00716-05503

KENNECOTT MINERALS COMPANY,
UTAH COPPER DIVISION,
RESPONDENT

Magna Concentrator

DECISION AFTER REMAND

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
Kent W. Winterholler, Esq., Parsons, Behle & Latimer,
Salt Lake City, Utah,
for Respondent.

Before: Judge Morris

On September 16, 1985, the Commission remanded the above cases to the undersigned judge for the assessment of appropriate penalties.

The statutory criteria for assessing civil penalties are set forth in 30 U.S.C. 820(i), which provides as follows:

(i) The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

The evidence at the hearing indicated that the operator had a history of 37 violations (Tr. 44; Exhibit P5). In connection with WEST 82-155-M and WEST 83-60-M the Secretary proposed penalties respectively, of \$40 and \$20. These penalties

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appear appropriate inasmuch as the respondent, with approximately 5,000 employees, should be considered a large operator. Further, the penalties will not affect the operator's ability to continue in business (Tr. 45, 46). I consider the negligence of the operator to be high inasmuch as the violative conditions were permitted to exist for some time (Tr. 29, 30, 31, 36). Such conditions were also open and obvious. The gravity is likewise high in view of the possibility that the violative conditions could cause a serious injury or a fatality (Tr. 23, 37). The file reflects the operator's good faith in that it rapidly abated the violations.

On balance, I deem that the penalties, as proposed, are appropriate. Accordingly, I enter the following:

ORDER

1. In WEST 82-155-M the proposed civil penalty of \$40 is affirmed.
2. In WEST 83-60-M the proposed civil penalty of \$20 is affirmed.
3. Respondent is ordered to pay the sum of \$60 within 40 days of the date of this decision after remand.

John J. Morris
Administrative Law Judge