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SOL (MSHA) V. WESTMORELAND COAL
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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)

Docket No. WEVA 82-152-R
WEVA 82-369

v.

WESTMORELAND COAL COMPANY

PETITION FOR RECONSIDERATION

The recent decision of this Commission to reduce the civil penalty in the captioned case is based on an erroneous interpretation of the intent of the undersigned in use of the words "gross negligence" and "negligence". Accordingly the Commission's legal conclusion that the undersigned thereby believed that the operator's negligence was somehow lessened is totally erroneous and reconsideration under the circumstances would be appropriate.

Although this Commission reversed the "unwarrantable failure" findings in the original decision of the undersigned the factual findings underlying the operator's negligence were not modified in any way. The use of the words "gross negligence" in that decision, 5 FMSHRC 132 (January 1983) (ALJ), and the use of the word "negligence" in the decision following remand, 7 FMSHRC 1647 (October 1985) (ALJ), concerning the same factual circumstances did not in any way reflect on my part a belief that there was any lesser negligence. The facts remain the same and had I known the Commission would have drawn any inference from the noted terminology I would have again used the phrase "gross negligence" to characterize the high degree of negligence found in this case, for indeed it is my firm belief that the facts of this case demonstrate the highest degree of negligence. This Commission of course has the authority to reduce the civil penalty in this case but such a reduction cannot be based upon any finding of lesser negligence by the undersigned because no such finding has ever been made.

Gary Melick
Administrative Law Judge